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CONTRACT
BETWEEN THE
NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILDREN AND FAMILY SERVICES
AND

Functional Assessment Systems, LLC

This contract is entered into by and between the Nebraska Department of Health and Human Services, **DIVISION OF CHILDREN AND FAMILY SERVICES** (hereinafter "DHHS"), and **Functional Assessment Systems, LLC** (hereinafter "Contractor").

PURPOSE. The purpose of this contract is to purchase a software program entitled JIFF through Functional Assessment Systems, LLC to assess children/family needs as it relates to school absenteeism.

I. TERM AND TERMINATION

- A. **TERM.** This contract is in effect from November 15, 2011 until June 30, 2012.
- B. **TERMINATION.** This contract may be terminated at any time upon mutual written consent or by either party for any reason upon submission of written notice to the other party at least Thirty (30) days prior to the effective date of termination. DHHS may also terminate this contract in accord with the provisions designated "FUNDING AVAILABILITY" and "BREACH OF CONTRACT." In the event either party terminates this contract, the Contractor shall provide to DHHS all work in progress, work completed, and materials provided to it by DHHS in connection with this contract immediately.

II. CONSIDERATION

- A. **TOTAL PAYMENT.** DHHS shall pay the Contractor a total amount not to exceed \$13,500.00 (thirteen thousand, five hundred dollars) for the services specified herein.
- B. **PAYMENT STRUCTURE.** Payment shall be structured as follows: Payment shall be made upon receipt of the software and an invoice from the Contractor.
- C. **PROMPT PAYMENT AND DISCOUNT.**
 - 1. Payment shall be made in compliance with the Nebraska Prompt Payment Act, NEB. REV. STAT. §81-2401 through 81-2408 with a discount for early payment as provided in this section. Unless otherwise provided herein, payment shall be made by electronic means.

2. For purposes of determining whether payment was made in accordance with this section, payment by DHHS shall be considered to be made on the date the warrant or check for such payment was mailed or payment was otherwise transmitted.
3. Bill shall mean a proper billing, invoice, report or other written document which requests a payment and which is supplemented by all necessary verification and forms required to process payments pursuant to this contract and agency regulations.

D. Automated Clearing House (ACH) Enrollment Form Requirements for Payment.

The vendor shall complete and sign the State of Nebraska ACH Enrollment Form and obtain the necessary information and signatures from their financial institution. The completed form must be submitted before payments to the vendor can be made. Download ACH Form:

http://www.das.state.ne.us/accounting/nis/address_book_info.htm

III. SCOPE OF SERVICES

- A. The Contractor shall do the following:
(See Attached Customer Set-Up Form for FAS Outcomes)
(See Attached Software License Agreement)
- B. DHHS shall do the following:
(See Attached Customer Set-Up Form for FAS Outcomes)
(See Attached Software License Agreement)

IV. GENERAL PROVISIONS

A. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES.

1. All Contractor books, records, and documents regardless of physical form, including data maintained in computer files or on magnetic, optical or other media, relating to work performed or monies received under this contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by DHHS. Contractor shall maintain all records for five (5) years from the date of final payment, except that records that fall under the provisions of the Health Insurance Portability and Accountability Act (HIPAA) shall be maintained for six (6) full years from the date of final payment. In addition to the foregoing retention periods, all records shall be maintained until all issues related to an audit, litigation or other action are resolved to the satisfaction of DHHS. All records shall be maintained in accordance with generally accepted business practices.
2. The Contractor shall provide DHHS any and all written communications received by the Contractor from an auditor related to Contractor's internal control over financial reporting requirements and communication with those charged with governance including those in compliance with or related to Statement of Auditing Standards (SAS) 112 *Communicating Internal Control related Matters*

Identified in an Audit and SAS 114 The Auditor's Communication with Those Charged With Governance. The Contractor agrees to provide DHHS with a copy of all such written communications immediately upon receipt or instruct any auditor it employs to deliver copies of such written communications to DHHS at the same time copies are delivered to the Contractor, in which case the Contractor agrees to verify that DHHS has received a copy.

3. The Contractor shall immediately correct any material weakness or condition reported to DHHS in the course of an audit and notify DHHS that the corrections have been made.
 4. In addition to, and in no way in limitation of any obligation in this contract, the Contractor shall be liable for audit exceptions, and shall return to DHHS all payments made under this contract for which an exception has been taken or which has been disallowed because of such an exception, upon demand from DHHS.
 5. The above provisions shall survive termination of the contract.
- B. **AMENDMENT.** This contract may be modified only by written amendment, executed by both parties. No alteration or variation of the terms and conditions of this contract shall be valid unless made in writing and signed by the parties.
- C. **ANTI-DISCRIMINATION.** The Contractor shall comply with all applicable local, state and federal statutes and regulations regarding civil rights and equal opportunity employment, including Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973, Public Law 93-112; the Americans With Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, NEB. REV. STAT. §§ 48-1101 to 48-1125. Violation of said statutes and regulations will constitute a material breach of contract. The Contractor shall insert this provision in all subcontracts.
- D. **ASSIGNMENT.** The Contractor shall not assign or transfer any interest, rights, or duties under this contract to any person, firm, or corporation without prior written consent of DHHS. In the absence of such written consent, any assignment or attempt to assign shall constitute a breach of this contract.
- E. **ASSURANCE.** If DHHS, in good faith, has reason to believe that the Contractor does not intend to, is unable to, or has refused to perform or continue to perform all material obligations under this contract, DHHS may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at DHHS's option, be the basis for terminating this contract.
- F. **BREACH OF CONTRACT.** DHHS may terminate the contract, in whole or in part, if the Contractor fails to perform its obligations under the contract in a timely and proper manner. DHHS may, by providing a written notice of default to the Contractor,

allow the Contractor to cure a failure or breach of contract within a period of thirty (30) days or longer at DHHS's discretion considering the gravity and nature of the default. Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing the Contractor time to cure a failure or breach of contract does not waive DHHS's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. DHHS may, at its discretion, contract for any services required to complete this contract and hold the Contractor liable for any excess cost caused by Contractor's default. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.

- G. CONFIDENTIALITY. Any and all information gathered in the performance of this contract, either independently or through DHHS, shall be held in the strictest confidence and shall be released to no one other than DHHS without the prior written authorization of DHHS, provided, that contrary contract provisions set forth herein shall be deemed to be authorized exceptions to this general confidentiality provision. This provision shall survive termination of this contract.
- H. CONFLICTS OF INTEREST. In the performance of this contract, the Contractor shall avoid all conflicts of interest and all appearances of conflicts of interest. The Contractor shall immediately notify DHHS of any such instances encountered so that other arrangements can be made to complete the work.
- I. DATA OWNERSHIP AND COPYRIGHT. All data collected as a result of this project shall be the property of DHHS. The Contractor shall not copyright any of the copyrightable material produced in conjunction with the performance required under this contract without written consent from DHHS. DHHS hereby reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the copyrightable material for state government purposes. This provision shall survive termination of this contract.
- J. DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- K. DOCUMENTS INCORPORATED BY REFERENCE. All references in this contract to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures to be followed by the Contractor in discharging its obligations under this contract shall be deemed incorporated by reference and made a part of this contract with the same force and effect as if set forth in full text, herein.
- L. DRUG-FREE WORKPLACE. Contractor certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Contractor shall provide a copy of its drug-free workplace policy at any time upon request by DHHS.

- M. **FORCE MAJEURE.** Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of this contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under this contract which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under this contract.
- N. **FUNDING AVAILABILITY.** DHHS may terminate the contract, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, DHHS may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. DHHS shall give the Contractor written notice thirty (30) days prior to the effective date of any termination. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.
- O. **GOVERNING LAW.** The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against DHHS or the State of Nebraska regarding this contract shall be brought in Nebraska administrative or judicial forums as defined by Nebraska State law. The Contractor shall comply with all Nebraska statutory and regulatory law.
- P. **HOLD HARMLESS.**
1. The Contractor shall defend, indemnify, hold, and save harmless the State of Nebraska and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State of Nebraska, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, subcontractors, consultants, representatives, and agents, except to the extent such Contractor liability is attenuated by any action of the State of Nebraska which directly and proximately contributed to the claims.
 2. DHHS's liability is limited to the extent provided by the Nebraska Tort Claims Act, the Nebraska Contract Claims Act, the Nebraska Miscellaneous Claims Act, and any other applicable provisions of law. DHHS does not assume liability for the action of its Contractors.

3. The above provisions shall survive termination of the contract.

- Q. **INDEPENDENT CONTRACTOR.** The Contractor is an Independent Contractor and neither it nor any of its employees shall for any purpose be deemed employees of DHHS. The Contractor shall employ and direct such personnel as it requires to perform its obligations under this contract, exercise full authority over its personnel, and comply with all workers' compensation, employer's liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this contract.
- R. **INVOICES.** Invoices for payments submitted by the Contractor shall contain sufficient detail to support payment. Any terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties.
- S. **INTEGRATION.** This written contract represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this contract.
- T. **NEBRASKA NONRESIDENT INCOME TAX WITHHOLDING.** Contractor acknowledges that Nebraska law requires DHHS to withhold Nebraska income tax if payments for personal services are made in excess of six hundred dollars (\$600) to any contractor who is not domiciled in Nebraska or has not maintained a permanent place of business or residence in Nebraska for a period of at least six months. This provision applies to individuals, to a corporation if 80% or more of the voting stock of the corporation is held by the shareholders who are performing personal services, and to a partnership or limited liability company if 80% or more of the capital interest or profits interest of the partnership or limited liability company is held by the partners or members who are performing personal services.

The parties agree, when applicable, to properly complete the Nebraska Department of Revenue Nebraska Withholding Certificate for Nonresident Individuals Form W-4NA or its successor. The form is available at:

http://www.revenue.ne.gov/tax/current/f_w-4na.pdf or
http://www.revenue.ne.gov/tax/current/fill-in/f_w-4na.pdf

- U. **NEBRASKA TECHNOLOGY ACCESS STANDARDS.** The Contractor shall review the Nebraska Technology Access Standards, found at <http://www.nitc.state.ne.us/standards/accessibility/tacfinal.html> and ensure that products and/or services provided under the Contract comply with the applicable standards. In the event such standards change during the Contractor's performance, the State may create an amendment to the Contract to request that Contract comply with the changed standard at a cost mutually acceptable to the parties.

V. NEW EMPLOYEE WORK ELIGIBILITY STATUS. The Contractor shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by NEB. REV. STAT. § 4-108.

W. PUBLIC COUNSEL. In the event Contractor provides health and human services to individuals on behalf of DHHS under the terms of this contract, Contractor shall submit to the jurisdiction of the Public Counsel under NEB. REV. STAT. §§ 81-8,240 through 81-8,254 with respect to the provision of services under this contract. This provision shall not apply to contracts between DHHS and long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act. This provision shall survive termination of the contract.

X. RESEARCH. The Contractor shall not engage in research utilizing the information obtained through the performance of this contract without the express written consent of DHHS. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with this contract. This provision shall survive termination of the contract.

Y. SEVERABILITY. If any term or condition of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations

of the parties shall be construed and enforced as if this contract did not contain the particular provision held to be invalid.

Z. **SUBCONTRACTORS.** The Contractor shall not subcontract any portion of this contract without prior written consent of DHHS. The Contractor shall ensure that all subcontractors comply with all requirements of this contract and applicable federal, state, county and municipal laws, ordinances, rules and regulations.

AA. **TIME IS OF THE ESSENCE.** Time is of the essence in this contract. The acceptance of late performance with or without objection or reservation by DHHS shall not waive any rights of DHHS nor constitute a waiver of the requirement of timely performance of any obligations on the part of the Contractor remaining to be performed.

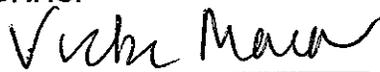
BB. Notwithstanding any other provision of this agreement, Functional Assessment Systems, LLC agrees the DHHS General Provision shall take effect over the Contractor's License Agreement in the even the terms conflict. All terms of agreement are entered into subject to the State's sovereign immunity.

NOTICES. Notices shall be in writing and shall be effective upon receipt. Written notices, including all reports and other written communications required by this contract shall be sent to the following addresses:

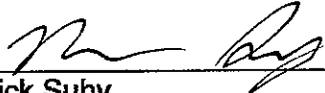
FOR DHHS:
Tony Green
NE Dept. of Health and Human Services
1313 Farnam St.
Omaha, NE
402-595-3893

FOR CONTRACTOR:
Nick Suhy
Functional Assessment Systems, LLC
3600 Green Ct., Suite 110
Ann Arbor, MI 48105
734-769-9725 ext. 24

IN WITNESS THEREOF, the parties have duly executed this contract hereto, and each party acknowledges the receipt of a duly executed copy of this contract with original signatures.

FOR DHHS:


Vicky Maca
Family Matter Administrator
Department of Health and Human Services
Division of Children and Family Service

FOR CONTRACTOR:


Nick Suhy
Functional Assessment Systems, LLC

DATE: 12/11/11

DATE: 11-29-11

HIPAA Business Associate Agreement

Department of Health & Human Services



MASTER INTERAGENCY / BUSINESS ASSOCIATE AGREEMENT

HIPAA CONTRACT / ATTACHMENT FOR
COMPLIANCE TO THE PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

THIS BUSINESS ASSOCIATE AGREEMENT is made and entered into this 15 day of November 2011 by and between the Nebraska Department of Health and Human Services also hereinafter referred to as "Covered Entity" ~~Functional Assessment Systems, LLC, 3600 Green Ct., Suite 110, Ann Arbor, MI 48105~~ hereinafter also referred to as "Business Associate".

Preamble

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") constitutes a non-exclusive agreement between Covered Entity, and the Business Associate named above. The purpose of this Agreement is to authorize the Business Associate to use and disclose to specifically identified entities Protected Health Information as more fully described in this Agreement and in the attached Scope-of-Work.

The Covered Entity and Business Associate, as defined in section 45 CFR Part 160, Subpart A §160.103 of the HIPAA Final Privacy Rule, have entered into this Business Associate Agreement to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Final Privacy and Security Rule requirements for such an agreement. See the Federal Register for the complete text of Part II, 45 CFR Part 160, 162 and 164, Health Insurance Reform, Final Rule, (referred to as the Security Rule and Standards) and Part V, 45 CFR part 160 and 164 Privacy of Individually Identifiable Health Information, (referred to as the Privacy Rule) in the federal register.

The Covered Entity and Business Associate intend to protect and provide for the security of protected health information (PHI) disclosed to a business associate pursuant to the contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

The Business Associate is subject to the legal requirements as defined by the HITECH ACT for business associates agreements as of February 17, 2010 including but not limited to those listed in Section IV of this document.

This business associate agreement also defines our duty to protect the confidentiality and integrity of Protected Health Information (PHI) as required by the HIPAA regulations, Covered Entity policy, professional ethics, and accreditation requirements. Parties executing this Agreement understand that they mutually agree to comply with the provisions of the regulations implementing HIPAA.

HIPAA Business Associate Agreement

The Covered Entity and the Business Associate may be parties to existing contracts that involve duties and obligations regulated by HIPAA and may enter into other such contracts in the future. This Agreement is intended to amend all such existing contracts and to be incorporated into all such future contracts between the parties.

The purpose of the Scope-of-Work Attachment is to identify specific requirements in such contracts for the safeguarding of Protected Health information and to identify any procedures necessary to the work performed on behalf of the Covered Entity by the Business Associate that is unique to its operation involving the use and disclosure of Protected Health Information.

This Agreement will have, at a minimum, the following attachments:

- Scope-of-Work Attachment;

This Agreement may include the following attachments:

- If this Agreement involves the use of Electronic Transactions regulated by HIPAA, 45 CFR Parts 160 and 162, then a Trading Partner Attachment must be included to facilitate the provision of billing, processing, collecting, modifying or transferring of Protected Health Information in agreed formats and to assure that such uses and disclosures comply with relevant laws, regulations and standards.
 - Other attachments as appropriate and mutually agreed between the parties.
-

NOW THEREFORE, the parties intending to be legally bound agree to the following General Conditions:

I. Definitions As used in this Agreement the terms below shall have the following meanings:

- a) **Business Associate:** A Business Associate means, with respect to a Covered Entity, a person or entity, other than a members of the Covered Entity's workforce, that performs or assists in the performance of a function or activity on behalf of the Covered Entity, involving the use or disclosure of Individually Identifiable Health Information, including claims processing or administration, data analysis, data administration, utilization review, quality assurance, billing, benefit management, practice management or repricing; or any other function or activity regulated by the HIPAA standards.
- b) **Covered Entity:** 1) All healthcare providers who transmit any Protected Health Information electronically in connection with a transaction covered by the HIPAA regulations; 2) All health plans. 3) All health care clearinghouses. DHHS consisting of the agencies of Division of Public Health, Division of Behavioral Health, Division of Medicaid and Long Term Care, Division of Children and Family Services, Division of Developmental Disabilities, Division of Veteran's Homes is a Covered Entity. Covered Entities are accountable for Protected Health Information under the Final Privacy and Security Rule
- c) **Health Care Provider:** A provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

HIPAA Business Associate Agreement

- d) **Individually Identifiable Health Information:** Information that is a subset of health information, including demographic information collected from an individual, and that: 1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and 2) relates to the past, present or future physical or mental health or condition of an individual; or the past, present or future payment for the provision of health care to an individual; and 3) identifies the individual or with respect to which there is a reasonable basis to believe that information can be used to identify the individual.
- e) **Protected Health Information:** Individually Identifiable Health Information that is transmitted by electronic media, maintained in any medium as described in the Privacy standards §162.103; or transmitted or maintained in any other form or medium. Protected Health Information excludes individually identifiable health information in: 1) education records covered by the Family Educational Rights and Privacy Act, as amended 20 U.S.C. 1232g; 2) records described at 20 U.S.C. 1232g (a)(4)(B)(iv); and 3) employment records held by a Covered Entity in its role as an employer.
- f) **Response Date Reference:** All Agreement compliance dates are considered to be elapsed time in calendar days.
- g) **Corrective Action Plan:** A written plan of correction, developed by the Business Associate that outlines the actions the Business Associate must take to address the contract performance compliance issues. The plan is the basis for a written assurance that the original conditions that caused or allowed unauthorized use and disclosure have been remediated.
- h) **Any Terms Used:** Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms when they are used in 45 CFR §164.501, §164.304 and §160.103 of the HIPAA Final Privacy and Security Rule.

II Performance

1. The specific work that is performed by the Business Associate on behalf of the Covered Entity involving the minimum necessary use and disclosure of Protected Health Information for the performance of this Agreement is presented in the attached "Scope-of-Work".
2. The Scope-of-Work identifies, defines and delineates the Covered Entity and Business Associate's contracted performance responsibilities in this Agreement, existing contracts or any future contract that involves the Business Associate's use and disclosure of Protected Health Information (as identified within existing or future contracts) while performing a function on behalf of the Covered Entity.
3. The specific functions of performance and the authorized individuals or subcontractors is presumed to be identified within this Agreement, existing contracts or any future contract. Existing or future associated contract deliverables are considered unique and applicable to this Agreement's performance.
4. Based upon the written assurances specified in Section IV of this Agreement, the performance of work under this Agreement, existing and future contracts is considered to be in compliance with the HIPAA regulations regarding use, disclosure and safeguarding of the Protected Health Information involved in the performance of work in this Agreement and any associated contracts.

HIPAA Business Associate Agreement

III. Notices.

1. Written notices to the Covered Entity concerning performance of this Agreement, or amendments shall be sent through U.S. Postal Service, First Class Mail, pre-paid, to the attention of:
1.1 Contact: **Tony Green, DHHS**
1313 Farnam Street
Omaha, NE 68102
2. Written notices to the Business Associate concerning performance of this Agreement, or amendments shall be sent through U.S. Postal Service, First Class Mail, pre-paid, to the attention of:
2.1 Contact: **Nick Suhy, FAS, LLC**
3600 Green Ct., Suite 110
Ann Arbor, MI 48105
3. When either party changes the contact or the contact's address, they shall give the other party written notice of the change.
4. Notices shall be deemed received within three days after the date of mailing.

IV. HITECH Act

Business Associate – HITECH Section 13408

The 2009 HITECH Act has made changes in the HIPAA Privacy and Security rules. Section 13408 imposes that each entity that provides data transmission of protected health information to a covered entity and requires access on a routine basis shall be treated as a business associate and required to have a written contract.

Security Rule Duties HITECH Section 13401(a)

The HITECH Act requires that a business associate of a covered entity is required to comply with the HIPAA Security Rules including policies and procedures. If the business associate violates any of the Security Rules, the business associate may be subject to the HIPAA civil and criminal penalties.

Privacy Rules Duties HITECH Section 13404(a)

The HITECH Act requires that business associates use or disclose protected health information only if such use or disclosure is consistent with the terms of the business associate agreement between the entity and the business associate. If a business associate violates a Business Associate Agreement with respect to the new privacy requirement, the business associate may be subject to the same HIPAA civil and criminal penalties previously only applicable to covered entities.

Cure a Breach HITECH Section 13404(b)

The HITECH Act requires that a business associate take reasonable steps to cure breach of, or terminate, a business associate agreement if it becomes aware of a pattern of activity or practice by a covered entity the violates the agreement. The business associate may be liable for civil and or criminal penalties under HIPAA.

Breaches Treated as Discovered HITECH Section 13402(c)

A breach shall be treated as discovered by a covered entity or by a business associate as of the first day on which the breach is known.

Notification in the Case of a Breach HITECH Section 13402

HIPAA Business Associate Agreement

A covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information (as defined in subsection (h) (1)) shall, in the case of a breach of such information that is discovered by the covered entity, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, or disclosed as a result of such breach. Notifications shall be made no later than 60 days after the discovery of a breach. 13402(b) a business associate of a covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information shall, following the discover of a breach of such information, notify to the covered entity of such breach.

Civil and Criminal Penalties Tiers of Penalties

The HITECH Act specifies that business associates will be subject to the same civil and criminal penalties previously only imposed on covered entities. As amended by the HITECH Act, civil penalties range from \$100 to \$50,000 per violation, with caps of \$25,000 to \$1,500,000 for all violations of a single requirement in a calendar year. The amount of the civil penalty imposed will vary depending on whether the violation was not knowing, due to reasonable cause, or due to willful neglect. Criminal penalties include fines up to \$50,000 and imprisonment for up to one year. In some instances, fines are mandatory.

V. Special Provisions to General Conditions:

1. Assurance of the Confidential Use and Disclosure of Protected Health Information.

1.1 Use of Protected Health Information. Business Associate shall not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law. Business Associate may use Protected Health Information for the purposes of managing its internal business processes relating to its functions and performance under this Agreement.

1.2 Covered Entity authorizes the use and disclosure of Protected Health Information by the Business Associate as follows:

1.2.1 *To identified individuals and entities:* Business Associate's employees, agents and subcontractors associated with the performance of this specific Agreement and other existing or future contracts involving the use and disclosure of Protected Health Information that are deemed minimally necessary to perform the work as identified in the attached Scope-of-Work; and,

1.2.2 *For the purposes of:* Business Associate's performance of work on behalf of the Covered Entity as specified in this Agreement and any existing or future contracts of this Agreement's attached Scope-of-Work.

1.3 Disclosure to Third Parties. Business Associate shall ensure that any of its agents and subcontractors to whom it provides Protected Health Information received from Covered Entity (or created by or received from the Business Associate on behalf of Covered Entity) agree to the same restrictions, and conditions relating to the, confidentiality, care, custody, and minimum use of Protected Health Information that apply to Business Associate in this Agreement.

1.4 Disclosure to the Workforce. Business Associate shall not disclose Protected Health Information to any member of its workforce except to those persons who have been authorized access to this information.

1.5 Disclosure and Confidentiality. Business Associate may maintain a confidentiality agreement with the individuals of its workforce, who have access to Protected Health

HIPAA Business Associate Agreement

Information. This confidentiality agreement should be substantially similar to the sample Authorized Workforce Confidentiality Agreement included as Exhibit "A" to this Agreement.

- 1.6 **Minimum Necessary Standard.** Pursuant to 45 CFR §164.502(b); §164.514(d): The Business Associate shall make reasonable efforts to limit the use and disclosure of Protected Health Information to the minimum necessary to accomplish the intended purpose of the use or disclosure. The Business Associate must limit access to those persons within its workforce, agents or subcontractors who are authorized and need the information in order to carry out their duties, and provide access only to the category of information that is required.

2. Assurance of Reasonable Safeguards of Protected Health Information.

- 2.1 **Safeguards.** Business Associate shall implement and maintain appropriate administrative, physical and technical safeguards to prevent access to and the use and disclosure of Protected Health Information, other than as provided for in this Agreement. The Business Associate agrees to assess potential risks and vulnerabilities to the individual health data in its care and custody and develop, implement and maintain reasonable security measures.

3. Assurance of Accounting for Disclosures of Protected Health Information.

- 3.1 **Accounting for Protected Health Information Disclosures.** Business Associate shall maintain an accounting of disclosures of Protected Health Information as required by the HIPAA regulations.
- 3.2 **Disclosure to the U.S. Department of Health and Human Services (DHHS).** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) available to the Secretary of DHHS or its designee for purposes of determining Covered Entity's compliance with HIPAA and with the Privacy and Security regulations. Business Associate shall provide Covered Entity with copies of any information it has made available to DHHS under this section of this Agreement.

4. Assurance for the Reporting and Remediation of Known Unauthorized Use and Disclosure of Protected Health Information.

- 4.1 **Reporting of unauthorized use and disclosures and remediation of risk conditions.** Business Associate shall report to Covered Entity within fifteen (15) days from when it becomes aware of, any unauthorized use or disclosure of Protected Health information made in violation of this Agreement or the HIPAA regulations, including any security incident that may put electronic Protected Health Information at risk. Business Associate shall, as instructed by Covered Entity, take immediate steps to mitigate any-harmful effect of such unauthorized disclosure of Protected Health Information pursuant to the conditions of this Agreement through the preparation and completion of a written Corrective Action Plan subject to the review and approval by the Covered Entity.

5. Assurance of Access and Amendments to Protected Health Information.

- 5.1 **Right of Access.** Business Associate shall make an individual's Protected Health Information available to the Covered Entity within fifteen (15) days of notice under this Agreement.
- 5.2 **Right of Amendment.** Business Associate shall make an individual's Protected Health Information available to the Covered Entity for amendment and correction within fifteen (15) days of notice under this Agreement, and shall incorporate any amendments or corrections to Protected Health Information within fifteen (15) days of notice under this Agreement that such amendments or corrections are approved.

6. Termination and Duties Upon Termination.

- 6.1 **Termination.** Covered Entity may immediately terminate this Agreement and any and all associated Agreements identified in the Scope of Work if Covered Entity determines that the Business Associate has violated a material term of a performance condition of this Agreement.
- 6.2 Covered Entity, at its sole discretion, may choose to issue a plan of correction to the Business Associate to set the conditions for remediation of any material breach of performance in an effort to mitigate the cause for breach or consequent termination. The plan of correction issued by the Covered Entity under this subsection shall supercede the provisions of any Corrective Action Plan prepared by the Business Associate that are in conflict.
- 6.3 This Agreement may be terminated by either party with not less than fifteen (15) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided whenever a notice provision for termination in any associated Agreement identified in the Scope of Work specifies a longer notice period for termination, the longer period shall apply; provided further that any termination of this Agreement shall not affect the respective obligations or rights of the parties arising under any existing contracts or otherwise under this Agreement before the effective date of termination.
- 6.4 Within thirty (30) days of expiration or termination of this Agreement, or as agreed, unless Business Associate requests and Covered Entity authorizes a longer period of time, Business Associate shall return or at the written direction of the Covered Entity destroy all Protected Health Information received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) that Business Associate still maintains in any form and retain no copies of such Protected Health Information. Business Associate shall provide a written certification to the Covered Entity that all such Protected Health Information has been returned or destroyed (if so instructed), whichever is deemed appropriate. If such return or destruction is determined by the Covered Entity to be infeasible, Business Associate shall use such Protected Health Information only for purposes that makes such return or destruction infeasible and the provisions of this Agreement shall survive with respect to such Protected Health Information.

HIPAA Business Associate Agreement

6.5 Upon termination of this agreement for cause of violation of the performance conditions of this Agreement, or the HIPAA Privacy Rule standards for use and disclosure, all associated existing contracts as identified or referred to in the Scope of Work Attachment are deemed terminated, except as provided in 45 CFR 164.504(e)(1)(ii)(B).

7. Amendment.

7.1 Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information required by the HIPAA regulations, or the publication of any decision of a court of the United States or of the State of Nebraska relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may provide written notice to the Business Associate to amend this Agreement in such a manner as Covered Entity determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within fifteen (15) days of Covered Entity's notice. If the parties are unable to agree on an amendment within fifteen (15) days thereafter, either of them may terminate this Agreement by reasonable written notice to the other.

8. Term of the Agreement.

8.1 The original date of implementation was April 14, 2003. The date of this agreement is ~~November 15, 2001~~, upon the signature of both parties, whichever is later, and continue for the longest applicable period, as follows:

- 8.1.1 If this Agreement is attached to any existing contract through an amendment process, then the term of the Agreement shall coincide with the term of the existing contract.
- 8.1.2 If this Agreement is attached to and incorporated into any renegotiated existing contract, or new contract as identified within the Scope-of-Work Attachment to this Agreement, then the term of the Agreement shall coincide with the term of the renewed contract or the new contract.
- 8.1.3 If this Agreement is not attached to or incorporated into any other contract between the Covered Entity and the Business Associate, then the term of the Agreement shall be from the commencement date for a period of five (5) years.

9. Hold Harmless.

- 9.1 The Covered Entity agrees to hold the Business Associate harmless for all loss or damage sustained by any person as a direct result of the negligent or willful acts by the Covered Entity, its employees or agents in the performance of this Agreement, including all associated costs of defending any action.
- 9.2 Business Associate agrees to hold the Covered Entity harmless for all loss or damage sustained by any person as a direct result of the negligent or willful acts by the Business Associate, its employees or agents in the performance of this Agreement, including all associated costs of defending any action.

HIPAA Business Associate Agreement

10. Execution.

EACH PARTY has caused this Agreement to be properly executed on its behalf as of the date signed.

For: DHHS Covered Entity

[Handwritten Signature]

For: Contractor / Business Associate

[Handwritten Signature]

Date

12/11/11

Date

11-29-11



**HIPAA/HITECH Business Associate Agreement
SCOPE-OF-WORK ATTACHMENT**

THIS Scope-of-Work ATTACHMENT supplements and is incorporated into, and considered part of the Business Associate Agreement (herein referred to as ("Agreement")) by and between the Nebraska Department of Health and Human Services consisting of the agencies of Division of Public Health, Division of Behavioral Health, Division of Children and Family Services, Division of Medicaid & Long Term Care, Division of Developmental Disabilities, Division of Veteran's Homes and represented herein collectively or singularly as the "Department of Health and Human Services" (DHHS also hereinafter referred to as "Covered Entity"), and ~~Functional Assessment Systems, LLC~~, (hereinafter also referred to as "Business Associate").

I. GENERAL CONDITIONS

1. Covered Entity agrees to provide the following:

1.1 Covered Entity will provide technical assistance directly to assist Business Associate with the use of any electronic formats for the transmission of Protected Health Information, such as magnetic tape. Covered Entity will provide advance notice whenever possible before making changes to the format or to the codes used in information processing.

2. Business Associate agrees to the following:

2.1 The Business Associate must adhere to all relevant confidentiality and privacy laws, regulations, and contractual provisions as provided within the Agreement.

2.2 The Business Associate shall have in place reasonable administrative, technical, and physical safeguards to ensure security and confidentiality of Protected Health Information.

2.3 A Corrective Action Plan (CAP) will be developed by the Business Associate to address and remediate any condition of contractual non-performance.

II. SPECIAL PROVISIONS TO GENERAL CONDITIONS

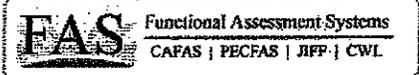
This Scope-of-Work Attachment amends any contract between the parties listed in this attachment and all other existing contracts between the parties that involve the performance of work on behalf of the Covered Entity and that involve the processing, handling, use or disclosure of Protected Health Information. This Scope-of-Work Attachment shall also incorporate the provisions of the Agreement and this Attachment into all renewals of such existing contracts and into all new contracts between the parties that involve performance of work on behalf of the Covered Entity and that involve the processing, handling, use or disclosure of Protected Health Information.

[Specifics to be included in this Scope of Work Attachment are:]

See Attached HITE License Agreement

Providing services on behalf of the Nebraska Department of Health & Human Services. This agreement applies within all service areas with Nebraska Department of Health & Human Services.

- Specific information required if this Scope of Work applies to the Agreement as a distinct standalone instrument. This information identifies:
 1. The Protected Health Information to be used or disclosed during the term of this Agreement;
 2. The authorized individuals or entities that are associated with the performance of this Agreement;
 3. The permitted uses and disclosures of Protected Health Information allowed during the term of this Agreement.
 4. The description of the administrative, physical and technical security safeguards used to prevent use or disclosure of the Protected Health Information other than as provided for during the term of this Agreement.



Customer Set-up Form for FASOutcomes®

Functional Assessment Systems, LLC (FAS) • 3600 Green Court, Ste. 110 • Ann Arbor, MI 48105
Tel. 734.769.9725 • Fax 734.769.1434 • FASoutcomes.com
Please Fax (734.769.1434) or Email (software@FASoutcomes.com) all Pages of this Document to FAS

Software Set-Up Contact (This person will set up your organization and create users - i.e., Clinical Director or Manager)
Name: _____ Title: _____
Email: _____ Phone: _____

FAS Outcomes Liaison (The "go to" person at the agency who is responsible for their FAS Outcomes account)
Same as Information Above? Yes No
Name: _____ Title: _____
Email: _____ Phone: _____

Any other important contacts? (Required)
Name: _____ Title: _____
Email: _____ Phone: _____

Organization Information
Agency: _____
Address: _____
City: _____ State: _____ Zip: _____ Country: _____
Phone: _____ Fax: _____
Authorized Contract Representative: _____
Title: _____
Phone: _____ Email: _____

Purchasing/Billing Information
Name: _____ Title: _____
Email: _____ Phone: _____
Same as Organization Information? Yes No
Agency: _____
Address: _____
City: _____ State: _____ Zip: _____ Country: _____
Phone: _____ Fax: _____

Tax Information
State Sales Tax Exemption Status: Exempt Non-Exempt
If Exempt, please fax or email a copy of your State Sales and Use Tax Certificate of Exemption

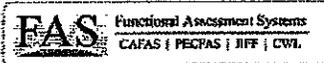
Other States in Which You Provide Services: _____
Do you have a 3rd party EHR or Case Management System? _____ If yes, name of vendor _____

For CAFAS®/PECFAS® Users Only
Name of Reliability Trainer: _____
Title: _____ Email: _____
Phone: _____ Fax: _____

SOFTWARE LICENSE
AGREEMENT

1. **Parties; Entire Contract.** This Software License Agreement ("Agreement") is between Functional Assessment Systems, LLC, a Michigan company with offices at 3600 Green Court, Suite 110, Ann Arbor, Michigan 48105 USA ("FAS") and the customer ("Customer") identified on the "FAS Customer Order Form" ("Order Form"). The following documents comprise the entire contract between the parties: (a) Software License Agreement; (b) Order Form; (c) Terms and Conditions Regarding Health Insurance Portability and Accountability Act of 1996, located at www.fasoutcomes.com, and (d) system requirements and description of Software features (including Software security features), functions, specifications, and instructions for use, located at www.fasoutcomes.com ("System Requirements").
2. **Purpose.** FAS provides psychometric assessments scales and tools. This Agreement contains the terms and conditions for Customer's access to the specific assessments (sometimes referred to as "measures") and tools specified in the Order Form ("Software"). It also governs Customer's process for renewing the Software license and for ordering professional services, such as Software training and system integration.
3. **Effective Date; Term.**
- 3.1 **Acceptance of Terms.** This Agreement is effective upon receipt by FAS of this Agreement signed by Customer. This Agreement is "signed" when FAS receives the Agreement bearing a signature of Customer's authorized representative as follows: (a) original copies by hand delivery, first class mail, overnight courier; (b) receipt by facsimile of a copy of a signed Agreement, (c) receipt of the foregoing as a scanned document delivered as an email attachment from Customer, or (d) completion and submission of a "fillable form" at fasoutcomes.com.
- 3.2 **Term Renewal.** The term of this Agreement shall be for one (1) year from the Effective Date, unless renewed or terminated in accordance with this Agreement. Sixty (60) days prior to the expiration of the then-current term, FAS shall invoice Customer for the Annual License Fee for the upcoming term. Payment of such invoice shall constitute renewal of this Agreement and entitle Customer to ongoing access to the Software.
4. **Fees.**
- 4.1 **Fees.** Customer shall pay FAS an Annual License Fee for the right to access and use the Software and "Use Fees" for the specific measures licensed to Customer. Under this Agreement, a "Use" is defined as Customer access to a licensed measure for a single individual. "Uses" are purchased in groups of at least 100 Uses. Customer may purchase additional Uses from FAS by written request, including by email. Yearly Annual License Fees, Use Fees, support fees, and other service fees are posted to www.fasoutcomes.com. Fees are subject to change, provided that Annual License Fees and Use Fees shall not be increased more often than once per calendar year. Changes during the term of each year of the Agreement will be effective at the commencement of the following renewal period. All fees stated are in U.S. dollars.
- 4.2 **Timing of Payment.** The initial term of the license commences on the date FAS receives payment of the Annual License Fee. FAS shall invoice Customer for the fees set forth on the initial Order Form, for renewals, and for requests for professional services. Payment is due thirty (30) days after the date of the invoice.
- 4.3 **Late Fees; Attorneys' Fees.** Customer agrees to pay a late fee of one and a half percent (1.5%) per month on all amounts that are overdue, and all FAS attorneys' fees and expenses relating to efforts to secure payments that are overdue. Customer is responsible for payment of any sales and/or use taxes arising out of its use of the Software.
- 4.4 **Suspension of Account.** FAS may suspend Customer's access to the Software due to nonpayment of overdue amounts. FAS shall provide written notice, which may be transmitted by email, prior to such suspension. Customer shall pay a reactivation fee, in addition to payment of overdue amounts, late fees, and attorneys' fees (if any) prior to having its access to the Software restored.
- 4.5 **Excluded Contracts and Services.** The Annual License Fee and Use Fees do not include fees for support, training, consultation, or other FAS services, such as Web Services.
5. **License to Use the Software.**
- 5.1 **Authorization to Access Software.** Upon the Effective Date, provided that FAS has received payment in accordance with this Agreement, for the term of this Agreement FAS authorizes Customer, including its employees, contractors, representatives, agents, and others acting under its control, to use the Software. The license granted by this Agreement is nonexclusive, nontransferable, and personal to Customer. It is subject to annual renewal. FAS reserves all rights, including intellectual property rights, in the Software and related materials (such as documentation, guides, scoring forms, training materials, and instructional materials). Customer shall use commercially reasonable security measures to prevent unauthorized access to and use of the Software.
- 5.2 **Use of Scale Scores.** FAS grants Customer a limited license to copy scale scores generated by Uses of the licensed measure for inclusion: (a) in the clinical records of the individuals assessed by Customer, (b) in Customer nonpublic business records, and (c) in presentations given by Customer to other professionals. Other all uses of scale scores are expressly prohibited. All records, reports, and presentation materials shall reference the appropriate measure, the score or indicator used, and the registered trademark symbol, such as "CAFAS" Total Score."
- 5.2.1 Customer may not extract descriptors from the measures, such as "goals," "strengths," or specific items or questions from the Child and Adolescent Functional Assessment Scale ("CAFAS"), Preschool and Early Childhood Functional Assessment Scale ("PECFAS"), Caregiver Wish List ("CWL"), and JIFF - Juvenile Inventory For Functioning".
- 5.2.2 Customer may not use the measures or any portion of the FAS measures (such as items) to create other measures, tools, new versions, condensations, "mini" versions, or other derivative works.
- 5.2.3 If Customer designs (or retains a third party to design) software or other technology that accepts inputs of scale scores generated by the FAS Software and extracted through the export tool or Web Services, such technology must display the applicable FAS registered trademark and registered trademark symbol in connection with such scores. For the avoidance of doubt, neither Customer nor any third party software developer may substitute, in such technology, a different name for the actual name of the FAS measure.
- 5.2.4 Any use not expressly authorized is reserved to FAS and no rights shall be implied.
- 5.3 **License to Use Scale Scores.** FAS grants Customer a limited license to copy scale scores generated by Uses of the licensed measure for: (a) inclusion in the records of the individuals assessed by Customer, (b) in Customer nonpublic business records, and (c) in presentations given by Customer to other professionals. All reports and presentation materials shall reference FAS, the appropriate measure, and the score or indicator used, such as "CAFAS" Total Score used by permission from Functional Assessment Systems."
- 5.3.1 Customer may not extract descriptors from the measures, such as "goals," "strengths," or specific items or questions from the Child and Adolescent Functional Assessment Scale ("CAFAS"), Preschool and Early Childhood Functional Assessment Scale ("PECFAS"), Caregiver Wish List ("CWL"), and JIFF - Juvenile Inventory For Functioning". Customer may not use the measures or any portion of the FAS measures (such as items) to create other measures, tools, new versions, condensations, "mini" versions, or other derivative works. Any use not expressly authorized is reserved to FAS and no rights shall be implied.
6. **Limited Warranties; Exclusion of Certain Warranties.**
- 6.1 **Limited Warranty.** During the term of the Agreement, FAS warrants that the Software will materially perform in accordance with the System Requirements. FAS does not warrant that the functions contained in the Software will meet Customer's specific needs, professional requirements (unless expressly stated in the documentation), be error-free, or operate without interruption. The Software is hosted on a computer system that will subject to maintenance, repair, and upgrading; the Software will be temporarily inaccessible during such times.
- 6.2 **Use by Trained Individuals.** The Software is designed for use by trained professionals and others qualified to administer the measures. The Software is not an expert system and is not a substitute for professional judgment. Customer is solely responsible for its use of the Software, administration of measures, analysis and interpretation of output, provision of services to individuals, and compliance with laws applicable to Customer's services.
- 6.3 **Waiver of Other Warranties.** THESE LIMITED WARRANTIES ARE IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
7. **Sole and Exclusive Remedies.**
- 7.1 **Correction of Software Errors.** FAS will use reasonable efforts to correct any material nonconformance within ten (10) business days after receipt of written notice of such nonconformance and Customer's provision of any data, output, or other documentation or description of the nonconformance sufficient to allow FAS to reproduce the error. All communications shall be sent to FAS using the technical assistance request form in the Software or by email, with supporting documentation, and from the Customer representative designated as the Super IT Admin. Customer may designate more than one individual as the technical representative if Customer has paid FAS for such additional designations.
- 7.2 **Acceptance/Rejection.** If the Software fails to materially conform to the System Requirements and FAS is unable to remedy errors within a reasonable period of time, Customer may either (a) accept the Software AS IS, or (b) reject the Software by notifying FAS in writing that Customer is terminating this Agreement. FAS shall refund the yearly annual fee paid by Customer, less the fees for the measures licensed to Customer. Upon termination, Customer shall have no further access to the Software.
- 7.3 **Sole and Exclusive Remedies.** The remedies in this Section are the sole and exclusive remedies provided to Customer relating to the Software.
- 7.4 **Charges to Customer.** FAS reserves the right to charge Customer, at its then-current hourly rates, for technical services provided to resolve an error that is later determined not to be inherent in the Software.
8. **Limitations of Liability for Damages.**
- 8.1 **Exclusion of Certain Damages; Limits on Direct Damages.** REGARDLESS OF THE FORM OF ACTION OR THEORY OF RECOVERY, IN NO EVENT SHALL FAS BE LIABLE TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT, INCLUDING USE OF THE SOFTWARE, FOR:
- (a) ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF FAS IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES;
- (b) LOST PROFITS, LOST REVENUE, LOST BUSINESS EXPECTANCY, BUSINESS INTERRUPTION LOSSES, OR LOSS OF DATA; AND/OR
- (c) DIRECT DAMAGES IN AN AMOUNT IN EXCESS OF THE ANNUAL LICENSE FEE AND USE FEES PAID BY CUSTOMER IN THE YEAR PRECEDING THE EVENT GIVING RISE TO THE CLAIM OF DAMAGE.
- 8.2 **Acknowledgement of Allocation.** The provisions of this Section allocate the risks under this Agreement between FAS and Customer, and this allocation is reflected in the Fees.
9. **Data Ownership.** All data generated by Customer in connection with Customer's use of the Software is and shall remain exclusively Customer's property. Customer is also responsible for ensuring that it maintains current and complete records and data generated via use of the Software. Customer acknowledges that FAS has no duty to maintain Customer data or other business records. Customer agrees that FAS may use nonconfidential data and data that do not disclose the identity of any individual for its business purposes, such as system security, testing, and accuracy; and research on and improvement to the assessment scales and tools.
10. **Health Insurance Portability and Accountability Act of 1996 ("HIPAA").** FAS treats protected health information as set forth in the document entitled "FAS and Health Insurance Portability and Accountability Act of 1996" posted to www.fasoutcomes.com. Those terms may be updated from time to time in accordance with applicable law. Customer is responsible for compliance with HIPAA and any other state and federal laws applicable to Customer regarding privacy.
11. **Termination of License and Agreement.**
- 11.1 **For Breach.** Either party may terminate this Agreement in the event of the breach of a material obligation that is not cured within thirty (30) days after receipt of written notice.
- 11.2 **Obligations upon Termination.** Upon expiration, termination, or non-renewal of this Agreement, Customer shall pay all amounts then due to FAS and immediately cease all use of the Software.
- 11.3 **Survival.** All Sections of this Agreement related to ownership, privacy, confidentiality, limitations of liability, and any other subject that would, by its nature, be deemed to survive termination of this Agreement, will survive the termination or expiration of this Agreement.
12. **Governing Law; Exclusive Forum for Dispute Resolution; Personal Jurisdiction.** In order to ensure consistency in interpretation, this Agreement shall be governed by the laws of the State of Michigan and the federal laws of the United States of America. Any action brought by either party related to this Agreement shall be initiated and maintained in Washtenaw County, Michigan, or in the U.S. District Court of the Eastern District of Michigan, Southern Division. The parties expressly submit to the exclusive personal jurisdiction and venue of these courts.
13. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be deemed modified so as to make it valid in a manner consistent with the intent of the parties expressed in that section.
14. **Assignability.** Customer may not assign any rights or delegate duties under this Agreement without the prior, express, written consent of FAS, which may be granted or withheld at FAS' sole discretion. Any attempted assignment without such consent shall be void.
15. **Integration.** This Agreement includes the documents referenced in Section 1 and constitutes the entire understanding of the parties with respect to the Software. It replaces, supersedes and merges all prior written and oral communications, representations, promises or understandings. This Agreement may be amended or supplemented only by a writing signed on behalf of both parties.
16. **No Waiver.** Any waiver of a provision of this Agreement or of a party's right or remedy under this Agreement must be in writing and signed by the party to be effective. Failure or delay by a party to enforce its rights or remedies under this Agreement at any time will not be deemed a waiver and will not affect the validity of this Agreement or prejudice such party's right to take subsequent actions.
17. **Attorneys' Fees.** The prevailing party in any such action will be entitled to recover reasonable attorneys' fees and the costs incurred in connection with such action.
18. **Force Majeure.** It shall not be a material breach of this Agreement, and neither party shall be liable to the other, if prevented from performing its duties or responsibilities under this Agreement by reason of any fire or other casualty, acts of God, earthquake, floods, explosions, interrupted power supply, sabotage, war, riots, acts of terrorism; inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market; strikes, court orders, laws, regulations, or orders of government or military authorities; or any other cause not within the control of such party whose performance is delayed.
19. **Notices.** All notices shall be in writing and shall be addressed to the parties at their respective addresses or to such other address as a party may designate. Notices are effective upon receipt. Notice may be given by email, fax, hand delivery, certified mail (return receipt requested), or overnight courier.

INITIAL HERE _____



SOFTWARE ORDER FORM

Phone: 734.769.9725 Fax: 734.769.1434 Email: orders@FASoutcomes.com

Items Available for purchase:	Fee (USD)	Total
Required Services:		
FASoutcomes Web-Hosted Software Annual Maintenance Fee - (\$400.00 per agency. Contact FAS if you have questions.)	\$400	Waived per Nick
Assessments:		
<ul style="list-style-type: none"> • Juvenile Inventory for Functioning® (JIFF®) 3,000 Assessments 	\$13,500	\$13,500
Douglas County Juvenile Court + payment is due by 10/21/11		\$13,500

Effective Date. This Agreement is effective on the date last signed below.

Commencement Date of Annual Maintenance. If the commencement of the date of the annual maintenance is different than the Effective Dates: _____

The undersigned Customer (1) accepts and agrees to be bound by the FAS "Software License Agreement," (2) agrees that the software measures licensed to Customer, the additional services (if any) purchased by Customer, and the fees owed to FAS, are accurately set forth, above.

AGREED AND ACCEPTED:

Functional Assessment Systems, LLC

Nick Suh
Signature

Nick Suh
Printed Name

Director
Title

11-29-11
Date

No. Dept. of Health & Human Services

No. Dept. of Health & Human Services
Legal Name of Customer Organization

Vicki Mach
Signature of Authorized Contract Representative

Vicki Mach
Printed Name

Administrator
Title

12/11/11
Date

**FUNCTIONAL ASSESSMENT
SYSTEMS, L.L.C.**
3600 Green Ct., Ste 110
Ann Arbor, MI 48105

Invoice

DATE	ACCOUNT #	INVOICE #
10/14/2011	007438	31033

BILL TO	PENDING (non-posting)
Douglas County Truancy Assmt Center Attn: Honorable Liz Crnkovich 1701 Farnam St. Omaha, NE 68183	

Visit our new website at www.fasoutcomes.com!

P.O. NUMBER	TERMS	REP	SHIP	VIA	TAX STATUS	TAX ID	SOFTWARE ID
			10/14/2011				
QTY	ITEM CODE	DESCRIPTION			ORDER #	PRICE E...	AMOUNT
1	APP-ALF	FASOutcomes Web-Hosted Software Annual Maintenance Fee				400.00	400.00T
	APP-ALF-RENU-DISC	Discount for FASOutcomes Web-Hosted Software Annual Maintenance Renewal Fee per Nick Suhy				-400.00	-400.00
30	APP-JIFF	FASOutcomes Web-Hosted Software JIFF Assessments, quantity of 100				550.00	16,500.00T
	APP-JIFF-DISCOUNT	FASOutcomes Software JIFF Assessment Discount per Nick Suhy				-3,000.00	-3,000.00
						0.00%	0.00
THE CUSTOMER IS RESPONSIBLE FOR PAYMENT DIRECTLY TO THEIR STATE OF ALL STATE SALES AND/OR USE TAXES ARISING FROM THIS SALE.							
					Total	\$13,500.00	
IMPORTANT LEGAL NOTICE REGARDING CUSTOMER'S USE OF PURCHASED MATERIALS. Copies of FAS assessment measures are sold on a per-use basis. Each measure may be used once. All FAS measures, including CAFAS®, PECFAS®, CWL®, and JIFF®, are protected by copyright and trademark laws. The purchased measures may not be re-used, posted to the Web, posted to an Intranet, scanned, or otherwise copied. Customer may not extract descriptors from the measures, such as "goals," "strengths," or specific items or questions from the measures. Customer may not use the measures or any portion of the FAS measures (such as items) to create other measures, tools, new versions, condensations, "mini" versions, or other derivative works.					Payments/Credits	\$0.00	
					Balance Due	\$13,500.00	