



MTM NETWORK PROVIDER AGREEMENT

This Agreement (hereafter “Agreement”) is entered into by Outcomes Operating, Inc, (“Outcomes”) and the accepting party (“Vendor”), along with their respective affiliates or subsidiaries, is entered into effective the date first accepted by Vendor by virtue of its authorized representative electronically accepting the terms and conditions of this Agreement and thereby acknowledging his or her acceptance of such terms (the “Effective Date”) in order for Vendor to participate in the Outcomes Medication Therapy Management services network.

In consideration of the mutual promises, covenants, terms and conditions contained in this Agreement, the parties agree as set forth herein.

In witness whereof, the parties hereto have caused this Agreement to be executed by their authorized representative below.

ARTICLE I - DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

- 1.1 “Approved Location” means a location listed under the NCPDP chain code and/or MTM Center ID set forth on the cover page of this Agreement.
- 1.2 “Client” means an individual or entity that has contracted with Outcomes to obtain MTM on behalf of one or more Members.
- 1.3 “Client Agreement” means a contractual agreement between Outcomes and a Client to cover payment for MTM delivered to Members in accordance with this Agreement.
- 1.4 “Medication-related Problem” means a health care issue related to the sub-optimal use of pharmaceuticals and shall include, without limitation, treatment failures, adverse drug reactions, medication errors, medication compliance problems, and cost-efficacy issues.
- 1.5 “Medication Therapy Management” and “MTM” means the services provided by pharmacists to facilitate the achievement of positive therapeutic and economic results from medication therapy as specifically described in Outcomes Policies and Procedures.
- 1.6 “Member” and “Members” means a person eligible to receive MTM from Vendor/MTM Center as notified in writing to Outcomes by Client.
- 1.7 “MTM Center” means a pharmacy, clinic, office, or other consultant setting designated by Vendor to provide MTM using the Outcomes System pursuant to this Agreement at an Approved Location.
- 1.8 “MTM Pharmacist” means a pharmacist designated by Vendor to provide MTM using the Outcomes System pursuant to this Agreement at an Approved Location.
- 1.9 “MTM Pharmacy Technician” means a licensed or duly authorized pharmacy technician or pharmacy intern who has completed the Outcomes Training Program and who provides MTM services at an Approved Location.
- 1.10 “MTM Provider” means an approved MTM Center and/or an approved MTM Pharmacist and/or an approved MTM Pharmacy Technician.
- 1.11 “Outcomes Policies & Procedures” means the policies and standard procedures for the provision of MTM in the Outcomes System, which may be amended by Outcomes from time to time. In the event of a material update to such

policies and procedures, Outcomes agrees to issue a system alert to Vendor Administrator prior to such changes going into effect.

- 1.12 “Outcomes System” or “System” means the system developed by Outcomes for the delivery, documentation, billing, administration, advertising, promotion, or sale of MTM, including all copyrights, icons, forms, guides, logos, materials, media, processes, programming, protocols, reports and their format, pricing, data organization, source code, object code, service claims, techniques, trademarks, training and other associated documents or procedures developed by Outcomes.
- 1.13 “Outcomes Training Program” means instructional course work and curriculum designed and/or designated by Outcomes to train pharmacists and/or other pharmacy personnel on the delivery, documentation, billing, and administration of MTM in the Outcomes System, which may be adjusted by Outcomes from time to time.
- 1.14 “Prescriber” means any person legally authorized to prescribe pharmaceuticals for a Member.
- 1.15 “Vendor Administrator” means a person designated by Vendor/MTM Center to (1) manage access to the Outcomes System for all MTM Pharmacists and other MTM Center personnel on behalf of Vendor/MTM Center; and (2) distribute information received in System alerts to appropriate Vendor/MTM Center personnel.
- 1.16 “Vendor/MTM Center” means Vendor and/or each MTM Center, as applicable.
- 1.17 “Term” means the term of this Agreement as specified in Article V.

ARTICLE II - OUTCOMES OBLIGATIONS

- 2.1 Access. Outcomes shall provide Vendor/MTM Center with web-based access to necessary portions of the Outcomes System for the sole purpose of documenting and administering the provision of MTM by MTM Providers, excluding reasonable periods of System downtime and disruption of internet service beyond Outcomes’ reasonable control. Outcomes reserves the right to suspend any MTM Provider’s access to the Outcomes System if, in Outcomes’ reasonable discretion, such MTM Provider has failed to comply with this Agreement, any applicable laws or regulations, or Outcomes’ Policies & Procedures or is otherwise detrimental to Outcomes.
- 2.2 Outcomes Warranty. Outcomes represents that it has the right to grant Vendor/MTM Center access to the Outcomes System and that, to the best of its knowledge, neither the Outcomes System, nor Vendor/MTM Center’s use or possession thereof, will violate or infringe any patent, copyright, trade secret or other proprietary right of any third party.
- 2.3 Contracting. Outcomes represents to Vendor/MTM Center that it has secured a Client Agreement with each Client to cover payment for MTM delivered to Members in accordance with this Agreement. Outcomes further represents and warrants to Vendor/MTM Center that it has executed and has in effect a business associate agreement with each Client, whereby Outcomes is the business associate (as that term is defined at 45 C.F.R. 160.103) of each Client. As such, Outcomes has been granted authority by each Client to exchange protected health information (as that term is defined at 45 C.F.R. 160.103) pertaining to Client’s Members for the purposes of facilitating provision of and payment for MTM.
- 2.4 Payment Rates. Outcomes shall compensate Vendor/MTM Center for the provision of MTM delivered to Members in accordance with the rates properly adjudicated within the Outcomes System upon claim approval. Under no circumstances shall Outcomes be required to compensate Vendor/MTM Center for provision of MTM to any person who is not a Member nor for any service which was not provided in accordance with Outcomes Policies and Procedures. Outcomes reserves the right to charge Vendor/MTM Center for services, access, support or such other items at any time.
- 2.5 Payment Cycle. Outcomes shall compensate Vendor/MTM Center for the provision of MTM on no less than a monthly basis within fifteen (15) days of Outcomes receiving payment on such services from all Clients for whom MTM

Services were provided. Vendor/MTM Center and Outcomes understand and agree that Outcomes payments to Vendor/MTM Center are conditioned: (i) on the completeness and accuracy of the claims information provided by Vendor/MTM Center to Outcomes and (ii) Outcomes receipt of payment for the MTM Services from all Clients. Payment will be made by Outcomes to the Vendor/MTM Center using the address appearing in this Agreement. To avoid frequent de minimis payments, Outcomes reserves the right to accumulate amounts due until a minimum threshold of fifty dollars (\$50) is payable. Upon termination of this Agreement, Outcomes shall compensate Vendor/MTM Center for all outstanding balances without regard to de minimis thresholds herein.

- 2.6 Limitations. Vendor/MTM Center understands and affirms that Outcomes serves as the payment processor between Client and Vendor/MTM Center for the provision of MTM and that payment for MTM to Vendor/MTM Center is expressly conditioned upon Outcomes' receipt of funds from the Client. In the event of Client default in payment, Outcomes and Vendor/MTM Center agree to cooperate in good faith to obtain payment in-full from Client for all services rendered. Vendor/MTM Center reserves the right to suspend provision of MTM to any Member for whom Client's late payment to Outcomes results in deficient payment to Vendor/MTM Center.
- 2.7 Insurance. Outcomes shall obtain and maintain in effect a program of self-insurance or a policy of insurance from a recognized carrier in such coverage amounts as is deemed reasonable and customary, or as required by law. Such coverage shall include no less than the following:
- (a) Workers compensation insurance as required by the laws of the state in which work is being performed;
 - (b) Comprehensive general liability insurance with limits for bodily injury and property damage of \$3,000,000 in the aggregate and \$1,000,000 per occurrence;
 - (c) Errors and omissions coverage with limits of \$1,000,000 per occurrence.
- 2.8 Technical Support. Outcomes shall maintain technical support as described in the Outcomes Policies and Procedures.
- 2.9 Reports. Outcomes shall make reports on the status of MTM services available to Vendor/MTM Center in the Outcomes System, such reports shall contain updated MTM service claim information such as the claim date and the number and detail of pending and completed MTM service claims.

ARTICLE III - VENDOR/MTM CENTER OBLIGATIONS

- 3.1 MTM Centers. Vendor shall provide Outcomes with the NCPDP Relationship ID number(s) covering each MTM Center and/or the MTM Center ID(s) to be included under this Agreement. In the event such NCPDP Relationship ID number(s) also include pharmacies which Vendor wishes to exclude from this Agreement or does not include MTM Centers which Vendor wishes to include, then Vendor shall also provide Outcomes with the pharmacy name, address, and NCPDP store number of each such pharmacy.
- 3.2 MTM Provision. Vendor/MTM Center shall ensure that only MTM Pharmacists practicing in conjunction with MTM Centers provide MTM pursuant to this Agreement. Vendor/MTM Center shall not subcontract the provision of MTM services without Outcomes' prior written authorization.
- 3.3 Staffing. Vendor/MTM Center shall maintain a sufficient number of MTM Pharmacists on duty at each MTM Center, along with sufficient facilities, equipment, and support personnel in order to provide MTM to Members in a timely and appropriate manner.
- 3.4 Clients. Vendor/MTM Center herein:
- (a) authorizes Outcomes to act as its agent to accept all payments from Clients for MTM provided pursuant to this Agreement.

- (b) authorizes Outcomes to accept all claims activity reports, remittance reports and other reports from Clients for MTM provided pursuant to this Agreement.
- (c) shall accept compensation from Outcomes as payment in-full for MTM provided pursuant to this Agreement, in accordance with the payment rate properly adjudicated within the Outcomes System upon claim approval.
- (d) shall indemnify, defend, and hold Clients harmless from any liability resulting from Outcomes' failure to pay Vendor/MTM Center any amounts already paid by Client to Outcomes for MTM provided pursuant to this Agreement.
- (e) shall abide by applicable terms of the Client Agreements that may not be included in this Agreement or the Outcomes Policies and Procedures. In the event Outcomes determines Vendor/MTM Center to be in violation of an applicable term of one or more Client Agreements, Outcomes shall provide notice of such violation to Vendor/MTM Center and the parties shall either determine a mutually agreeable corrective action plan or proceed with termination in accordance with Article V.
- (f) acknowledges and agrees that Client is a third-party beneficiary of this Agreement.

3.5 Credentials. Vendor/MTM Center shall, at its own expense, maintain and confirm all licenses, certifications, permits and other prerequisites required by law to provide MTM pursuant to this Agreement.

3.6 Disclaimers. Vendor/MTM Center acknowledges and agrees that all clinical and therapeutic decisions relating to the provision of MTM shall be the exclusive responsibility of Vendor, MTM Providers, Members, Prescribers and other health care professionals. Neither Outcomes nor Client shall be liable for any acts or omissions of Vendor/MTM Center or any MTM Provider. Neither Outcomes nor Client warrants any aspect, either express or implied, of any MTM provided by any MTM Provider.

3.7 Warranties. Vendor/MTM Center warrants that:

- (a) It has the right to and hereby contracts for services on behalf of MTM Centers included in this Agreement and/or represented under their NCPDP Relationship ID and binds those MTM Centers to all relevant provisions and obligations herein including, but not limited to, Section 6.5 Indemnification. Further, in the event that Vendor provides MTM to Medicare beneficiaries of a CMS Plan Sponsor for which Vendor is not a network provider, the additional warranties set forth in Exhibit A of this Agreement shall apply.
- (b) The MTM services provided shall strictly comply with the terms and conditions of this Agreement and shall be performed with the care and skill ordinarily used by members of the same profession practicing under similar circumstances.
- (c) Vendor/MTM Center shall, while performing MTM, take all required actions and comply with, and cause its employees and agents to comply with, all laws and regulations applicable to its performance hereunder, including without limitation, the employment, workman's compensation, immigration, tax and export control laws of any jurisdiction in which MTM are performed.
- (d) Vendor/MTM Center represents that any software in its possession, including any Outcomes software, is properly licensed for use.

3.8 Insurance. Vendor/MTM Center shall obtain and maintain in effect a policy of insurance for general and professional liability coverage purposes from a recognized carrier in such coverage amounts as is deemed reasonable and customary, or as required by law, for similar entities doing business in the state in which Vendor/MTM Center is located. Such coverage shall include no less than the following:

- (a) Workers compensation insurance as required by the laws of the state in which work is being performed;
- (b) Comprehensive General Liability insurance with limits for bodily injury, personal injury, and property damage of \$3,000,000 in the aggregate and \$1,000,000 per occurrence;

- (c) Professional Liability/Errors and omissions coverage with limits of \$2,000,000 per occurrence;
- (d) Cyber Liability, including coverage for privacy, in an amount not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor/MTM Center in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. The policy shall include, or be endorsed to include property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of Outcomes in the care, custody, or control of Vendor.

Vendor shall provide evidence of insurance upon request. Any claims made policy shall be maintained for a minimum of 6 years after the expiration or termination of this Agreement.

- 3.9 Vendor Administrator. Vendor/MTM Center shall at all times designate one or more Vendor Administrators. In the event an unauthorized individual gains access to protected health information, Vendor/MTM Center shall indemnify, defend, and hold Clients and Outcomes harmless from any liability resulting from any breached information.
- 3.10 Policies and Procedures. Vendor/MTM Center shall abide by the policies and procedures set forth in Outcomes Policies & Procedures.
- 3.11 Activity. Outcomes reserves the right to monitor and record all activity of any person using the Outcomes System.

ARTICLE IV - CONFIDENTIALITY

4.1 Confidential Information. In connection with this Agreement, each Party may disclose certain of its “Confidential Information” (defined below) to the other. The Party disclosing such information shall be referred to herein as the “Disclosing Party” and the Party receiving such information shall be referred to herein as the “Receiving Party.”

For purposes of this Agreement, “Confidential Information” means all confidential, proprietary and trade secret information that is provided by the Disclosing Party to the Receiving Party as well as this Agreement (including its terms and conditions). Confidential Information shall exclude any information that: (1) becomes generally available to the public other than as a result of a breach of this Agreement to the Receiving Party; (2) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided such source is not bound by any obligation to keep such information confidential by agreement or otherwise; (3) the Receiving Party, upon request can reasonably demonstrate, it knew, obtained or was in possession of such information on a non-confidential basis prior to receipt of such information from the Disclosing Party or (4) is independently developed by the Receiving Party without access to, or reliance on any Confidential Information of Disclosing Party.

In recognition of the interests of the Parties in protecting such Confidential Information and in consideration of the promises contained herein, the Receiving Party covenants and agrees as follows:

- a. The Receiving Party shall: (1) hold all Confidential Information provided by the Disclosing Party in confidence and take all necessary precautions to protect such Confidential Information, including, without limitation, all precautions the Receiving Party employs with respect to its own confidential information; (2) use the Confidential Information only for the purposes under this Agreement; (3) not misappropriate, duplicate, reverse engineer, decrypt, attempt to derive the source code of, or decompile the Confidential Information, (4) restrict disclosure of the Confidential Information solely to the Receiving Party or its employees, contractors and agents on a need to know basis in order to effectuate the purpose(s) of this Agreement and provided that such individuals agree to be fully bound by obligations of confidentiality no less stringent than those contained herein; (5) not otherwise disclose Confidential Information to any other person

or entity without the prior written consent of the Disclosing Party in each instance, which consent may be rescinded at any time in writing by the Disclosing Party; and (6) return or certify the destruction of the Confidential Information, together with all copies thereof and without retaining any copies, to the Disclosing Party upon request from the Disclosing Party. Nothing in this Agreement restricts the right of a Party to create, develop, acquire, protect, procure or market any products or services, whether or not similar to or competitive with those being discussed by the Parties; provided that such Party has not used the Confidential Information in breach of this Agreement.

b. Notwithstanding the foregoing, if the Receiving Party is required (by interrogatories, requests for information or documents, subpoena or similar process) to disclose any Confidential Information, the Receiving Party, to the extent possible, shall cooperate with the Disclosing Party and provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order and/or waive compliance by the Receiving Party with the provisions of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party is, in the opinion of the Receiving Party's counsel, legally required to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other censure or penalty, the Receiving Party may disclose such information to such tribunal without liability hereunder. Nothing contained in this Agreement shall be construed as granting or conferring rights by license or otherwise in any Confidential Information.

c. The Parties acknowledge and agree that, in the event of any breach of this section, the other Party may be irreparably and immediately harmed and unable to be made whole by monetary damages. It is accordingly agreed that the non-breaching Party, in addition to any other remedy to which it may be entitled at law or in equity, will be entitled to seek temporary restraining orders and permanent injunctions prohibiting disclosure of the Confidential Information by the breaching Party and any and all persons acting in concert with the breaching Party and/or to compel specific performance of this Agreement.

4.2 Proprietary Nature of Outcomes System. Vendor/MTM Center acknowledges that the Outcomes System, Outcomes Policies and Procedures, and Outcomes Training Program (including, without limitation, the System and all rights associated with trade secrets, copyrights, trade names, service marks and trademarks related thereto) as well as all improvements, developments, derivatives or modifications to the Outcomes System (whether made by Outcomes or Vendor/MTM Center) constitutes Confidential Information and valuable proprietary assets of Outcomes, and that this Agreement shall not and does not provide the Vendor/MTM Center with any ownership interest therein, whether as a licensee or otherwise. Vendor/MTM Center and its respective employees, agents and representatives shall hold all information and material relating to the Outcomes System in confidence with the exception of information and material in the public domain on the effective date of this Agreement or subsequently entering the public domain without breach by Vendor/MTM Center. Further, Vendor/MTM Center agrees not to use for its own or another's benefit or to reveal any such information and material to any other person or entity except for uses explicitly authorized hereunder during the Term of this Agreement. Vendor/MTM Center shall not provide its Affiliates or any third party visual or operational access to the Outcomes System. This obligation shall survive the termination of this Agreement.

4.3 Reverse Engineering. Except as expressly permitted in the Agreement, Vendor/MTM Center shall not directly or indirectly do any of the following: (a) access, use, sell, distribute, sublicense, broadcast, or commercially exploit the Outcomes System or any rights under the Agreement, including, without limitation, any access or use of the Outcomes System on a service bureau basis or for any Vendor/MTM Center processing services beyond the scope specified in this Agreement (such as for any third parties on a rental or sharing basis); (b) knowingly introduce any infringing, obscene, libelous, or otherwise unlawful data or material into the System; (c) copy, modify, or prepare derivative works based on the Outcomes System; (d) reverse engineer, decompile, disassemble, or attempt to derive source code from the Outcomes System; or (e) remove, obscure, or alter any intellectual property right or confidentiality notices or legends appearing in or on any aspect of the Outcomes System.

4.4 Equitable Relief. Vendor/MTM Center acknowledges the value of Outcomes' proprietary rights and the irreparable injury that would result from violation of the provisions of Sections 4.2 and 4.3. Accordingly, Vendor/MTM Center

agrees that Outcomes shall be entitled to seek injunctive or other equitable relief to prevent the threatened or further actual breach of Sections 4.2 and 4.3.

- 4.5 Return of Confidential Information. Promptly upon the termination of this Agreement, Vendor/MTM Center shall return to Outcomes all of Outcomes' Confidential Information and materials and all copies of such information and materials, if any, in its possession except for the de-identified aggregated data referred to in Section.
- 4.6 Vendor/MTM Center Protection. Outcomes shall not use any name, trademark, service mark, trade name or other commercial or product designation belonging to Vendor/MTM Center without the prior written consent of Vendor/MTM Center in each instance, except for use in the routine course of business, which may include, but not necessarily be limited to, Client and Sponsor reporting, network management, and publication of directories.
- 4.7 Analytics. In order to continue the improvement of medication therapy management and other related services, Vendor/MTM Center hereby grants Outcomes the right to use data collected in connection with any MTM provided to analyze such MTM Programs and to publish and/or report on the results of such MTM Programs, provided that any publication shall only contain aggregate, and de-identified data.

ARTICLE V - TERM AND TERMINATION

5.1 Term; Termination.

- (a) Term. This Agreement shall commence on the Effective Date and continue for a period of one (1) year, unless earlier terminated in accordance with the terms of this Agreement (the "Initial Term"). After the expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term"), unless either Party gives written notice of non-renewal to the other Party at least sixty (60) days prior to the end of the then-current term or unless the Agreement is earlier terminated as provided herein (the Initial Term and all Renewal Terms, collectively, the "Term"). Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.
- (b) Termination for Cause. A Party may terminate this Agreement at any time during the Term for cause based on the other Party's misrepresentation, breach of warranty, or failure to perform as required hereunder, which misrepresentation, breach of warranty, or failure to perform continues for more than thirty (30) days after written notice to cure thereof is provided to such other Party. If the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within thirty (30) calendar days, then the defaulting Party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting Party immediately (1) provides written notice to the non-defaulting Party and (2) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed sixty (60) calendar days.

Either Party may terminate the Agreement immediately if the other Party, voluntarily or involuntarily, becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. Upon termination of this Agreement, Vendor shall immediately stop accessing, using, transmitting, exchanging, and processing all Outcomes data and shall return all Outcomes data to Outcomes in a usable format.

ARTICLE VI - GENERAL PROVISIONS

- 6.1 Audit. Outcomes or its designee, which may include but not necessarily be limited to, the Centers for Medicare and Medicaid Services (CMS), US Department of Health and Human Services (HHS), US Comptroller General, or Client shall retain rights to reasonably audit for the Term and a period of ten (10) years from the termination of this Agreement any pertinent contracts, books, documents, papers, and records of Vendor/MTM Center that pertain to any aspect of the Vendor/MTM Center's duties or obligations under this Agreement. Vendor/MTM Center agrees to maintain such records for the period contemplated and make them available for inspection and audit upon ten (10) days written notice.

- 6.2 Counterparts. This Agreement or any addendum or amendment to this Agreement may be executed in counterparts, all of which taken together shall be deemed one original agreement, and shall be binding upon the parties hereto notwithstanding that all parties hereto are not signatory to the same counterpart.
- 6.3 Exclusivity. This Agreement is not exclusive and nothing herein shall be construed to prohibit the parties hereto from entering into similar agreements with other parties.
- 6.4 Gender and Number. Whenever used in this Agreement and as required by context, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 6.5 Indemnification. In addition to any other indemnity obligation in this Agreement, each Party (the “Indemnifying Party”) shall indemnify, defend, and hold harmless the other Party and its directors, officers, employees, agents, and representatives (each and collectively, the “Indemnified Party”), from and against any claims, liabilities, damages, fines, penalties, judgments, costs, and other losses (including reasonable attorneys’ fees, court costs, and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or caused by or based upon (i) Indemnifying Party’s breach of this Agreement or (ii) any acts, misconduct, errors, mistakes or omissions of the Indemnifying Party (including the acts, misconduct, errors, mistakes and omissions of Indemnifying Party’s officers, employees, agents, or any tier of subcontractor or person for which the Indemnifying Party may be legally liable in the performance of this Agreement) in connection with the performance of any of the Indemnifying Party’s duties or obligations under this Agreement, except to the extent that such claims, liabilities, damages, judgments or other losses arise from the bad faith, willful misconduct, or gross negligence of the Indemnified Party.
- 6.6 Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED HEREUNDER, NO PARTY MAKES ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED. EACH PARTY SHALL TAKE COMMERCIALY REASONABLE STEPS TO SCREEN THE SYSTEMS OR INTERFACE, AS APPLICABLE, FOR INFECTION BY VIRUSES, WORMS, TROJAN HORSES OR OTHER CODE MANIFESTING CONTAMINATION OR DESTRUCTIVE PROPERTIES. UNDER NO CIRCUMSTANCES WILL A PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE OR KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION OR LOSS OF PROGRAMS OR INFORMATION) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR KNEW OF OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES, AND NOTWITHSTANDING THE FORM IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT AGAINST IT. EXCEPT FOR DAMAGES RESULTING FROM A BREACH UNDER ARTICLE IV (CONFIDENTIALITY), SECTION 6.11 (HIPAA), AND 6.5 (INDEMNIFICATION), IN NO EVENT WILL THE AGGREGATE LIABILITY FOR WHICH EITHER PARTY MAY BE LIABLE TO THE OTHER PARTY EXCEED THE TOTAL AMOUNT ACTUALLY PAID UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM.
- 6.7 Independent Contractors. This Agreement is only intended to create an independent contractor relationship between Vendor and Outcomes. It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. Under no circumstance shall one Party’s employees be deemed or construed to be employees of the other Party. Vendor further agrees to be responsible for all of Vendor’s federal and state taxes, withholding, social security, insurance and other benefits. Upon request, Vendor shall provide Outcomes with satisfactory proof of independent contractor status, if applicable. The Parties agree that nothing contained in this Agreement or any SOW shall be construed as creating an exclusive relationship between the parties.
- 6.8 Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law or choice of law thereof.

- 6.9 Laws and Regulations. The parties shall comply with all federal, state and local laws, rules, and regulations which are applicable to carrying out its obligations under this Agreement. In the event it is determined by any governmental agency that any regulatory license or approval of this Agreement or any activity undertaken by the parties under this Agreement's terms and conditions is required, then the parties:
- (a) shall be bound by and govern themselves in accordance with the requirements of the regulating entities unless and to the extent that the parties challenge such requirements, and
 - (b) agree to cooperate and assist one another in obtaining such license and complying with such approvals and to modify this Agreement to the extent necessary to accommodate any such license or approvals.
- 6.10 Equal Opportunity. As applicable, each party and its subcontractors shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors (as that term is defined in 41 CFR 60-300.2(p)) and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.
- 6.11 HIPAA. The Parties agree that the Services require Vendor to access, process, transmit, or otherwise use PHI to complete the Services. Accordingly, the Parties agree to comply with the terms and conditions set forth in the Business Associate Subcontractor Agreement, attached as Exhibit B and incorporated by reference herein, and all applicable laws, including the provisions set forth therein related to PHI under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); the Privacy and Security Rules, 45 C.F.R. parts 160, 162 and 164; and the Health Information Technology for Economic and Clinical Health Act, included in Division A, Title XIII, Subtitle D of The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009) and any regulations issued pursuant thereto (“HITECH”) (collectively HIPAA and HITECH are referred to as the “HIPAA Regulations”). All capitalized terms used in the Agreement that are not otherwise defined herein shall have the defined meanings set forth in the HIPAA Regulations
- 6.12 Section Headings. The section headings used in this Agreement have been inserted for convenience of reference only and shall not in any way modify or restrict any of its terms or provisions.
- 6.13 Severability. In the event one or more of the provisions contained in this Agreement are declared invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be impaired thereby unless the effect of such invalidity is to substantially impair or undermine any of the party's rights and benefits hereunder.
- 6.14 Waiver. The failure of any party hereto to insist in any one or more instances upon performance of any terms or conditions of this Agreement shall not be construed as a waiver of future performance of any such term, covenant, or condition and the obligations of such party with respect thereto shall continue in full force and effect.
- 6.15 Amendment. This Agreement cannot and shall not be changed, modified, amended or supplemented except by another written agreement that is executed by a person duly authorized to enter into contracts on behalf of each Party.
- 6.16 E-Signature and Counterparts. The Parties agree that this Agreement and any associated document may be signed electronically and/or in two or more counterparts, and all such counterparts together shall constitute one and the same contract; such signatures shall bind the signing party in the same manner as if a handwritten signature had been delivered. Signatures of this Agreement or a SOW transmitted by facsimile transmission, by e-mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, shall be binding on the Parties and will have the same effect as physical delivery of the paper document bearing the ink-original signature.
- 6.17 Survival. Rights and obligations under this Agreement which by their nature should survive, including, but not limited to any warranties, indemnities, limitation of liabilities and all payment obligations, and Confidentiality obligations will remain in effect after termination or expiration hereof.

- 6.18 Force Majeure. Unless caused by a Party, neither Party shall be liable for a failure or delay in performance hereunder arising out of or resulting from acts of God, acts of a public enemy, acts of a sovereign nation or any state or political subdivision or any department or regulatory agency thereof or entity created thereby, acts of any person engaged in a subversive activity or sabotage, fires, floods, earthquakes, epidemics, pandemics, explosions, strikes, slow-downs, lockouts or labor stoppage, freight embargoes, or other similar or dissimilar causes beyond the reasonable control of the Party (“Force Majeure Event”), when the non-performing Party presents satisfactory evidence to the performing Party of such Force Majeure Event and that the non-performance is not due to the fault or neglect of the non-performing Party. If a Force Majeure Event prevents either Party from performing its responsibilities under this Agreement for a period of sixty (60) days or more, then either Party may terminate this Agreement upon written notice to the other Party.
- 6.19 No Assignment; Binding Effect. Neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by any Party without the prior written consent of the other Party and any attempt to do so will be void; provided, however, that Outcomes may assign this Agreement or any of its rights, interests or obligations hereunder to an affiliate, subsidiary, or successor-in-interest of Outcomes. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties hereto and their respective successors and assigns.
- 6.20 Subcontracts. Vendor may not subcontract any portion of the Services to a third party (“Subcontractor”) without prior written notice to and approval from Outcomes. With respect to use of a Subcontractor, Vendor shall comply with the following conditions:
- (a) Vendor is responsible for and guarantees Subcontractor’s performance of the Services and fulfillment of applicable Vendor obligations under this Agreement. Vendor shall be liable for any Services that Subcontractor fails to perform or complete as required by this Agreement and the applicable SOW.
 - (b) Vendor makes all payments to Subcontractor. In addition to all other indemnity obligations in this Agreement, Vendor shall indemnify, defend, and hold harmless Outcomes for all damages, liabilities, and costs of any kind, without limitation, incurred by Outcomes and arising out of Vendor’s failure to pay a Subcontractor. Failure to pay a Subcontractor in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Vendor.
 - (c) Vendor shall not change fees set forth in a SOW because of Vendor’s use of a Subcontractor.
- 6.21 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement. This Agreement does not constitute an offer by Outcomes and it shall not be effective until signed by both Parties.
- 6.22 Notices. Any notice required or permitted hereunder shall be made in writing by certified mail, return receipt requested, addressed to the parties as hereinafter specified. For administrative simplification, such correspondence from Outcomes may alternatively be sent via regular mail, electronic mail, or other manner; provided a voluntary, non-automated receipt confirmation is generated from the receiving party. All notices from Vendor to Outcomes must be sent via certified mail or hand-delivered to: Outcomes, Attn: Chief Legal Officer, 1001 E. 101st Terrace, Suite 250, Kansas City, MO 64131. All notices from Outcomes to Vendor must be sent to the address and/or email address Vendor provides in the “Contractual Information” section above. Any notice sent electronically shall be in addition to and not in lieu of sending notice as required above. The parties shall notify the other in writing of any changes to the notice information provided below.

END OF AGREEMENT

Exhibit A

Medicare/Medicaid and Other Government Sponsored Programs Addendum

This Medicare/Medicaid Advantage and Part D and Other Government Sponsored Programs Addendum (“**Medicare/Medicaid Addendum**”) is entered into by and between Outcomes Operating, Inc. together with its subsidiaries and affiliates (“**Outcomes**”) and **Vendor**, as identified in the MTM Network Provider Agreement between the Parties (the “**Agreement**”). Outcomes and Vendor may be referred to individually as the “**Party**”; collectively, “**Parties**”.

Recitals

WHEREAS, Outcomes has agreements (“**CMS Plan Sponsor Contracts**”) with CMS plan sponsors (“**CMS Plan Sponsors**”) offering one (1) or more Medicare Advantage (“**MA**”) plans, MA prescription drug (“**MA-PD**”) plans, and/or Medicare Part D (“**Part D**”) prescription drug plans (“**PDPs**”) or government-sponsored plans which follow same regulations as MA-PD and Part D plans in regards to CMS requirements for first tier, downstream or related entities as defined in next paragraph.

WHEREAS, Outcomes provides certain services and activities relating to the CMS Plan Sponsor Contracts that have been delegated to Outcomes by the plan sponsor, such that Outcomes is a first tier entity, downstream entity, or related entity (collectively, “**FDR**”) in relation to CMS Plan Sponsors as a CMS Plan Sponsor and has further delegated to Vendor certain service and activities such that Vendor is a FDR in relation to CMS Plan Sponsors.

WHEREAS, in order to comply with certain minimum requirements for written arrangements between CMS Plan Sponsors and their FDRs as set forth in the law, Outcomes and Vendor incorporate the provisions of this Medicare Addendum into the Agreement;

NOW, THEREFORE, the Parties agree as follows:

Agreement

- a. If Vendor performs services for members of a CMS Plan Sponsor and Vendor is not a network provider for such CMS Plan Sponsor, Vendor acknowledges and agrees that it is a “first tier entity,” “downstream entity,” or “related entity” of Outcomes as defined under 42 C.F.R. §§ 422.500 and 423.501.
- b. The agreements between Outcomes and CMS Plan Sponsors specify the Covered Services and the related FDR reporting responsibilities of Outcomes. *See* 42 C.F.R. §§ 422.504(i)(4)(i) and 423.505(i)(4)(i).
- c. Vendor shall perform the Covered Services under the Agreement in a manner that is consistent and in compliance with Outcomes’s contractual obligations under the CMS Plan Sponsor Contracts. *See* 42 C.F.R. §§ 422.504(i)(3)(iii) and 423.505(i)(3)(iii).
- d. Vendor shall comply with all Laws and CMS instructions applicable to FDRs. *See* 42 C.F.R. §§ 422.504(i)(4)(v) and 423.505(i)(3)(v).
- e. Vendor understands and agrees that Vendor is prohibited from subcontracting any Covered Services without Outcomes’s prior written and signed consent. Vendor shall ensure that its agreements with any subcontractor to which Vendor delegates any activity or responsibility related to the Covered Services shall comply with all Laws and CMS instructions applicable to FDRs and all of the terms and conditions set forth in this Medicare/Medicaid Addendum. *See* 42 C.F.R. §§ 422.504(i) and 423.505(i).
- f. Vendor understands and agrees that where the Covered Services include the selection of providers, contractors, or subcontractors, Outcomes’s CMS Plan Sponsors retain the right to approve, suspend, or terminate any such arrangement. *See* 42 C.F.R. § 422.504(i)(5) and 423.505(i)(5). Vendor shall indemnify, defend and hold harmless Outcomes from all claims, liabilities, and damages arising out, related to or resulting from this subsection.
- g. Vendor acknowledges that payments under the Agreement from Outcomes to Vendor are made, in whole or in part, from federal funds, and subject Vendor to all Laws applicable to individuals or entities who receive federal funds, including, but not limited to the False Claims Act (32 U.S.C. § 3729, *et. seq.*), the Anti-Kickback Statute (section 1128B(b) of the Social Security Act), Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act, and the Rehabilitation Act of 1973.
- h. Vendor shall comply, and require its subcontractors to comply, with any and all state and federal privacy and security requirements that relate to the information Vendor obtains in the performance of the Covered Services, including the following confidentiality and member record accuracy requirements:

1. Abiding by all federal and state laws, regulations, and orders regarding confidentiality and disclosure of medical records, or other health and enrollment information;
 2. Ensuring that medical information is released only in accordance with applicable federal or state law, or pursuant to court orders or subpoenas;
 3. Maintaining the records and information in an accurate and timely manner;
 4. Abiding by all CMS instructions, and policies relevant to the activities to be performed under the Agreement, including but not limited to, the Medicare Marketing Guidelines for Medicare Managed Care Clients, and any requirements for CMS prior approval of materials. Further, Vendor agrees that any services provided by the Vendor or its subcontractors to or on behalf of Customer's Medicare Advantage and/or Medicare Part D enrollees will be consistent with and will comply with the Customer's Medicare Advantage and/or Medicare Part D contractual obligations. and
 5. Ensuring timely access by members to the records and information that pertain to them. *See* 42 C.F.R. §§ 422.118, 422.504(a)(13), 423.136, and 423.504(a)(14).
- i. For any particular contract period through 10 years from the final date of the final term of the applicable CMS Plan Sponsor Contracts or from the date of completion of any audit, whichever is later, Vendor shall:
1. Maintain all books, contracts, computer or other electronic systems, and other records (including, medical records) and documentation as related to the Covered Services and Vendor's compliance with applicable CMS requirements and the terms of this Medicare Addendum, including Appendix A ("**Relevant Records**") (alternatively, if Outcomes agrees, Vendor may delegate responsibility for this recordkeeping to Outcomes); and
 2. Grant HHS, the Comptroller General, or their designees and Outcomes the right to audit, evaluate, and inspect any pertinent information of Vendor as related to the Covered Services, including, but not limited to the Relevant Records; and
 3. Upon request by CMS or its designees or Outcomes, produce any Relevant Records to either CMS or its designees or Outcomes.

See 42 C.F.R. §§ 422.504(d), 422.504(i)(2), 422.504(e), 423.505(d), 423.505(e), 423.505(i)(2), and 423.505(i)(3)(iv).

Vendor understands and agrees that certain Laws and CMS instructions apply where Vendor provides offshore services. Vendor warrants that neither Vendor nor any downstream or related entity utilized by Vendor to provide MTM to Medicare beneficiaries on behalf of Outcomes utilizes an offshore vendor and/or subcontractor to provide said services. Vendor further attests that neither Vendor nor any downstream or related entity utilized by Vendor provides or allows access to protected health information or "PHI" (as such term is defined at 45 C.F.R. §160.103) of a Medicare beneficiary to any offshore vendor and/or subcontractor. For the purposes of this attestation, the term "offshore" shall refer to any country that is not one of the fifty United States or one of the following United States Territories: American Samoa, Guam, Northern Marianas, Puerto Rico and the Virgin Islands. Where applicable, Outcomes shall exercise its right (on at least an annual basis) to audit, evaluate, and inspect all Relevant Records located offshore or related to offshore activities. Outcomes shall have the discretion to report to CMS any offshore activities performed under the Agreement, including any deficiencies. This provision shall survive the termination or other expiration of the Agreement regardless of the cause giving rise to the termination or expiration.

- j. If CMS, CMS Plan Sponsor, or Outcomes determines that Vendor has not performed satisfactorily under the Agreement, CMS, CMS Plan Sponsor, or Outcomes may revoke or terminate any of the activities or reporting responsibilities (including the Covered Services) delegated to Vendor under the Agreement. *See* 42 C.F.R. §§ 422.504(i)(4)(ii) and 423.505(i)(4)(ii). Vendor shall indemnify, defend and hold harmless Outcomes from all claims, liabilities, and damages arising out, related to or resulting from this subsection.
- k. Vendor shall comply and cooperate with Outcomes's policies and procedures and compliance program requirements, including but not limited to **Appendix A** of this Medicare Addendum, as well as all applicable Outcomes reporting requirements, corrective actions, and training and education that support its compliance and fraud, waste, and abuse program. *See* 42 C.F.R. §§ 422.503(b)(4)(vi)(C), 422.503(d), 423.504(b)(4)(vi)(C), and 423.504(d).
- l. Vendor is not excluded and shall not employ or contract for the provision of the Covered Services with any individual whom Vendor knows or reasonably should have known is excluded from participation in the Medicare and Medicaid program under Section 1128 or 1128A of the Social Security Act. Vendor hereby certifies that no such excluded person currently is employed by or under contract with Vendor relating to the furnishing of the Covered Services. Vendor shall review the Office of Inspector General and General Services Administration exclusion files and verify on a monthly basis (or as often as required by

CMS) that the persons it employs or contracts for the Covered Services are in good standing. Vendor shall immediately disclose to Outcomes any debarment, exclusion, or other event that makes its employees or subcontractors ineligible to perform work related to federal health care programs. *See, e.g., 2 C.F.R. pt. 376.*

- m. Vendor shall submit a report in writing to Outcomes within thirty (30) calendar days of Vendor's knowledge of any and all civil judgments and other adjudicated actions or decisions against the Vendor related to the Covered Services performed by Vendor under the Agreement (regardless of whether the civil judgment or other adjudicated action or decision is the subject of a pending appeal).
- n. In Outcomes agreements with CMS Plan Sponsors, CMS Plan Sponsors retain ultimate responsibility for complying with all terms and conditions of the CMS Plan Sponsor Contracts. *See 42 C.F.R. §§ 422.504(i)(1) and 423.505(i)(1).*
- o. Outcomes shall monitor the performance of the Parties on an ongoing basis. *See 42 C.F.R. §§ 422.504(i)(4)(iii) and 423.505(i)(4)(iii).*
- p. Vendor shall ensure that CMS Plan Sponsor members are not held liable for the payment of any fees that are the responsibility of Outcomes or CMS Plan Sponsor. Vendor agrees that in no event, including, but not limited to, nonpayment by Outcomes's insolvency, or breach of the Agreement, shall Vendor, or its subcontractors, bill, charge, or collect a deposit from, seek compensation, remuneration, reimbursement or payment from, or have recourse against, a member for services provided pursuant to the Agreement. This provision shall survive the termination or other expiration of the Agreement regardless of the cause giving rise to the termination or expiration, and shall be construed for the benefit of the applicable member. *See 42 CFR §§ 422.504(i)(3)(i), 422.504(g)(1)(i), 423.505(g)(1)(i), and 423.505(i)(3)(i).*
- q. Where applicable, if Vendor employs or contracts with medical professionals for the performance of the Covered Services, Outcomes agrees that it shall review the credentials of such medical professionals or, if Outcomes has delegated the credentialing process to Vendor, CMS Plan Sponsor and Outcomes shall review and approve Vendor's credentialing process and audit it on an ongoing basis. *See 42 C.F.R. §422.504(i)(4)(iv).*
- r. Where applicable, Vendor shall use and distribute only those CMS Plan Sponsor- and/or CMS-approved materials provided to Vendor by Outcomes, or as otherwise authorized by the agreements between Outcomes and CMS Plan Sponsors. *See 42 C.F.R. §§ 422.2262 and 423.2262.*
- s. Each year during the term of the Agreement, or as often as required by CMS, Vendor shall provide a written attestation to Outcomes confirming Vendor's compliance and Vendor's subcontractors' compliance with the terms and conditions of this Medicare Addendum.
- t. This Agreement may be unilaterally amended by Outcomes if there are any changes in applicable government requirements, laws, rules or regulations regarding Covered Services. Such amendment(s) shall take effect ten (10) days after written notice to Vendor by Outcomes regarding such changes.
- u. In the event that any of the terms and conditions of the Agreement between Outcomes Vendor relating to the Covered Services conflict with the terms and conditions of this Medicare Addendum, the terms and conditions of this Medicare Addendum shall govern.

Appendix A to Exhibit A **Outcomes FDR Compliance Program Requirements**

Vendor shall abide by the FDR compliance program requirements set forth below, which supplement the requirements under the Agreement and Medicare Addendum, in performing Covered Services for Outcomes, or Outcomes CMS Plan Sponsor members. These requirements apply to Vendor and its employees that perform or support the Covered Services. Vendor shall require materially similar actions on the part of any Downstream Entity subcontractors which Vendor utilizes in support of the Covered Services.

1. Definitions

- A. First Tier Entity: An entity with a direct contract with CMS Plan Sponsor or a CMS Plan Sponsor-owned entity to provide the Covered Services.
- B. Downstream Entity: An entity with an indirect contract, meaning the contract exists between a First Tier Entity and a subcontractor, or, additionally between that subcontractor and another subcontractor down the stream, for the performance of Covered Services.
- C. Related Entity: An entity related to Outcomes by common ownership or control.

2. FDR Compliance Program Requirements:

- A. Written Policies, Procedures, and Standards of Conduct
 - Outcomes distributes its CMS Plan Sponsors compliance policies, standards of conduct, CMS general compliance training and fraud, waste, and abuse (“FWA”) training to all FDRs. FDRs are required to comply with these documents and to provide them or materially similar documents and training to their employees and subcontractors.
- B. Training and Education
 - FDRs must maintain effective trainings and educational materials on general compliance and fraud, waste, and abuse. Education and training completion must be formally tracked and conducted by FDRs within 90 days of initial contract or employment and annually thereafter for all employees.
- C. Monitoring and Auditing
 - FDRs are required to maintain monitoring and auditing work plans to provide oversight of compliance with these policies and related requirements by any Downstream Entities supporting Outcomes work.
 - Vendor shall comply and cooperate with any Outcomes, CMS Plan Sponsor- or CMS-initiated audits related to the Agreement and all related Outcomes, CMS Plan Sponsor, and CMS policies and regulations, as applicable.
 - Outcomes retains the right to audit FDRs at Outcomes’s discretion for matters related to these policies and requirements.
- D. Designated Compliance Resource and High Level Oversight
 - FDRs must have designated personnel accountable for overseeing compliance responsibilities and to provide high level oversight of compliance obligations.
- E. Investigation, Discipline, and Corrective Actions
 - FDRs are required to investigate suspected violations of CMS Plan Sponsor and Outcomes policies and requirements and related CMS regulations, take applicable disciplinary action, and implement any necessary, subsequent corrections to prevent future violations. Additionally, FDRs must widely publicize disciplinary standards and the requirement to report suspected violations. Any violations must be reported to Outcomes and FDRs must also cooperate with any Outcomes, CMS Plan Sponsor, and/or CMS investigation.
- F. Effective Lines of Communication
 - FDRs are given access to Outcomes’s compliance officer for feedback and multiple methods for reporting suspected or detected noncompliance. Such reporting is required of all who support Outcomes’s business. FDRs are required to have and publicize one or more reporting options with these features and/or publicize Outcomes’s reporting options. FDRs must have a widely-publicized policy that prohibits intimidation or retaliation against anyone making a good faith report of suspected violations of related policies and requirements.
 - Vendor agrees to report compliance or FWA concerns to Outcomes, CMS or the Client immediately but no more than twenty-four (24) hours after discovery. Reports to Outcomes shall be submitted through Outcomes Incident Line at www.outcomes.ethicspoint.com or by phone at 1-800-739-0077. Outcomes and the Client has a no-tolerance policy for retaliation or retribution against any employee or Vendor for good-faith reporting of FWA.

EXHIBIT B

Business Associate Subcontractor Agreement

This Business Associate Subcontractor Agreement (the "Agreement") is entered into as of the last date the MTM Network Provider Agreement between the Outcomes and Vendor ("NPA") is executed (the "Effective Date"), by and between Outcomes Operating, Inc., together with its subsidiaries and affiliates, a Florida corporation ("Outcomes" or "Business Associate") and Vendor, as identified in the NPA ("Subcontractor").

WHEREAS, Business Associate and Subcontractor are parties to an agreement or various agreements pursuant to which Subcontractor provides certain services to Business Associate. In connection with such services, Subcontractor creates, receives, maintains or transmits Protected Health Information from or on behalf of Business Associate or a Covered Entity;

WHEREAS, Business Associate and Subcontractor wish to enter into this Agreement to confirm their compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the HIPAA Privacy Rule, 45 C.F.R. Parts 160 and 164; the HIPAA Security Rule, 45 C.F.R. Parts 160, 162 and 164; the Act; the Breach Notification Rule (8/24/09), 45 C.F.R. Parts 160 and 164; Subtitle D of the American Recovery and Reinvestment Act of 2009 ("ARRA '09") entitled "Health Information Technology for Economic and Clinical Health", generally referred to as the HITECH Act ("HITECH"), Section 13400 *et seq.*; state laws and regulations not preempted by HIPAA that are addressed to the privacy and security of Protected Health Information ("PHI"); and

WHEREAS, the purpose of this Agreement is to reflect the intention of the Parties that their relationship shall be in compliance with the applicable statutes, rules and regulations referenced herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R §160.103, 45 CFR § 164.304, and 45 C.F.R. § 164.501.

- 1.1 Business Associate. "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R §160.103, and for the purposes of this Agreement shall mean Outcomes.
- 1.2 Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 C.F.R § 160.103, and for the purposes of this Agreement shall mean a client of Outcomes.
- 1.3 Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502.
- 1.4 Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 1.5 Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 164.501, limited to the information created or received by Subcontractor from Business Associate or a Covered Entity.
- 1.6 Electronic Protected Health Information. "Electronic Protected Health Information" shall have the same meaning as the term "Electronic Protected Health Information" in 45 C.F.R. § 160.103, and shall refer to PHI that Business Associate, or Subcontractor on behalf of Business Associate, transmits or maintains in electronic media.
- 1.7 Underlying Services Agreement. "Underlying Services Agreement" shall mean the agreement between the Parties hereto setting forth the scope of the services Business Associate has engaged Subcontractor to provide on Business Associate's behalf.
- 1.8 Unsecured Protected Health Information. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance, as set forth as 45 C.F.R. § 164.402.

1.9 Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.501.

1.10 Secretary. "Secretary" shall refer to the U.S. Secretary of Health and Human Services.

2. Obligations and Activities of Subcontractor

2.1 Obligations Regarding Uses and Disclosures of PHI

- (a) Subcontractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Underlying Services Agreement or as Required by Law.
- (b) Subcontractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Subcontractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Subcontractor of a use or disclosure of Protected Health Information by Subcontractor in violation of the requirements of this Agreement.
- (d) Subcontractor agrees to report to Business Associate any use or disclosure of the Protected Health Information not provided for by this Agreement.
- (e) Subcontractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from Business Associate, or created by Subcontractor on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Agreement to Subcontractor with respect to such information.
- (f) Subcontractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Subcontractor on behalf of Business Associate, available to Business Associate, or at the request of the Business Associate to the Secretary, in a time and manner designated by the Business Associate or the Secretary, for purposes of the Secretary determining Business Associate's compliance with the Privacy Rule.
- (g) Subcontractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- (h) Subcontractor agrees to provide to Business Associate or an Individual, in the reasonable time and manner designated by Business Associate, information collected in accordance with this Agreement, to permit Business Associate to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- (i) Subcontractor agrees, at the Business Associate's request, to provide to Business Associate or an Individual in the reasonable time and manner designated by Customer, the Protected Health Information requested by an individual pursuant to 45 C.F.R. § 164.524.
- (j) Subcontractor agrees, at the Business Associate's request, and in the reasonable time and manner designated by Business Associate, to provide to Business Associate the Protected Health Information that an individual seeks to amend pursuant to 45 C.F.R. § 164.526.

2.2 Obligations Regarding Electronic Protected Health Information

- (a) Subcontractor agrees to comply with the HIPAA Security Regulations, 45 C.F.R. Parts 160, 162 and 164, with respect to any Electronic Protected Health Information Subcontractor creates, receives, maintains or transmits for or on behalf of Business Associate.
- (b) In particular, with respect to such Electronic Protected Health Information:
 - (i) Subcontractor agrees to implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health

Information as required by the Security Regulations.

- (ii) Subcontractor will ensure that any agent, including a subcontractor to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect the Electronic Protected Health Information.
- (iii) Subcontractor shall report to Business Associate any successful security incident of which Subcontractor becomes aware with respect to Electronic Protected Health Information.
- (iv) Subcontractor will ensure that all Electronic Protected Health Information at rest and all Electronic Protected Health Information in transit (including email communications containing PHI) is encrypted.
- (v) Subcontractor agrees that the storage of Electronic Protected Health Information on its employees' personal devices is prohibited.
- (vi) Subcontractor agrees that the storage of Electronic Protected Health Information on unencrypted mobile devices is prohibited.
- (vii) Subcontractor will ensure that all devices used to access and/or store Electronic Protected Health Information shall have current and up to date anti-virus software installed.
- (viii) In the event that the employment of any Subcontractor employee with access to PHI is terminated, Subcontractor shall promptly notify Business Associate so that said employee's access to Business Associate's network may be modified accordingly.
- (ix) Subcontractor agrees that it will retain PHI only for as long as necessary to provide the services set forth in the Underlying Services Agreement. PHI that is no longer needed shall be immediately destroyed in a manner that is compliant with the relevant HIPAA regulations, and Subcontractor agrees that it will provide proof of such destruction at the reasonable request of the Business Associate.

2.3 Obligations Regarding Notification of Breaches of Unsecured PHI.

- (a) Subcontractor will notify Business Associate of Breaches of Unsecured PHI without unreasonable delay and in no case later 24 hours after the discovery of such a Breach in Unsecured PHI, as these terms are defined at 45 C.F.R. 164 subpart D. Subcontractor notice to the Business Associate shall include the applicable elements as set forth at 45 C.F.R. § 164.410. The notice of breach shall also include: (i) the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Subcontractor, to have been accessed, acquired, or disclosed; and (ii) a brief description of the event; and (iii) the date of the potential Security Breach; and (iv) the date of discovery; and (v) the type of Protected Health Information involved; (vi) any preliminary steps taken to mitigate the damage; and (vii) a description of any investigatory steps taken. In addition, Subcontractor shall provide any additional information reasonably requested by Business Associate for purposes of investigating the security Breach.
- (b) Subcontractor will comply with all requirements of the HIPAA Breach Notification Rule pursuant to 45 C.F.R. 164 subpart D.
- (c) In the event of a breach notification, Business Associate shall have the sole right to determine (i) whether notice is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, media outlets and /or HHS, or others as required by law or regulation, or in Business Associate's discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation. Any such notice or remediation shall be at the breaching party's sole cost and expense.

2.4 No Data Aggregation or De-Identifying. Subcontractor may not use the PHI to provide data aggregation services of any kind. In addition, Subcontractor may not "de-identify" PHI as described in 45 C.F.R. §164.514 and use or disclose "de-identified" information.

3. Permitted Uses and Disclosures by Subcontractor

- 3.1. Except as otherwise limited in this Agreement, Subcontractor may use or disclose Protected Health Information on behalf of, or to provide services to, Business Associate provided that such use or disclosure of Protected Health

Information is: (A) in furtherance of the purposes set forth in the Underlying Services Agreement; and (B) if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Business Associate.

- 3.2. Except as otherwise limited in this Agreement, Subcontractor may disclose Protected Health Information for the proper management and administration of Subcontractor, provided that any such disclosures are either: (A) required by law; or (B) made after Subcontractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached.

4. Business Associate Obligations

- 4.1 Business Associate shall not request Subcontractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Business Associate.
- 4.2 Business Associate shall notify Subcontractor of any restriction to the use or disclosure of PHI that Business Associate has agreed to in accordance with 45 C.F.R. § 164.522, or as mandated pursuant to Section 13405(c) of HITECH, to the extent that such restriction may affect Subcontractor's use or disclosure of PHI.

5. Term and Termination

- 5.1. Term. The Term of this Agreement shall be effective as of the Effective Date and shall terminate when all of the Protected Health Information provided by Business Associate to Subcontractor, or created or received by Subcontractor on behalf of Business Associate, is destroyed or returned to Business Associate, or, if Subcontractor determines it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- 5.2. Termination for Cause. Upon either Party's knowledge of a material breach by the other Party, the non-breaching Party shall provide an opportunity for the breaching Party to cure the breach or end the violation. If the breaching Party does not cure the breach or end the violation within the reasonable time specified by the non-breaching Party, or if the breaching Party has breached a material term of this Agreement and cure is not possible, the non-breaching Party may immediately terminate this Agreement. If neither termination nor cure is feasible, the non-breaching Party may report the violation to the Secretary.
- 5.3. Effect of Termination.
 - (a) Except as provided in paragraph (b) of this Section, upon termination of this Agreement, for any reason, Subcontractor shall return or destroy all Protected Health Information received from Business Associate, or created or received by Subcontractor on behalf of Business Associate. This provision also shall apply to Protected Health Information that is in the possession of subcontractors or agents of Subcontractor. Subcontractor shall retain no copies of the Protected Health Information.
 - (b) In the event that Subcontractor determines that returning or destroying the Protected Health Information is infeasible, Subcontractor shall provide to Business Associate notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Subcontractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Subcontractor maintains such Protected Health Information.

6. Other Terms

- 6.1 Indemnification. To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and hold harmless Business Associate and Business Associate's officers, directors, employees, agents, contractors, and representatives (collectively, the "Indemnified Parties") from and against any and all damages, losses, liabilities, judgments, awards, costs, and expenses of any nature whatsoever, including attorney's fees, court costs and any credit monitoring fees, due to, related to or arising out of any Use and/or Disclosure of PHI by Subcontractor or its agents or subcontractors in violation of this Agreement, the HIPAA Rules, or HITECH or any violation of this Agreement by Subcontractor or its agents or subcontractors. Business Associate will promptly notify Subcontractor in writing of any related claim or action brought against it or the Indemnified Parties. The selection of counsel, the conduct of the defense of any lawsuit and any settlement shall be within Subcontractor's control; provided, however, that Subcontractor may not settle any claim, or otherwise take any action or make any admission that would adversely impact the Indemnified Parties without Business Associate's prior written approval. Notwithstanding anything to the contrary herein, Business Associate shall

have the unrestricted right to participate in the defense of any claim covered by this Section using counsel of its choice.

- 6.2 Offshore Access. Subcontractor shall not access, store, transmit, maintain, share, use, process, or disclose PHI in any form via any medium with any entity or person, includes Subcontractor's employees and subcontractors, at locations outside the 50 United States of America, without express written authorization from Outcomes, which may be withheld, delayed or conditioned in Outcomes' sole discretion.
- 6.3 Audits, Inspection and Enforcement. From time to time, upon reasonable advance notice, or upon a reasonable determination by Business Associate that Subcontractor has potentially or actually breached this Agreement, Business Associate may inspect the facilities, systems, books, procedures, and records of Subcontractor to monitor compliance with this Agreement. Subcontractor shall promptly remedy any violation of any term of this Agreement and shall certify the same to Business Associate in writing. To the extent that Business Associate determines that such examination is necessary to comply with Business Associate's legal obligations pursuant to HIPAA relating to certification of its security practices, Business Associate or its authorized agents or contractors, may, at Business Associate's expense, examine Subcontractors facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Business Associate the extent to which Subcontractor's administrative, physical, and technical safeguards comply with HIPAA, the HIPAA Rules or this Agreement.
- 6.4 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Business Associate to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- 6.5 Survival. The respective rights and obligations of Subcontractor under Section 5.3 of this Agreement shall survive the termination of this Agreement.
- 6.6 Interpretation. The provisions of this Agreement are to be interpreted at all times so as to be consistent with the statutes, rules and regulations referred to in this Agreement. In the event of any conflict among the provisions of this Agreement and the statutes, rules and regulations referred to herein, the provisions of such statutes, rules and regulations as currently written or as hereafter amended or otherwise modified by the Secretary shall prevail. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA.
- 6.7 Disclaimer. Business Associate makes no warranty or representation that compliance by Subcontractor with this Agreement, HIPAA, HITECH, or the HIPAA Regulations will be adequate or satisfactory for Subcontractor's own purposes. Subcontractor is solely responsible for all decisions made by Subcontractor regarding the safeguarding of PHI.
- 6.8 Entire Agreement. This Agreement contains all of the agreements and understandings between the parties with respect to the subject matter hereof. No agreement or other understanding in anyway modifying the terms hereof will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.
- 6.9 Conflicts. In the event of a conflict between the terms of this Agreement and other terms of the Underlying Services Agreement, the terms of this Agreement shall govern and control.

END OF THE AGREEMENT