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I, Rodney Steven Mituniewicz, certify that I mailed a copy of this document, postage prepaid, to all parties or their counsel under the penalty of perjury, for the laws of the State of Washington, that the forgoing is true and correct

Dated: this 22<sup>nd</sup> day of November, 2006

By: Rodney Steven Mituniewicz Pro Se Brief  
Rodney Steven Mituniewicz

TO: John A. Hays  
Attorney for Appellant  
Michael C. Kinnie  
Deputy Prosecuting Attorney

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COURT OF APPEALS  
DIVISION TWO  
THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, )  
 ) Case No. 34702-4-II  
 Respondent, )  
 )  
 vs. ) STATEMENT OF ADDITIONAL  
 ) GROUND FOR REVIEW  
 RODNEY STEVEN MITUNIEWICZ, )  
 )  
 Appellant. )

I, Rodney Steven Mituniewicz, have received and reviewed the Opening Brief prepared by Attorney for Appellate, John A. Hays, and, Deputy Prosecuting Attorney, (“DPA”) Michael C. Kinnie, Brief of Respondent. Summarized below are the Additional Ground for review that are not addressed in Opening Brief and Brief of Respondent. I am to close to the Subject Matter in those two Briefs. But when my Appeal is Considered on the Merits. I asks the Court to Address my Additional Ground the Appellant has a duty to the DOC (Exhibit #3) and the DOC to the public and the Legislature about wised investment of fiscal resources as follows:

Issue Related To Additional Ground No. 1: “DOC CONTRACT # COCO5469 LICENSE AGREEMENTS MHS CONTRACT # 06222001-1”

The Laws of 1999, Ch. 309, Amend of RCW 72.09.050. The DOC secretary’s authority to make agreements with an other party. Effective date: July 1, 2001, of Department of Corrections, “(DOC) CONTRACT No. COCO5469 LICENSE AGREEMENTS with Multi-Health Systems Inc., (MHS) CONTRACT No. 06222001-1” as attached at Page 1 of 5 STATEMENT OF ADDITIONAL GROUND FOR REVIEW

RODNEY STEVEN MITUNIEWICZ  
DOC # 912672, D-103-B  
MCC/MSU  
P.O. BOX 7001  
MONROE, WA 98272-7001

1 Exhibit #1, and incorporated by reference as if fully set forth herein. Effective date:  
2 June 26, 2002, DOC Policy 320.400 LEVEL OF SERVICE INVENTORY-REVISED  
3 (LSI-R) . as attached at Exhibit #2, and incorporated by reference as if fully set forth  
4 herein. Gary Banning, Contracts Administrator's answer to RCW 72.09.050 Dated:  
5 November 14, 2006, as attached at Exhibit #3, and incorporated by reference as if fully  
6 set forth hereing.  
7

## 8 I. ARGUMENT

9 Additional Ground No. 1: DOC ABUSED ITS AUTHORITY UNDER RCW  
10 72.09.050 "DOC CONTRACT No. COCO5469 LICENSE AGREEMENTS  
11 CONTRACT No. 06222001-1" ILLEGALLY WITH THE FOREIGN PRIVATE  
12 ORGANIZATION OF MHS. DOC MUST BE ORDERED TO TERMINATE THIS  
13 LICENSE AGREEMENTS

### 14 A. Standard of Review

15 The construction and meaning of a statute is a question of law, are review de  
16 novo. *Dep't of Ecology v. Campbell & Gwinn L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4

#### 17 1. Under RCW 72.09.050 "LICENSE AGREEMENTS CONTRACT 18 NO: 0622001-1" is Illegal on its Face a Question of Law

19 Appellant argues, Contracts Administrators, for Licensee is James E. Thatcher,  
20 and Licensee signed by Gary Banning. Professional with Legal Training by and  
21 through Seminars on Agreements positions of the Washington State DOC ("Licensee")  
22 with its offices at 410 West 5<sup>th</sup> Avenue, Olympia, WA 98504-0116, and MHS with its  
23 offices at 3770 Victoria Park Avenue, Toronto, Ontario M2H3M6 Canada; and this  
24 part is Illegal on its Face. (Exhibit #1, Paragraph 2, at p. 1). A contract that is in  
25 conflict with statutory requirements is illegal and unenforceable as a matter of law.  
26 'DOC CONTRACT No. COCO5469 LICENSE AGREEMENTS MHS CONTRACT  
27

1 No. 06222001-1” (Exhibit # 1, Paragraph 1, at p. 1) clear, cogent, and convincing  
2 evidence, pursuant to RCW 72.09.050 states:

3 “The secretary shall manage the department of corrections and shall be  
4 responsible for the administration of adult correctional programs, including but not  
5 limited to the operation of all state correctional institutions or facilities used for the  
6 confinement of convicted felons. In addition, the secretary shall have broad powers to  
7 enter into agreements with any federal agency, or any other state, or any Washington  
8 state agency or local government providing for the operation of any correctional  
9 facility or program for persons convicted of felonies or misdemeanors or for juvenile  
10 offenders. Such agreements for counties with local law and justice councils shall be  
11 required in the local law and justice plan pursuant to RCW 72.09.300. The agreement  
12 may provide for joint operation or operation by the department of corrections, alone,  
13 for by any of the other governmental entities, alone. Beginning February 1, 1999, the  
14 secretary may expend funds appropriated for the 1997-1999 biennium to enter into  
15 agreements with any local government or *private organization in any other state*,  
16 providing for the operation of any correctional facility or program for persons  
17 convicted of felonies. Between July 1, 1999, and June 30, 2001, the secretary may  
18 expend funds appropriated for the 1999-01 biennium to enter into agreements with any  
19 local government or *private organization in any of state*, providing for the operation of  
20 any correctional facility or program for persons convicted of felonies. The secretary  
21 may employ persons to aid in performing the functions and duties of the department.  
22 The secretary may delegate any of his or her functions or duties to department  
23 employee, including the authority and maintain custody of records and departments on  
24 file with the department. The secretary is authorized to promulgate standards for the  
25 department of corrections within appropriation levels authorized by the legislature.”

17 RCW 72.09.050 (emphasis added)

18  
19 The Question of Law is whether DOC “*enter into agreements with*” the foreign  
20 “*private organization*” MHS is it legal under RCW 72.09.050? This statute must, be  
21 strictly construed and limited to its plain intent and scope. Is the Foreign Company of  
22 MHS in Canada included “*in any other state*”? as part of RCW 72.09.050, meaning  
23 must be given to all words and the clearly expressed intent, although the statute cannot  
24 be extended beyond its plan terms. *Marble v. Clein*, 55 Wn.2d 315, 318, 347 P.2d 830  
25 (1959); and *State v. Grant*, 89 Wn.2d 678, 683. 575 P.2d 210 (1978).  
26  
27

1 Unambiguous statutory language must be given its unambiguous meaning. A  
2 court may not add words to a statute even if it believes the Legislature intended  
3 something else but failed to express it adequately. *Caritas Service v. DSHS*, 123 Wn.2d  
4 391, 409, 869 P.2d 28 (1994) (citing *State v. Smith*, 117 Wn.2d 263, 270-71, 814 P.2d  
5 652 (1991)).

6  
7 Washington State Supreme Court in *Failor's Pharmacy v. DSHS*, held that:

8 “A contract in conflict with statutory requirements is illegal and unenforceable  
9 as a matter of law. In addition, a government contract beyond an agency’s authority is  
10 void and unenforceable. Even where a contract is within an agency’s substantive  
11 authority, failure to comply with statutory mandated procedures is ultra vires and  
12 renders the contract void. Moreover, where the government action was not  
13 substantively ultra vires or manifestly against [DOC] policy a good faith private party  
14 is entitled to recover for losses on the void contract under the doctrine of quantum  
15 meruit.”

16 125 Wn.2d 488, 499, 886 P.2d 147 (1994) (emphasis added).

## 17 II. CONCLUSION

18 For the reason-above stated, since any conflict with existing RCW 72.09.050 a  
19 government contract beyond an agency’s authority is void and unenforceable “DOC  
20 CONTRACT # COCO5469 LICENSE AGREEMENT MHS CONTRACT #  
21 06222001-1”, Nor DOC Policies 320.400 LSI-R incorporated into Policy Directive:  
22 ACA 2A-07; ACA 5A-01; DOC 300.380 Classification; DOC 320.410 Offender Risk  
23 Management; DOC 320.420 Offender Accountability Plans; DOC 320.455  
24 Community Supervision of Risk Management Level-D (RM-D) Offender all and any  
25 related to LSI-R is void and unenforceable.

26 Respectfully submitted, this 22<sup>nd</sup> day of November, 2006.

## Appendix

### RCW 72.09.050 Powers and duties of secretary.

The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with local law and justice councils shall be required in the local law and justice plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections, alone, for by any of the other governmental entities, alone. Beginning February 1, 1999, the secretary may expend funds appropriated for the 1997-1999 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. Between July 1, 1999, and June 30, 2001, the secretary may expend funds appropriated for the 1999-01 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his or her functions or duties to department employees, including the authority to certify and maintain custody of records and documents on file with the department. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action.

[1999 c 309 § 1902; 1999 c 309 § 924; 1995 c 189 § 1; 1991 c 363 § 149; 1987 c 312 § 4; 1986 c 19 § 1; 1981 c 136 § 5.]

#### Notes:

**Reviser's note:** This section was amended by 1999 c 309 § 924 and by 1999 c 309 § 1902, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective dates -- 1999 c 309 §§ 927-929, 931, and 1101-1902:** See note following RCW 43.79.480.

**Severability -- Effective date -- 1999 c 309:** See notes following RCW 41.06.152.

**Purpose -- Captions not law -- 1991 c 363:** See notes following RCW 2.32.180.

## LICENSE AGREEMENT

This Agreement is entered into this 1st day of July, 2001 between the State of Washington Department of Corrections ("Licensee") with its offices at 410 West 5<sup>th</sup> Avenue, Olympia, Washington 98504-0116, and Multi-Health Systems Inc. ("MHS") with its offices at 3770 Victoria Park Avenue, Toronto, Ontario M2H 3M6, Canada, for statewide use and coverage in the State of Washington of certain components of the assessment test known as the *Level of Service Inventory -Revised* ("LSI-R") and the *Level of Service Inventory-Revised: Screening Version* ("LSI-R:SV").

### 1. GENERAL PROVISIONS

In this Agreement "LSI-R" means all components of the assessment test owned and published by MHS as the *Level of Service Inventory-Revised*<sup>TM</sup>, and "LSI-R:SV" means all components of the assessment test owned and published by MHS as the *Level of Service Inventory-Revised*<sup>TM</sup>: *Screening Version*, in any form or medium, including without limitation, test items, QuickScore forms, normative data, scoring algorithms, scoring patterns and directions, score conversion tables, rating criteria, printed profile and interpretative reports, training manuals and numerical and graphic data relating to administration, scoring and interpretation of the LSI-R and LSI-R:SV, and includes all formats, versions, revisions, translations, standardizations and adaptations of the foregoing. Any software, documentation and manuals created by Licensee pursuant to this Agreement shall be included in the above definition.

Licensee acknowledges and agrees that all right, title and interest in and to the LSI-R and LSI-R:SV shall remain vested in MHS and MHS shall be the first owner of the copyright in software and scoring algorithms created by Licensee for the purposes of this Agreement. These rights are protected by Canadian intellectual property rights, international treaty provisions and other applicable national laws. During or after the term of this Agreement, Licensee shall not, in any manner, infringe such rights or contest or dispute the validity, enforceability or ownership thereof. The rights granted in this Agreement shall not constitute a sale of whole or part of the LSI-R and LSI-R:SV. Any algorithms created by Licensee must be approved by MHS prior to implementation.

### 2. LICENSE

2.1 In consideration of the payments set out in paragraph 2(b) and subject to the terms and conditions of this Agreement, MHS hereby grants Licensee a non-transferable, non-exclusive license to:

- (a) install the LSI-R and/or the LSI-R:SV test items, annexed to this Agreement as Schedule "A", on the *OBTS/OMNI Data System* (the "Licensee Database"), or distribute through the Washington State Association Of Sheriffs and Police Chiefs ("WASPC") for those assessments that may be done on offenders currently housed in jails,

- (b) to reproduce an altered electronic format of the LSI-R and/or the LSI-R:SV items and/or altered electronic format of the LSI-R and/or LSI-R:SV items in the Licensee Database and a WASPC system;
- (c) administer, through the Licensee Database and a WASPC system, the LSI-R and/or the LSI-R:SV to offenders in the County Jail population, who are under the jurisdiction of the Licensee and the WASPC for risk assessment purposes. These assessments may be completed by either the Licensee or jail personnel, if those offenders being assessed will be or may be under the jurisdiction of the Licensee; and
- (d) enter the resulting assessment scores into the Licensee Database and a WASPC system.

2.2 As consideration for the rights granted herein, Licensee shall pay MHS, for each twelve-month (12 month) period of the Term, an annual license fee of U.S. \$16,000.00, which shall entitle Licensee and jail personnel, to enter an unrestricted number of combined LSI-R and/or LSI-R:SV assessments scores into the Licensee Database and WASPC system for such twelve month (12 month) period.. For each assessment score in excess of the Maximum, Licensee shall pay MHS a royalty of U.S. \$0.80. Each initial assessment of an offender and each reassessment of the same offender shall constitute a separate assessment for the purposes of this paragraph.

2.3 The annual license fee shall be due and payable at the beginning of each year of the Term, in July of each year. Within thirty (30) days of the end of each fiscal year during the Term, Licensee shall provide to MHS a certificate signed by an officer of Licensee certifying the number of assessments administered on the Licensee Database for the fiscal year just ended.

2.4 The Licensee shall pay a one-time fee of \$200.00 for the review by MHS staff of Licensee's scoring algorithms. Licensee shall submit to MHS a description of the algorithm and a sample of the software program prior to implementation. MHS will notify Licensee in writing of the approval status of the algorithms and any corrections needed within fifteen (15) days of receipt. Implementation cannot proceed until written approval is given by MHS to Licensee signifying that the scoring algorithms are complete and correct in all respects.

### 3. UPDATES

During the Term of this Agreement, MHS shall provide Licensee with any updates, new releases or revisions to the LSI-R and LSI-R:SV items as are generally released by MHS and Licensee shall have the right to utilize such updates, new releases or revisions pursuant to the licenses granted in this Agreement.

### 4. COPYRIGHT NOTICES

All reference material for the paper and electronic versions of the LSI-R and/or LSI-R:SV will bear the appropriate instrument, title, author's names, and copyright notice. This copyright notice is to appear as:

MHS CONTRACT # 06222001-1  
DOC CONTRACT # COCO5469  
EXHIBIT # 1

*Level of Service Inventory-Revised by D.A. Andrews, Ph.D., and James L. Bonta, Ph.D. Copyright © 1995, Multi-Health Systems Inc. In the USA: 908 Niagara Falls Blvd., North Tonawanda, NY 14120-2060, 1-800-456-3003. In Canada, 3770 Victoria Park Avenue, Toronto, Ontario M2H 3M6, Canada; 1-416-492-2627. All rights reserved. Reproduced by permission.*

*Level of Service Inventory-Revised: Screening Version by D.A. Andrews, Ph.D., and James L. Bonta, Ph.D. Copyright © 1998, Multi-Health Systems Inc. In the USA: 908 Niagara Falls Blvd., North Tonawanda, NY 14120-2060, 1-800-456-3003. In Canada, 3770 Victoria Park Avenue, Toronto, Ontario M2H 3M6, Canada; 1-416-492-2627. All rights reserved. Reproduced by permission.*

## 5. REPRESENTATIONS, WARRANTIES AND INDEMNITIES

Except as otherwise allowed in this Agreement, Licensee represents and warrants that:

- 5.1 the Licensee Database is solely owned and directly administered and controlled by Licensee;
- 5.2 all uses of the LSI-R and/or LSI-R:SV pursuant to the licenses granted in this Agreement shall be by authorized employees of Licensee only;
- 5.3 Licensee shall take all such security measures as are necessary, of a technological or administrative nature, to restrict access to and use of the LSI-R and/or LSI-R:SV programs installed on the Licensee Database to authorized employees of Licensee and to maintain the confidentiality of confidential information in the LSI-R and/or LSI-R:SV programs;
- 5.4 Licensee shall not transfer or export by any means whatsoever, either whole or part of the LSI-R and/or LSI-R:SV from the Licensee Database; and
- 5.5 Licensee shall not use whole or part of the LSI-R and/or LSI-R:SV in any manner except as permitted under this Agreement, and without limiting the generality of the foregoing, shall not use whole or part of the LSI-R and/or LSI-R:SV as a basis for the development of another psychometric instrument.

## 6. INDEMNITY

To the extent permitted under laws of the state of Washington, Licensee shall indemnify, defend and hold harmless MHS, its directors, officers, employees and agents from any and all claims, suits, damages, liability, losses, fees and expenses (including reasonable attorneys' fees) resulting from or arising out of any negligent act or omission of Licensee under this Agreement.

## 7. CONFIDENTIAL INFORMATION

### Employees and Third Parties

Except as provided herein, or as required, or prohibited by applicable state and federal law, Licensee agrees not to disclose any Confidential Information to any third party, except to those of its employees or agents who have a need to know such information, and then only to the extent necessary to exercise its rights under this Agreement.

MHS CONTRACT # 06222001-1  
DOC CONTRACT # COCO5469  
EXHIBIT # 1

Licensee shall maintain the confidentiality of the Confidential Information in its possession by exercising the same security measures it normally exercises with respect to its own confidential information. To this end, Licensee agrees to take appropriate action by way of instruction or agreement with its employees, consultants or other agents to ensure that such employees, consultants and other agents understand and are bound by Licensee's obligations of confidentiality and non-disclosure with respect to the Confidential Information.

#### Data Gathering

In accordance with all applicable federal and state laws and regulations, the Licensee agrees to assist MHS in any data gathering and information sharing with regard to the LSI-R and/or LSI-R:SV in a manner that will be of mutual benefit to both Licensee and MHS.

Any offender information entered into the Licensee Database, including any special notes or circumstances entered by Licensee, shall remain the confidential information of Licensee. However, MHS shall have the authority to check the data on a quarterly basis with Licensee. MHS agrees to take reasonable security measures to safeguard the confidentiality of any information received from Licensee in writing and marked as confidential.

#### 8. TERM

- 8.1 This Agreement shall remain in effect for a period of one (1) year unless earlier terminated by either party upon ninety days' prior written notice of termination to the other party. Upon termination Licensee shall assign and transfer to MHS in writing all of its interest in any software, documentation or manuals developed by Licensee to enable the installation and administration of the LSI-R and/or LSI-R:SV on the Licensee Database. There shall be no refund, credit or offset of any annual license fee paid.
- 8.2 Upon request by MHS, Licensee shall provide MHS with their auto-generated scoring process to ensure that Licensee's scoring process is identical to the process used by MHS for the LSI-R/LSI-SV quick score forms. Any specific wording changes to the LSI-R/LSI-SV may be approved only upon request to MHS.
- 8.3 Consistent with section 7, Licensee shall provide MHS with full and complete access to the results from all comparative studies using the LSI-R and LSI-SV that are or will be conducted by Licensee.
- 8.4 This Agreement may be amended only by written agreement signed by the authorized employees of the parties. The Contract Administrator for Licensee is James E. Thatcher [Tel. (360) 753-1598] and the Contract Administrator for MHS is Jerry Smith [Tel. (416) 492-2627].
- 8.5 Except as expressly provided herein, Licensee shall have no right to assign or transfer this Agreement or any of its rights or duties hereunder without the prior written consent of MHS

9. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have entered into the above Agreement as of the date first written above.

MULTI-HEALTH SYSTEMS INC.

By: [Signature]  
Authorized Signing Officer

Print: Steven J. Stern

Date: July 30/01

Witness: Rita Chedde

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS:

By: [Signature]  
Authorized Signing Officer

Print: Gary Banning

Date: 8/2/01

Witness: Michelle Sabin

**ADENDUM TO LICENSE AGREEMENT**

This is an amendment dated and effective from July 1, 2002, to the License agreement, dated July 1, 2001 ("the Agreement"), by and between Multi-Health Systems Inc. ("MHS"), an Ontario corporation addressed at 3770 Victoria Park Avenue, Toronto, Ontario, Canada, M2H 3M6 and the State of Washington of Department of Corrections ("Licensee") 410 West 5<sup>th</sup> Avenue, Olympia, Washington 98504-0116.

Licensee have agreed to amend the terms of the Agreement as set out below.

1. Section 2.2 shall read:

As consideration for the rights granted herein, Licensee shall pay MHS, for the twelve-month (12 month) period of the Term, an annual license fee of U.S. \$19,200.00, which shall entitle Licensee and jail personal to enter an unrestricted number of combined LSI-R and/ or LSI-SV assessments scores into the Licensee Database and WASPC for such twelve month (12 month) period. Licensee shall pay MHS a royalty of U.S. \$0.80 per assessment. Each initial assessment of an offender and each reassessment of the same offender shall constitute a separate assessment for the purposes of this paragraph.

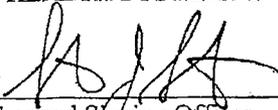
2. Licensee shall agree to discuss the possibility of implementing a Software Development Kit ("SDK") containing the LSI-R and the LSI-SV scoring algorithm in the Licensee Database and WASPC. Licensee is not obliged or required to implement the SDK under this agreement or any renewal thereof.

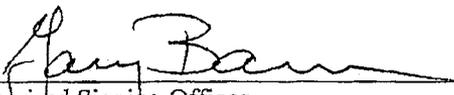
3. In all other respects, the terms, covenants and conditions of the Agreement shall remain unchanged, continuous and in full force and effect between MHS and the Licensee.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below:

MULTI-HEALTH SYSTEMS INC.

LICENSEE

By:   
Authorized Signing Officer

By:   
Authorized Signing Officer

Print Name: Steven Stein

Print Name: Gary Banning

Date: 8/15/02

Date: 7/22/02

*"Helping You To Help Others Since 1963"*

MHS CONTRACT # 06222001-1

DOC CONTRACT # C0605469

3770 Victoria Park Ave.,

Toronto, ON

M2H 3M6

Phone: 1-800-268-6011

*In the U.S....*

P.O. Box 950

North Tonawanda, NY

14120-0950

Phone: 1-800-456-3003

Fax: 1-888-540-4484 or 1-416-492-3343

International Phone: +1-416-492-2627

## AMENDMENT TO LICENSE AGREEMENT

This is an amendment, effective July 1, 2003 to the License Agreement, dated July 1, 2001 and the Addendum Agreement dated July 1, 2002 ("the Agreement"), by and between Multi-Health Systems Inc. ("MHS"), an Ontario corporation addressed at 3770 Victoria Park Avenue, Toronto, Ontario, M2H 3M6, Canada and the State of Washington Department of Corrections ("Licensee") with its offices at 410 West 5<sup>th</sup> Avenue, Olympia, Washington 98504-0116.

For good and valuable consideration, MHS and the Licensee have agreed to amend the terms of the Agreement as set out below.

1. The Agreement shall be renewed for an additional term of two (2) years commencing July 1, 2003 and ending June 30, 2005 (the "Term").

2. Section 2.2 shall read:

As consideration for the rights granted herein, Licensee shall pay MHS, for the twenty four-month (24 month) period of the Term, a license fee of U.S. \$36,000.00, which shall entitle Licensee and jail personnel to enter up to 45,000 of LSI-R and/or LSI-R:SV assessments scores into the Licensee Database and WASPC for such twenty four-month (24 month) period (the "Maximum"). For each assessment score in excess of the Maximum, Licensee shall pay MHS a royalty of U.S. \$0.80. Each initial assessment of an offender and each reassessment of the same offender shall constitute a separate assessment for the purposes of this paragraph.

3. Section 2.3 shall read:

The license fee of U.S. \$36,000 shall be due and payable on July 1, 2003. Within thirty (30) days of the end of each fiscal year during the Term, Licensee shall provide to MHS a certificate signed by an officer of Licensee certifying the number of assessments administered on the Licensee Database for the fiscal year just ended.

4. Section 8.1 shall read:

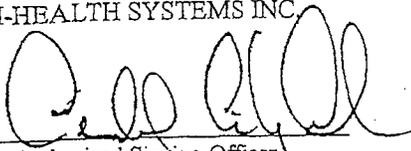
This agreement shall remain in effect for a period of two (2) years unless earlier terminated by either party upon ninety (90) days' prior written notice of termination to the other party. Upon termination Licensee shall assign and transfer to MHS in writing all of its interest in any software, documentation or manuals developed by Licensee to enable the installation and administration of the LSI-R and/or LSI-R:SV on the Licensee Database. There shall be no refund, credit or offset of any license fee paid.

5. In all other respects, the terms, covenants and conditions of the Agreement shall remain unchanged, continuous and in full force and effect between MHS and the Licensee.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement as set forth below:

MHS CONTRACT # 06222001-1  
DOC CONTRACT # COCO5469  
EXHIBIT # 1

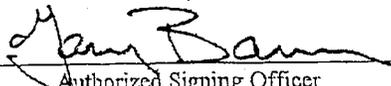
MULTI-HEALTH SYSTEMS INC.

By:   
Authorized Signing Officer

Print Name: GERALD FITZGERALD

Date: June 23, 2003

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

By:   
Authorized Signing Officer

Print Name: Gary Banning

Date: 6/19/03

### THIRD AMENDMENT TO LICENSE AGREEMENT

This third Amendment, to extend the Term of the License Agreement dated July 1, 2001, ("the Agreement"), by and between Multi-Health Systems Inc. ("MHS"), an Ontario corporation addressed at 3770 Victoria Park Avenue, Toronto, Ontario, Canada, M2H 3M6 and the State of Washington Department of Corrections ("Licensee") addressed at 410 West 5<sup>th</sup> Avenue, Olympia, Washington 98504-0116, is effective July 1, 2005.

Whereas the parties desire to amend the Agreement to provide a Term extension and to provide the rates to permit Licensee continued use of the LSI-R™ and LSI-R:SV™ in the Licensee Database;

For good and valuable consideration and pursuant to Section 8.4 of the Agreement, MHS and the Licensee have agreed to amend the terms of the Agreement as set out below:

1. Section 2.2 shall be deleted and replaced with the following:

2.2 As consideration for the rights granted herein, Licensee shall pay MHS a license fee of US \$55,200.00, for the period July 1, 2005 through June 30, 2007, which shall entitle Licensee to enter up to a combined total of 69,000 LSI-R and/or LSI-R:SV assessments scores into the Licensee Database during such twenty-four (24) month period (the "Maximum"). For each assessment score in excess of the Maximum, Licensee shall pay MHS a royalty of US \$0.80. Each initial assessment of an offender and each reassessment of the same offender shall constitute a separate assessment for the purposes of this paragraph. There shall be no refund, credit or offset of any annual license fee paid.

2. Section 8.1 shall be deleted and replaced with the following:

8.1 This Agreement shall remain in effect through June 30, 2007, unless earlier terminated by either party upon ninety (90) days' prior written notice of termination to the other party.

3. Section 8.4 shall be deleted and replaced with the following:

8.4 Changes and modifications to this Agreement, including any extension of its Term, shall not be binding unless by written amendment and signed by personnel authorized to bind each of the parties.

For purposes of this Agreement, the contact person for Licensee is the Case Management Program Manager and the contact person for MHS is the President of MHS.

4. In all other respects, the terms, covenants, and conditions of the Agreement shall remain unchanged, continuous and in full force and effect between MHS and the Licensee.

IN WITNESS WHEREOF, the parties have executed this Amendment, consisting of two pages and no attachments, by the persons signing below who warrant that they have the authority to execute the contract.

MULTI-HEALTH SYSTEMS INC.



(Authorized Signing Representative)

Gerald A. FitzGerald

(Printed Name)

President

(Title)

6/29/05

(Date)

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS



(Authorized Signing Representative)

Gary Banning

(Printed Name)

Contracts Administrator

(Title)

6/20/05

(Date)

MHS # 06222001-1  
DOC Contract No. COCO5469(3)

MHS CONTRACT # 06222001-1  
DOC CONTRACT # COCO5469  
EXHIBIT # 1



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

**PRISON/PRE-RELEASE/  
WORK RELEASE/FIELD**

NUMBER

**DOC 320.400**

**POLICY  
DIRECTIVE**

Offender Manual  Spanish

SIGNATURE

DATE

EFFECTIVE DATE

4/15/03

PAGE NUMBER

JOSEPH D. LEHMAN, SECRETARY

1 of 4

TITLE

**LEVEL OF SERVICE INVENTORY--REVISED (LSI-R)**

**SUPERSESSION:**

DOC 320.400 effective 6/26/02

**REFERENCES:**

DOC 100.100 is hereby incorporated into this Policy Directive; ACA 2A-07; ACA 5A-01; DOC 300.380 Classification; DOC 320.410 Offender Risk Management; DOC 320.420 Offender Accountability Plans; DOC 320.455 Community Supervision of Risk Management Level-D (RM-D) Offender

**POLICY:**

- I. The Department shall manage offenders using a risk management system. The Department will use the Level of Service Inventory-Revised (LSI-R) as an instrument to assess potential risk, determine intervention targets, measure offender change, and establish the foundation for case management practices.

**DIRECTIVE:**

- I. Assessment
  - A. The LSI-R will be the primary risk assessment tool.
  - B. The LSI-R assessment/reassessment will be done at the earliest possible entry point of the offender into the system and will be documented on Offender Management Network Information (OMNI) LSI-R Application. [2A-07]
    - 1. The initial LSI-R assessment will be done with the offender's participation.
      - a. If an offender refuses or is unable to participate, Counselors and Community Corrections Officers (CCO) will complete the assessment by:
        - 1) Obtaining as much information as possible from the offender;
        - 2) Reviewing all available criminal history sources;
        - 3) Reviewing the file;

**COPY**

**EXHIBIT # 2**

**Exhibit**

NUMBER	TITLE	EFFECTIVE DATE	PAGE NUMBER
DOC 320.400	LEVEL OF SERVICE INVENTORY – REVISED (LSI-R)	4/15/03	2 of 4

- 4) Utilizing collateral contacts; and
- 5) Utilizing official documents.
- 6) Documenting the refusal and sources used to obtain/verify information, in the Criminal History Risk Narrative.

C. Reception Center staff will complete the LSI-R assessment/reassessment for offenders who arrive with 6 months or less remaining until release.

1. Counselors will administer an LSI-R assessment/reassessment on all offenders committed to Prison within 30 days of the offender's arrival at the offender's initial placement, if one was not completed at the reception center. [2A-07]

D. Offenders participating in the Youthful Offender Program (YOP) will be assessed using the LSI-R, after turning age 16.

## II. Reassessments

A. [5A-01] Facility CCO/Counselor will complete a reassessment:

1. At the regular review as designated per DOC 300.380 Classification.
2. For RM-D offenders at 120 days prior to the offender's release as designated in DOC 350.200 Transition of Offenders.
3. As information is received or events occur that would increase or decrease risk.

B. Field CCOs will complete a reassessment:

1. At the review designated by DOC 320.420 Offender Accountability Plans for the RM-A, RM-B, and RMC cases. X
2. For RM-D offenders according to DOC 320.455 Community Supervision of risk Management Level-D (RM-D) Offender.
3. As information is received or events occur that would increase or decrease risk.

## III. Verification Requirements

A. CCO/Counselor shall use multiple sources whenever possible to verify the information provided by the offender to enhance the reliability and validity of the LSI-R assessment. The results of a risk assessment shall not be based on unconfirmed allegations.

**COPY**

*EXHIBIT # 2*

**Exhibit**

NUMBER	TITLE	EFFECTIVE DATE	PAGE NUMBER
DOC 320.400	LEVEL OF SERVICE INVENTORY – REVISED (LSI-R)	4/15/03	3 of 4

B. Possible sources for verification include:

1. Federal Bureau of Investigation (FBI);
2. Washington Crime Information Center (WACIC);
3. Superior Court Operations Management Information System (SCOMIS);
4. District Court Information System (DISCIS);
5. County Prosecuting Attorney's Office;
6. County Department of Adult Detention;
7. National Crime Information Center (NCIC);
8. Department of Social and Health Services (DSHS) – Child Protective Services (CPS), Adult Protective Services (APS), Developmental Disabilities Division (DDD);
9. Washington State Juvenile Rehabilitation Administration (JRA);
10. Collateral contacts;
11. Department files (i.e., electronic and hardcopy);
12. Victim Impact Statement and/or other victim information; and
13. Other available documents.

IV. Documenting Assessment/Reassessment

A. The CCO/Counselor shall document the risk assessment information for all of the 10 LSI-R sub-components and the 2 RMI risk narrative descriptions.

1. Risk narrative descriptions shall include:

- a. Description of past and present criminal behavior;
- b. Description of violence;
- c. Victim/community concerns;
- d. Explanation of risk/need factors identified;
- e. Attitude toward risk behaviors;
- f. Description of protective factors; and
- g. Any other information that may be pertinent to the supervision effort.

B. The CCO/Counselor shall document reassessment information, which will include changes in risk/needs areas and any other new information.

V. LSI-R Quality Assurance

A. Statewide LSI-R Program Manager shall oversee quality assurance by:

1. Providing on-going technical assistance to staff; and
2. Completing performance support activities and audits, as needed.

COPY

EXHIBIT # 2

Exhibit

NUMBER	TITLE	EFFECTIVE DATE	PAGE NUMBER
DOC 320.400	LEVEL OF SERVICE INVENTORY – REVISED (LSI-R)	4/15/03	4 of 4

VI. Training Requirements

- A. All Department staff who oversee a caseload of offenders and their Supervisor's, are required to complete LSI-R training through a trainer approved by the LSI-R Program Manager.
- B. All training will be documented on the employee's official training record.

**DEFINITIONS:**

Words/terms appearing in this Policy Directive may be defined in the Glossary section of the Policy Directive Manual.

**ATTACHMENTS:**

None

**DOC FORMS (See Appendix):**

None

COPY

EXHIBIT # 2

Exhibit



STATE OF WASHINGTON  
**DEPARTMENT OF CORRECTIONS**  
P.O. Box 41100 • Olympia, Washington 98504-1100

November 14, 2006

Mr. Rodney Mituniewicz, DOC # 912672  
Monroe Correctional Complex  
Minimum Security Unit  
PO Box 7001  
Monroe, Washington 98272-7001

Dear Mr. Mituniewicz:

I have received your letter dated October 26, 2006, regarding your allegation of an unlawful contract for the LSI-R pursuant to RCW 72.09.050. Since it is unclear to me what you are requesting in your letter, I must interpret your letter to mean that you question whether the Department of Corrections was authorized to enter into the contract for the LSI-R assessment tool, pursuant to RCW 72.09.050. I also interpret your letter to inquire into whether the Revised Code of Washington is controlling law in Washington State.

First, you request information as to whether RCW 72.09.050 authorizes the Department to enter into agreements. RCW 72.09.050 authorizes the Secretary of the Department of Corrections to manage the department, administer programs, and enter into agreements. In addition, RCW 72.02.040 authorizes the Secretary of the Department of Corrections to exercise all powers and perform all duties prescribed by law with respect to the administration of any adult correctional program by the Department. Therefore, the Secretary is permitted by law to enter into contracts on behalf of the Department of Corrections, including the contract for the LSI-R assessment tool.

Second, your letter appears to question whether the Revised Code of Washington (RCW) is controlling law for the state of Washington. RCW 1.04.021 declares that the RCW establishes the permanent and general laws of the state of Washington. Therefore, the Department of Corrections is required to follow the laws contained within the Code as it contains the controlling law for the state of Washington.

I hope that this information is helpful to you.

Sincerely,

A handwritten signature in black ink that reads "Gary Banning".

Gary Banning, Administrator  
Contracts and Legal Affairs Office  
Washington State Department of Corrections

GB:mql.DEP-3876

cc: Offender Central File  
Correspondence Unit  
Mr. Harold Clarke, Secretary  
Melanie Roberts, Deputy Secretary, ASD

*EXHIBIT # 3*

**"Working Together for SAFE Communities"**