

**VALUECENTRIC, LLC**  
**HOSTED SERVICES AGREEMENT**

This Hosted Services Agreement (the "Agreement") is made as of this 26<sup>th</sup> day of February, 2009, (the "Effective Date"), by and between ValueCentric, LLC ("ValueCentric"), with offices at 23 Cobham Drive, Orchard Park, NY 14127 and Actavis Kadian LLC ("Customer"), a limited liability company registered in Delaware, with offices at 60 Columbia Rd, Building B Morristown, NJ 07960.

WITNESSETH:

**WHEREAS**, ValueCentric is a software and services company which owns software under the ValueTrak product name; and

**WHEREAS**, ValueCentric has established a hosted services arrangement whereby ValueCentric administers the ValueTrak software, providing the computers, communications and technical support; and

**WHEREAS**, Customer desires to purchase such hosted services arrangement, which will include inter-connectivity with certain Customer's customers (collectively, "Trading Partners") as identified by Customer.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

**1. SERVICES**

**1.1 Hosted Services.** During the term of this Agreement, ValueCentric shall supply to Customer, and Customer shall purchase from ValueCentric, the service package described on Schedule A (and the Appendices thereto, if any) attached hereto and incorporated herein by reference (the "Hosted Services"), and all other services described in this Agreement and Schedules B, C, D, and E attached hereto and incorporated herein by reference (together with the Hosted Services, the "Services"), which includes access to the "System" (as such term is hereinafter defined) for the purpose of receiving the Hosted Services, all upon and subject to the terms and conditions set forth herein. For purposes of this Agreement, the term "System" shall mean the ValueCentric computer system described on Schedule A pursuant to which ValueCentric will be providing Hosted Services hereunder, which shall include all hardware, software, internet and telecommunications components.

**1.2 Implementation and Training Services.** ValueCentric shall also provide to Customer, and Customer shall purchase from ValueCentric, the implementation services described in Schedule B attached hereto and incorporated herein by reference (the "Implementation Services").

**1.3 Hours of Operation.** The System shall operate and be available for access by Customer during the hours set forth on Schedule A hereto.



1.4 Definitions. For all purposes of this Agreement, the terms defined below, when used with initial capital letters, shall have the same meanings indicated:

- (a) "Affiliates" shall mean, with respect to a party, any person, corporation or other business entity which, either directly or indirectly, controls such party, is controlled by such party or under common control with such party. As used herein, the term "control" means possession of power to direct, or cause the direction of the management and policies of a corporation or other entity, whether through the ownership of voting secretaries, by contract or otherwise.
- (b) "ValueTrak Software" shall mean the proprietary ValueTrak software described in this Agreement and the System, including (i) all changes to the software and/or the System, (ii) all updates, patches and similar devices or methods related to or directed at malfunctions or bugs in the software and/or the System ("Updates") and (iii) all upgrades, modifications, or improvements to the software and/or the System ("Upgrades").
- (b) "Documentation" means any and all operator and user manuals, training materials, guides, listings, drawings, reports, notes, memoranda, descriptions, explanations, commentary, brochures, sales and marketing literature, proposals, including information and responses thereto, the specifications describing the performance, functionality, operation and use of the ValueTrak Software and other materials for use in conjunction with or describing the functionality, performance and operation of the ValueTrak Software.
- (c) "Source Code" means the human readable embodiment of the ValueTrak Software code, in or on any electronic media which includes complete comments, flow charts, program narratives, and all related system and programming documentation for the ValueTrak Software, every change to the ValueTrak Software and all externalizations, utilities and compilers required to utilize, execute and modify the source code form of the ValueTrak Software and which is sufficient to enable a reasonably skilled programmer to maintain and enhance the ValueTrak Software.

## 2. PRICING; PAYMENT

**2.1 Fees.** Customer shall pay ValueCentric the applicable fees according to the pricing schedule attached hereto as Schedule C (the "Pricing Schedule"). Such fees include fees for transaction processing, installation, connectivity of Trading Partners, and other fees payable by Customer. Customer shall be responsible for costs associated with Customer's connectivity to the Hosted Services for the purposes of remote review and downloading of information.

**2.2 Reimbursable Expenses.** Customer shall reimburse ValueCentric certain reasonable and itemized expenses that ValueCentric may incur for activities related to, but not necessary limited to, installation, implementation, project management, training, travel and/or living expenses for ValueCentric personnel that are incurred for the sole purpose of assisting Customer in the implementation of the Hosted Services. Such expenses shall be billed monthly and be payable per the Payment Terms in Section 2.5 and in accordance with the Customer's Travel and Entertainment Policy. All expenses shall be approved by Customer prior to being incurred by ValueCentric. Copies of receipts shall accompany any billing notice that includes expense reimbursement.

**2.2 Changes.** After the end of Term of this Agreement, ValueCentric may modify the fees and charges contained in Schedule C by furnishing to Customer a revised version of the Pricing Schedule and only upon Customer's written approval. Such modified charges shall not be effective before sixty (60) days after Customer's written approval thereof, and shall only apply to Services performed by ValueCentric after the effective date of the change.

**2.3 Offset.** Notwithstanding the above, ValueCentric shall have the right to increase the fees and charges paid by Customer to directly offset, on an appropriately allocated and weighted basis, any increase in rates charged to ValueCentric (i) by the U.S. Postal Services and/or communications common carriers or network providers (including value added network or Internet provider) applicable to, or in connection with, the provision of Services by ValueCentric hereunder; (ii) any increase to ValueCentric in the direct costs of providing the Services brought about by any change in the rules, regulations or operating procedures of any cognizant federal, state or local governmental agency or regulatory authority after the Effective Date; provided, however, in either case of (i) or (ii) above, Customer shall have sixty (60) days notice of any such increase and, within such sixty (60) days, Customer may opt not to accept such increase in which case this Agreement shall be terminated as of the end of such sixty (60) day period. Any accepted increase contemplated by this subsection shall become effective sixty (60) days after ValueCentric notifies Customer of such increase provided that the additional costs precipitating the increased charges are in fact being incurred; however, ValueCentric agrees to use reasonable efforts to provide Customer with as much notice as possible that such an increase is about to occur. ValueCentric agrees to provide Customer with reasonable backup documentation setting forth the justification for any increase.

**2.4 Taxes.** All federal, state or local taxes that may be assessed on the Services rendered herein or otherwise on any service delivered or rendered by ValueCentric to Customer under this Agreement, shall be paid by ValueCentric to the appropriate governmental agency and Customer shall fully reimburse ValueCentric therefore upon presentation to it of written proof of payment by ValueCentric. This provision shall not apply to any tax based upon the income of ValueCentric or its officers, directors, and employees. Customer shall have no liability for any interest, penalty or tax increase resulting from the actions or failure to act by ValueCentric.

**2.5 Payment Terms.** Certain fees may be due and payable upon execution of this Agreement. For monthly fees, ValueCentric shall invoice Customer monthly in advance beginning 30 days after the signing of the agreement and itemizing in detail the basis for each invoice. All charges under this Agreement will be due and payable within forty-five (45) days of the date of invoice.

### **3. CUSTOMER RESPONSIBILITIES**

**3.1 Internet Communication.** Customer shall, at its expense, provide and maintain all hardware, software and telecommunications equipment and devices required at Customer's site(s), including any Customer personnel that may connect to the Hosted Services from a remote location, to connect to and interact with the System, except as are expressly stated herein to be provided by ValueCentric.

**3.2 Designated Contacts.** Customer shall designate two (2) individuals (primary and secondary) to serve as Customer's contacts with ValueCentric. The primary contact shall also be designated as the project manager for the Implementation Services and shall coordinate the implementation on behalf of Customer. Such individuals will have the knowledge and authority to relate the technical aspects of problems to ValueCentric, receive, interpret and apply remedial instructions from ValueCentric.

**3.3 Implementation.** Customer shall at its cost be solely responsible for providing the

necessary support and resources for the Implementation Services as set forth in Schedule C attached hereto.

**3.4 Cooperation.** Each of ValueCentric and Customer shall cooperate with each other in the performance of ValueCentric's obligations hereunder, and shall not unreasonably hinder, prevent or delay the other party in the performance thereof.

#### **4. TERM, TERMINATION**

**4.1 Term.** This Agreement shall be for a term commencing upon the Effective Date, and shall continue in effect for a period of three (3) years (the "Term") unless sooner terminated according to the provisions hereof.

**4.2 Termination For Cause.** If either party hereto (a) breaches its representations and warranties under this Agreement or otherwise fails to perform its obligations hereunder, (b) ceases to conduct its operations in the normal course of business, including the inability to meet its obligations as they mature, (c) fails to make progress to such an extent that performance of the work to be performed hereunder is endangered, or (d) any proceeding is filed by or against a party in bankruptcy or insolvency, or for appointment for the benefit of creditors, and, in any case, such breaching/defaulting party does not remedy such failure within thirty (30) days of its receipt of the written notice of default, the non-defaulting party may then terminate this Agreement immediately upon written notice to the other party. Both parties shall fully perform all of their obligations under this Agreement throughout the notice period until the Agreement is terminated. In the event that ValueCentric is the defaulting party, Customer shall have the right to obtain the release of the Source Code and Documentation in escrow from the escrow agent pursuant to Section 7 of this Agreement; in such case, Customer shall be permitted to utilize such Source Code and Documentation for no more than twelve (12) months as Customer transitions to another system for similar services. If Customer should terminate this Agreement for cause (as set forth above), or pursuant to Section 2.3 or due to a Force Majeure event (as set forth in Section 6.1), and if such termination shall occur within the first twelve (12) months of the Start-Up Date (as defined in Schedule C), Value Centric agrees to promptly refund to Customer a pro rata portion of the fees paid hereunder amortized on a straight-line basis, at the rate of 1/12<sup>th</sup> for each month remaining during the first year from the Start-Up Date. The aforementioned remedy shall not limit Customer from attaining any other remedy available hereunder or at law or in equity. Additionally, Customer may terminate this Agreement at any time upon thirty (30) days written notice to ValueCentric in the event that (i) a generic competitive product to Kadian becomes available in the United States; and/or (ii) Customer is sold or otherwise transferred or its product, Kadian, is sold or otherwise transferred. Both parties shall fully perform all of their obligations under this Agreement throughout the notice period until the Agreement is terminated.

**4.3 Termination Without Cause.** Notwithstanding Section 4.1 of this Agreement, Customer reserves the right to terminate this Agreement at the end of the first twelve (12) month period of the Term at its option and its sole discretion upon sixty (60) days prior written notice to ValueCentric. Subsequent to the first twelve (12) month period of the Term, Customer shall have the right to terminate this Agreement at any time without cause upon sixty (60) days prior written notice to ValueCentric.

#### **5 WARRANTIES**

**5.1 Services.** ValueCentric warrants that (a) in performing the Services, ValueCentric will comply with all descriptions and representations as to the Services and the ValueTrak Software set forth in this Agreement and the applicable Schedules attached hereto and with all laws, rules and regulations applicable to ValueCentric and the provision of Services hereunder, and (ii) the ValueTrak Software will perform in accordance with the Documentation therefore provided by ValueCentric to Customer as of the Effective Date.

Notwithstanding the foregoing, ValueCentric does not warrant or guaranty the accuracy of any information furnished to it by Customer or Trading Partners, and does not warrant or guaranty that the ValueTrak Software will operate error free.

**5.2 Warranties.** ValueCentric further represents and warrants to Customer that:

- (a) it owns the ValueTrak Software and/or has the full power and authority to grant the use granted under this Agreement;
- (b) Customer's hosted use of the ValueTrak Software will not be interrupted or otherwise disturbed by any entity asserting a claim related to the ValueTrak Software;
- (c) Neither the ValueTrak Software nor the Documentation, nor any portion thereof nor Customer's use thereof, constitutes or will give rise to a claim of infringement of any patent, copyright, trade secret or other property right of a third party;
- (d) neither the ValueTrak Software nor the Documentation, and any medium by which they are made accessible to Customer contain any virus or any other contaminant;
- (e) neither the ValueTrak Software nor the Documentation, and any medium by which they are delivered to Customer contain any disabling devices including, but not limited to, codes, commands or instructions, "time-bomb", "time locks", software disabler program or other like device (each a "Disabling Device") that may have the effect of or be used to access, alter, delete, damage, cause a degradation in functionality of or disable the ValueTrak Software, other software, Customer information or other Customer property in a manner other than in accordance with the Documentation. ValueCentric further agrees that it will not under any circumstances, including enforcement of a valid contract right, install or trigger a lockup or encryption program or any device which in any manner interferes with Customer's authorized access to and use of the ValueTrak Software in accordance with this Agreement;
- (f) any and all keys necessary for continued operation and use of the ValueTrak Software by Customer during the duration of this Agreement and the use granted hereunder have been provided to Customer as of the Effective Date.
- (g) Each ValueCentric employee, subcontractor or agent assigned to render technical support services under this Agreement has the proper expertise, skills, training, and professional education to perform the services required under this Agreement in a professional manner and consistent with applicable industry standards; and
- (h) Based on ValueCentric's understanding of the scope of the project as set forth this Agreement, ValueCentric has not made any material misrepresentation or omissions in this Agreement as to costs or requirements of hardware or systems.

**5.3. Work Product.** ValueCentric acknowledges that Customer shall have exclusive, unlimited ownership rights to all data, data related materials, information, reformatted materials specifically made for Customer and/or deliverables prepared hereunder or developed as a result of the Services performed hereunder, both as individual items and/or a combination of components (collectively, "Work Product"). All of the foregoing Work Product shall be deemed to be work made for hire and made in the course of services rendered and shall belong exclusively to Customer. ValueCentric shall, immediately upon request of Customer, or upon the termination, cancellation or expiration of this Agreement, turn over to Customer all data, data related materials, reformatted materials and/or information and deliverables prepared or developed as a result of this Agreement.

**5.4 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, VALUECENTRIC HEREBY DISCLAIMS ALL OTHER WARRANTIES. EXPRESS OR IMPLIED, INCLUDING WITHOUT

LIMITATION IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**5.5 Insurance.** ValueCentric currently carries, and at all times during the Term of this Agreement shall continue to carry, insurance at values at least in conformance with acceptable industry standards naming Customer as additionally insured, and shall provide Customer with evidence of such insurance contemporaneously with the execution of this Agreement.

**6. LIMITATIONS OF LIABILITY**

**6.1 Force Majeure.** Neither party shall be liable for failure to perform hereunder (except for nonpayment) if such failure is due to any reasonable cause or condition beyond such parties reasonable control. Such causes or conditions shall include but shall not be limited to: acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity; fires; flood, epidemics; severe weather, electrical power failures, telecommunication problems; third-party network connections, response or transmission quality problems; or other similar causes beyond such party's reasonable control (collectively, Force Majeure"). Such party shall have no liability for losses, expenses or damages, ordinary, special or consequential, to the extent resulting directly or indirectly from such causes. In the event that any party claims a Force Majeure event, such party shall provide to the other party written notice of such Force Majeure event, explaining the details of such Force Majeure event and the reasonable duration. In the event that ValueCentric claims a Force Majeure event, (a) all Monthly Service Fees (defined in Schedule C) shall be suspended until such Force Majeure event has been terminated, and (b) Customer may terminate this Agreement upon notice to ValueCentric if such Force Majeure event remains for forty-five (45) days.

**6.2 Error Correction.** ValueCentric shall use its best efforts to timely and correctly process all work submitted to it by Customer or Trading Partners and agrees that it will, at its expense, after becoming aware of the same or being advised of the same by Customer, use commercially reasonable best efforts to correct or provide a work-around for any errors to the extent such errors are due to malfunction of the System or the ValueTrak software, or errors by ValueCentric's employees or an agent of ValueCentric. Correction shall be limited to rerunning of the job or jobs, recreating and reconstructing any erroneous, corrupted or damaged data or program files and correcting any errors which caused the malfunction. ValueCentric further specifies its service obligations in Schedule E related to system performance and remedies.

**6.3 Liability for Data Loss.** Should ValueCentric or an employee or agent of ValueCentric intentionally or willfully act or omit to act in a manner that results in data loss or corruption or other operational efficiency problem with the Customer systems, including, but not limited to, intentionally creating and introducing a harmful code into Customer systems, then ValueCentric shall be responsible under this Agreement to use all commercially reasonable efforts at no additional charge to assist Customer in eradicating and reducing the effects of such acts or omissions. Such efforts shall include, but not be limited to, recreating the lost data and information from back-up tapes or any other source. ValueCentric agrees that it shall back-up the data and information input to and generated by the ValueTrak Software (as defined below) according to ValueCentric's standard back-up procedures, but in no event shall ValueCentric use back-up procedures which are less than commercially reasonable.

**6.4 Limitation of Liability.** Except as provided in Section 8 of this Agreement, in the event that either party becomes liable to the other party under this Agreement for any reason, whether arising by negligence, willful misconduct or otherwise, the total liability recoverable against such other party shall not exceed one (1) times the fees paid or payable by Customer in the last twelve (12) months to ValueCentric hereunder. In no event shall either party be liable for any indirect, incidental, special, or consequential damages (including without limitation lost profits, loss of data, and loss of business, even if such party has been advised of the possibility of such damages and fails to respond with reasonable efforts to such claims) other than claims

by third parties for such indirect, incidental, special or consequential damages. Notwithstanding the above, each party shall be liable for damages due to intentional misconduct or gross negligence. Neither party may assert any cause of action against the other party more than twelve (12) months after such party discovered (or should have reasonably discovered) that such cause of action has occurred.

**7. ESCROW OF DECRYPTED SOURCE CODE:** Within sixty (60) days of the Effective Date, ValueCentric will deposit a copy of the Source Code and decryption password(s) for the ValueTrak Software (and any other information necessary for an engineer reasonably skilled in the art to work with the Source Code) with the escrow agent (the "Escrow Agent") described in Schedule F ("*Code in Escrow*"). During the Term of the Agreement, ValueCentric shall continue to place on deposit with the Escrow Agent copies of the Source Code and related printed materials for all such ValueTrak Software including new releases, Updates and Upgrades provided to Customer. Under this Escrow Agreement, Customer shall have the right to receive a copy of said Source Code and Documentation (other information) in the event ValueCentric fails to meet its obligations under this Agreement by reason of (a) a general termination of its business of providing support for its ValueTrak Software, (b) ValueCentric's failure to provide support of the ValueTrak Software in accordance with the terms of this Agreement and such failure continues for ten (10) consecutive or non-consecutive days or more, (c) termination of this Agreement pursuant to Section 4.2 hereof, (d) ValueCentric defaults under any material debt or financing agreements which it is a party, (e) ValueCentric lays off more than thirty (30) percent of its workforce in any rolling three (3) month period, (f) the filing by ValueCentric of a voluntary petition for bankruptcy or receivership or an involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors and such a proceeding has not been dismissed within 60 calendar days of its commencement. The Escrow Agent shall have no responsibility for determination of any of the above circumstances. Upon any of the above events, Customer shall notify the Escrow Agent and request in writing the release of the escrow detailing the reasons for such request. Upon receipt of such notice, the Escrow Agent shall immediately notify ValueCentric of Customer's request and, absent notice to the contrary by ValueCentric within fifteen (15) working days of Escrow Agent's notice to ValueCentric, the Escrow Agent shall deliver said materials to Customer. Upon release of the materials to Customer, ValueCentric grants to Customer access to use the escrow materials as necessary for the limited purpose of supporting and maintaining the Licensed Software under this Agreement subject to the scope of access granted under the Agreement. The cost for all escrow fees and other costs related to initiation and execution of the escrow service shall be borne by ValueCentric for a standard two party escrow agreement. Should the Customer desire a three party escrow agreement, the cost of all fees shall be borne by the Customer. A copy of the escrow service agreement, containing the release events described in this Section 7 and other release events can be attached if desired as part of Schedule F.

## **8. INDEMNIFICATION**

**8.1 Indemnification by Customer.** Customer shall indemnify and hold harmless ValueCentric and its officers, employees, and agents from and against any losses, claims, damages, judgments, liabilities or expenses (including reasonable counsel fees and expenses) (collectively, "Liabilities") resulting from any third party claim made or suit brought against ValueCentric or any such persons arising out of (a) Customer's performance of this Agreement, except such Liabilities as may result from the negligence or willful misconduct of ValueCentric, (b) any breach by Customer of any of its representations, warranties or obligations under this Agreement.

**8.2 Indemnification by ValueCentric.** ValueCentric shall indemnify and hold harmless Customer and its Affiliates and their respective officers, employees, and agents from and against any Liabilities resulting from any third party claim made or suit brought against Customer or any such persons arising out of (a) ValueCentric's performance of this Agreement, except such Liabilities as may result from the negligence or willful misconduct of Customer, or (b) any the breach by ValueCentric of any of its representations, warranties

or obligations under this Agreement.

**8.3 Infringement.** ValueCentric agrees to indemnify, defend and hold harmless Customer, its officers, agents and employees from and against any and all losses, cost, damage or liability, including counsel fees and costs, as a result of any claim or cause of action for (a) patent, copyright or trademark infringement, (b) unlawful disclosure or use of misappropriation of a trade secret, or (c) violation of any other intellectual property right asserted against Customer or one of the indemnified parties by virtue of Customer's use of the ValueTrak Software, Documentation, or any Work Product ("Infringement Claim").

**8.4 Notice of Claim.** Each party shall give prompt notice of any such claim to the other party and its applicable insurance carriers.

**8.5 Remedies.** If an Infringement Claim is upheld or is reasonably believed by Customer to be upheld or if an injunction or order is obtained against Customer's use of the ValueTrak Software, Documentation or any Work Product ("Infringing Materials") or, if the Customer's opinion, the Infringing Material is likely to become the subject of an infringement Claim, ValueCentric shall either, at ValueCentric's expense and Customer's opinion, (a) modify the Infringing Material to be non-infringing or substitute non-infringing software, provided that in either case that the replacement is acceptable to Customer and the replacement does not impair the performance or functionality of the Infringing Material, or (b) obtain a license to enable Customer to continue to use the Infringing Material. Any modification to or substitute for any Infringing Material provided under this Section 8.5 shall be subject to all of the terms and conditions of this Agreement, including without limitation, the indemnification provisions of this Section 8. Customer shall have the right to terminate this Agreement and receive a refund of all fees paid under this Agreement if ValueCentric fails to modify the Infringing Material, provide a replacement for any Infringing Material or obtain a license to enable Customer to continue to use the Infringing Material in accordance with this Section 8.5. These termination rights and reimbursement of fees paid by Customer are in addition to all other rights and remedies available to Customer, in contract, at law or in equity.

## **9. CONFIDENTIALITY: OWNERSHIP**

**9.1 Confidentiality.** ValueCentric on behalf of itself and its employees, agrees to keep confidential, and not to use except for performing Services hereunder, all information about Customer's finances, inventory, products, sales, strategies, Work Product and Trading Partners, and other proprietary information with respect to Customer and its business ("Customer's Confidential Information") throughout the Term, any renewal term and an additional five (5) years thereafter. Customer on behalf of itself and its employees agrees to keep confidential all information with respect to the System and the ValueTrak Software and Documentation which had been labeled confidential by ValueCentric ("ValueCentric's Confidential Information") throughout the Term of this Agreement. Customer's Confidential Information and ValueCentric's Confidential Information collectively, shall be referred to as the "Confidential Information").

**9.2 Exceptions.** Notwithstanding the Section 9.1. the confidentiality obligations set forth in this Section 9 will not apply to any Confidential Information which (a) is publicly available without breach of this Section 9 at the time of disclosure, (b) is independently developed by the recipient party outside the scope of this Agreement and without reference to the Confidential Information received under this Agreement, (c) is rightfully obtained by the recipient party from third parties which are not obligated to protect its confidentiality, or (d) is known to the recipient party at the time of disclosure.

If a party is required by an order of a court or a governmental agency of competent jurisdiction to disclose such Confidential Information, such party shall give the other party written notice of such required disclosure and shall use its best efforts to allow such other party the opportunity to intervene in the applicable proceedings.



**9.2. Ownership and Scope of Use - ValueTrak Software.** The ValueTrak Software is owned by ValueCentric, provided, however, that it does not contain any of Customer's Confidential Information. In connection with the Services hereunder, Customer is granted a royalty-free license to access and use the ValueTrak Software only by Customer, its employees and Trading Partners ("Licensed Software") which are connected to the System pursuant to this Agreement. Customer shall use the ValueTrak Software only for purposes described herein. Customer may not copy the ValueTrak Software or the documentation thereto or permit same to be copied. Customer shall reproduce ValueCentric's copyright and proprietary notices on all copies of the ValueTrak Software and the Documentation thereto.

## **10. GENERAL**

**10.1 Non-Solicitation.** During the term of this Agreement, and for a period of one (1) year after termination, ValueCentric and Customer agree, with respect to each other, not to directly or indirectly solicit or hire any employee of the other who has been directly or indirectly involved in or is familiar with the operations and technical services performed hereunder.

**10.2 Publicity.** Customer acknowledges and agrees that ValueCentric may use Customer as a business reference for advertising, marketing, or promotional purposes upon customer's prior written approval. Customer has the right of refusal of any use of its name for any reason.

**10.3 Notice Requests.** All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed given (i) if by hand delivery, upon receipt hereof, (ii) if mailed, three (3) days after deposit in the U.S. mails, postage pre-paid, certified or registered, return receipt requested, or (iii) if sent via overnight courier with receipt. All notices shall be addressed to the addresses of the parties set forth above or to such other address as the party to receive the notice or request so designates by written notice to the other. A copy of any such notices to Customer shall also be sent to its Legal Department at the same address.

**10.4 Governing Law.** This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Delaware and the parties consent to the exclusive jurisdiction and venue of the State and Federal Courts of the State of Delaware. The Delaware State Courts or Federal Courts shall have the sole and exclusive jurisdiction for any disputes.

**10.5 Enforceability.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

**10.6 Waiver.** The waiver or failure of either party to exercise any right provided for herein shall not be deemed a waiver of any further rights hereunder.

**10.7 Remedies.** The rights and remedies of ValueCentric and Customer set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

**10.8 Independent Contractor.** It is expressly understood that ValueCentric and Customer are independent contractors of one another, and that neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto.

**10.9 Assignment** This Agreement and the rights and duties hereunder shall not be assignable

by either party hereto except upon written consent of the other party, provided, however, that Customer may assign this Agreement to its Affiliate or to the successor of all or substantially all of the business to which this Agreement pertains.


**10.10 Entire Agreement** Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may not be modified or altered except by written instrument duly executed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the Effective Date by their duly authorized representatives.

ValueCentric

By:   
Name: David Janca  
Title: Founder & CEO

Actavis Kadian LLC

By:   
Name: Dawn S. Bortle  
Title: COO, ACTAVIS KADIAN LLC



## SCHEDULE A

### Hosted Services

#### **I. Services:**

##### **A. Contracted Service**

The contracted service shall include the modules as selected below:

- a. Base 852 Monitoring and Scorecarding
- b. Base 867 Detailed Sales Analysis

The above modules set forth in a. and b. shall include any industry accepted updates, upgrades, releases and/or any comparable reporting.

##### **B. System Access**

Includes Customer remote access to ValueCentric's internet location or locations.

The Initiation Fee (set forth in Schedule C) provides support for up to five (5) users from Customer location(s). Additional users may be added based on fees detailed in Schedule C.

The Initiation Fee also provides support for up to eleven (11) Trading Partner users who would have access to any collaborative applications available through the ValueTrak system. Additional Trading Partner users may be added based on fees detailed in Schedule C.

##### **C. Software Access and Maintenance**

Includes Customer remote access to ValueCentric's ValueTrak Software, Documentation, and all features, functions and reporting capabilities licensed within.

##### **D. System Usage Parameters:**

The base service includes the following limited use parameters:

- 1) Support for eleven (11) Trading Partner EDI connections (via AS-2 communications whenever Trading Partner is AS-2 capable);
- 2) Support for up to eight (8) SKUs from Customer;
- 3) Support for all associated Customer Trading Partner distribution center locations;
- 4) Support for sixty-thousand (60,000) Customer client/outlet locations (retail, institution, etc.)
- 5) Support for five (5) Customer personnel users; and
- 6) Support for eleven (11) Trading Partner unique sign-on authorizations.

##### **E. Telecommunications Links**

Customer shall be responsible for establishing and maintaining any hardware or software necessary for Customer personnel to connect to the Internet. ValueCentric will provide any relevant information to Customer as such information may relate to required software, software versions, codes for access, or other necessary data to facilitate connectivity to the ValueTrak Software.

**F. Transaction Processing**

ValueCentric shall accept and update the ValueTrak Software to allow for review, reporting and transactions for Customer ("Transactions") formatted in accordance with the Format Specifications (described in Schedule D) which may be of a proprietary format for which specifications shall be agreed to by the parties, and shall process Customer and Trading Partner information and provide report generation capabilities as described herein.

**G. Back-up**

ValueCentric will provide daily backup (during each weekday) of the ValueTrak Software and customer data. ValueCentric will maintain during the term of this Agreement, a system backup of all Transactions and data passing through the ValueTrak Software for routing from Customer or Customer Trading Partner.

ValueCentric's back-up cycle for the ValueTrak Software is fourteen (14) days and all back-ups occur daily.

All customer data is available on line for two (2) years historical and then it is archived for a period of five (5) years.

ValueCentric also maintains a weekly off-site back-up and storage of system and data for use in disaster recovery.

**H. Hours of Access and Availability:**

The hours of operation for Customer access to the ValueTrak Software shall be seven (7) days and twenty-four (24) hours per day.

**I. Customer Equipment and Software Requirements:**

ValueCentric recommends that personal computers accessing the ValueTrak Software be capable of running Microsoft Internet Explorer version 6.0 or higher.

**J. Customer Support and Error Reporting:**

ValueCentric shall provide, during business hours (that is 8:00 a.m. – 8:00 p.m Eastern) Monday through Friday, excluding ValueCentric' holidays), telephone contact support to customer for: (i) reporting errors or defects in the System, and (ii) assistance in the use and operation of the System. Customer will be provided a copy of ValueCentric's holiday schedule annually.

## **SCHEDULE B**

### **IMPLEMENTATION SERVICES**

ValueCentric's ValueTrak Software and online service will utilize a phased process to implement Customer and its selected Trading Partners on the ValueTrak Software. Such phased process may be modified by mutual agreement of the parties to meet customer's specific requirements, and many of the phases will run concurrently (e.g., testing and training).

The working implementation plan shall be developed with input from both parties during the initial planning session. Customer shall have ten (10) days from the completion of the initial planning session and the development of the project timeline to review and accept or reject the project plan and terminate the Agreement.

In the event Customer, in its sole discretion rejects the project plan, Customer may terminate this Agreement without any further obligation to ValueCentric except that Customer shall pay for ValueCentric's participation in the initial planning session and development of the project timeline at the rates specified below.

The current ValueCentric daily rate is \$1500/person-day for post implementation related services.

ValueCentric charges one fee for implementation and training services and this fee and the payment terms are detailed in Schedule C.

## SCHEDULE C

### PRICING SCHEDULE

The following fee schedules represent pricing for the ValueTrak System.

#### **Initiation Fee:**

This Initiation Fee represents the set up of the service, loading of the Customer items and Trading Partners, set up of the Customer database on the service, integration of any Customer internal data from its ERP system or other internal systems in the formats that ValueCentric specifies, configuration of desired reports and alert notifications as well as training of Customer resources. The fee is a **one-time** fee for the initial targeted customers. Implementation also includes the EDI connections to Customer's initial Trading partners.

Customer shall pay to ValueCentric an Initiation Fee of thirty-five thousand dollars (\$35,000) for the modules outlined in Schedule A. Any additional modules beyond those defined in Schedule A shall be charged separately and remain payable upon acceptance of this Agreement or at such time that the Customer chooses to add one or more Additional Modules to the ValueTrak Software. This fee is payable the first month upon which the loading of data into the ValueTrak solution begins for any new modules identified.

Included in this Initiation Fee is support for no more than five (5) users at the Customer location(s). Additional users beyond the initial five (5) to be set up will be charged at the rate of \$1080 per year for each additional Client Access sign-on.

#### **Implementation and Training Fees:**

The fees for implementation and training shall be included in the Initiation Fee for the initial modules selected. Any additional modules beyond the initial modules shall have their own implementation and training fees.

Any additional training beyond the initial training session shall be charged at a rate of \$1500 per day plus travel related expenses. Travel expenses will be charged to the Customer and shall follow the guidelines assigned in "Reimbursable Travel & Living Expenses".

#### **Monthly Fees:**

The Monthly Service Fee is a fee for the ongoing utilization of the service by Customer and work performed by ValueCentric. The work performed includes the regular (assumed daily or weekly) EDI transaction access from the Customer's Trading Partners, database updating, access of internal Customer data, report generation, systematic monitoring of the information and alert notification. Unless specified elsewhere, ValueCentric reserves the right to increase the Monthly Service Fee after Term of this Agreement, once a year thereafter up to such annual increase of the Customer Price Index.

The Monthly Service Fee shall be Four Thousand Two Hundred Fifty Dollars (\$4,250.00) for the modules selected by Customer outlined in Schedule A. Any additional modules beyond those defined in Schedule A shall be charged separately but shall be inclusive on monthly invoices. Customer shall be billed monthly in advance for the specific fees to continue to use the ValueTrak Software. Such fees shall be payable within forty-five (45) days after billing.

**New Customer Fees:**

The System (and all additional modules) includes support for eleven (11) Trading Partners and their associated distribution center ship-to locations. The one-time fee for adding new Trading Partners to the service shall be \$3,000 per connection point and would only come into effect should Customer wish to expand the ValueTrak Service beyond the initial Trading Partners that Customer shall identify. The fee would be assessed for one new EDI connection point at the Trading Partner account (e.g. if an account had multiple EDI connection points, the fee would be assessed for each connection established). The incremental Monthly Fee is \$300 for each additional Trading Partner beyond the initially group of Trading Partners.

**New SKU Fees:**

Customer may add new SKU's to ValueTrak at any time for an additional fee of \$300.00 per month for each additional group of five (5) SKU's added. This fee is assessed to cover the additional transaction load on the system and the integration to trading partners sending data to ValueTrak.

**New Client/Outlet Location Fees:**

Customer shall have the ability to add additional Client/Outlet Locations in blocks of five-thousand (5000). The Monthly Fee for each block of five-thousand (5000) incremental Locations shall be \$1000. The invoicing for each additional block of Client Locations shall occur when the additional Locations are added.

**EDI Charges:**

Any EDI processing charges incurred by ValueCentric for the connection and access to EDI data through any Value Added Network (VAN) shall be passed along to Customer at actual cost.

**ValueCentric will work with or on behalf of Customer, along with Customer's trading partners to implement EDI data transmission using AS2 or secure EDI over the Internet. ValueCentric cannot be held responsible if Customer's trading partners are unwilling to do so.**

**Fee Payment Schedule:**

<b>Product or Service</b>	<b>Fee</b>	<b>Payment Due</b>
<b><u>Software Initiation Fee:</u></b> by Module: - Base 852/Scorecarding - Base 867 Sales Detail	\$20,000 <u>\$15,000</u>	Initiation Fee Payment for selected Modules is due with signed agreement from Customer.
TOTAL	\$35,000	
<b><u>Implementation &amp; Training</u></b>	Included	
<b><u>Monthly Fee:</u></b> by Module: - Base 852/Scorecarding - 867 Sales Detail	\$2,550 <u>\$1,700</u>	Billing begins 30 days from date of signed agreement and in advance for the coming month. These fees are payable within 30 days of billing. Monthly fees will continue for the entire three (3) year term.
TOTAL	\$4,250	

## **Additional Services:**

### **Service Tailoring or Custom Programming:**

When Customer identifies new features or enhancements they desire to implement in the ValueTrak Software, ValueCentric will first consider whether the features should be added for all customers or whether it already exists on the product roadmap. The addition of new features provides more functionality for all customers without the problems associated with writing, supporting and updating customized enhancements when new service versions are released. ValueCentric shall provide a quote on any new feature as first being exclusive for Customer and then as part of a general release of the service offering.

### **Reimbursable Travel and Living Expenses:**

ValueCentric shall be reimbursed for expenses incurred in connection with the performance of services under this Agreement at Customer's location, provided, however, that such expense is approved by Customer prior to being incurred by ValueCentric. ValueCentric shall provide Customer with itemized statements of reimbursable expenses with receipts attached on a monthly basis, or within thirty (30) days of the last day an expense was incurred, and payable in accordance with Customer's Travel and Entertainment Policy. Each statement shall contain the Agreement number, and the Purchase order number(s) under which the expenses were incurred. Unless otherwise provided in the Purchase Order(s), the following expenses are allowed:

- I. Airfares: at the lowest rate available not to exceed coach.
- II. Automobile, Mileage: at IRS standard reimbursable rate per mile for actual miles traveled in the performance of services. This rate is subject to review and possible change as the IRS updates its actual published value.
- III. Automobile, Rental:
  - a) where necessary in the performance of Services, subcompact or compact shall be used unless more than four people share the same car;
  - b) where two or more ValueCentric personnel are at the same site in connection with one Purchase Order, one car shall be shared by up to four individuals.
- IV. Meals. shall not exceed Thirty-five Dollars (\$35.00) per day per person.
- V. Lodging: at reasonable rates for the locale.
- VI. Telephone Calls: those necessary for the performance of services. Personal calls are not reimbursable.



## **SCHEDULE D**

### **Basic Data Requirements**

ValueCentric has developed guidelines for the core X12 transaction sets (852, 867, 850, etc.) which identify the minimum data required for integration within the ValueTrak Software. Customer and Trading Partners shall deliver to ValueCentric its X12 transaction set or other specifications for the format in which Transactions are to be transmitted through to ValueCentric (the "Format Specifications"). The Format Specifications, if other than X12, shall include all information necessary for the reprogramming of the ValueCentric System to translate data to conform to such Format Specifications.

During the Term of this Agreement, Customer shall have the right to modify the Format Specifications, and, in such event, the procedures stated in this Agreement shall apply to the implementation of any such modifications to the Format Specifications. In the event that Customer desires to modify the Format Specifications, ValueCentric reserves the right to charge Customer for such additional modifications at a rate listed under Additional Services in the Payment Schedule in Schedule C to this Agreement..

All Customer data will be available to Customer in computer-readable format. Associated documentation and initial help/support shall be available online only.

## SCHEDULE E

### ValueCentric Service Standards

ValueCentric will be responsible for providing the availability of the ValueTrak Software and associated Internet web locations or addresses except for down time (“Down Time”) resulting from any of the following events:

- a) Customer’s failure to meet its obligations under the Agreement.
- b) Failure of equipment under Customer control.
- c) Failure of equipment outside of Customer and ValueCentric’s reasonable control.
- d) A Force Majeure Event.

Upon the occurrence of any of the above events, ValueCentric shall provide immediate notice to Customer, detailing the event and, if possible, the duration of the Down Time. In the case of a Force Majeure event, ValueCentric must comply with the terms set forth in Section 6.1 of this Agreement.

### Availability

a) Base Service will be available to Customer and its Affiliates and their employees, independent contractors and agents seven (7) days per week and twenty-four (24) hours per day. Exceptions may include planned backup activities that may preclude accessibility. Such backup activities occur daily but will be scheduled during overnight time periods.

b) Normal weekday maintenance, backup and upgrades shall be performed between the hours of 11:00 p.m. and 5:00 a.m. (Eastern) as required. The below provides definitions for Issue Severities used by ValueCentric when providing support under this Agreement. It also provides a description of the types of problems which ValueCentric will be expected to resolve, and the escalation process for opening an issue ticket with ValueCentric.

c) ValueCentric will commit the resources necessary to diagnose and resolve the issue, provide an appropriate workaround, or provide a resolution plan in accordance with the below-stated table. Problem escalation is determined by two major factors: (1) Elapsed time since the problem was reported and, (2) Severity of the problem.

d) ValueCentric will provide Telephone and E-mail Support regarding Help Desk assistance during Customer’s normal business hours.

e) Severity Levels Definitions and Resolution Timetables: Issue Severity is determined by objective examination of the incident. The following outlines criteria for each category:

### **Severity 1 Issue**

Routine Questions or Minimal Impact Problems that do not affect product operation, questions regarding the use of the product, or clarification of product features. E.g. An infrequently used utility occasionally gives misleading results; or a problem has occurred once but has not yet reoccurred and cannot be reproduced; or a problem occurs once but can be circumvented without undue difficulty. Severity 1 Issues include how-to-questions and help with functionality.

### **Severity 2 Issue**

Limited Non-Critical Problems that occur with the product but the majority of functions are still usable; e.g., the production system is occasionally impacted (less than once per week); or a specific development area is impacted; or a problem occurs when a specific facility or function is invoked.

### **Severity 3 Issue**

Limited Critical Problems that restrict functionality; e.g., the product operates but is severely restricted; the production system is regularly disrupted (i.e. 2 or 3 times a week); or the development system is seriously impacted.

### **Severity 4 Issue**

Critical Problems that require immediate attention and circumvention is not available; e.g., the production system is down and cannot be brought up; or a problem seriously impacts the business.

#### a.) Response/Resolution Time

Below indicates the response/resolution times goals for each Severity Issue (All times indicated are worst case).

Severity	Response or Action Plan	Resolution	Higher Level Escalation
1	24 hr	Next major release	NA
2	2 hr	20 days or next patch	NA
3	1 hr	3 days	8 hours
4	30 min	24 hrs	4 hours

b) If special maintenance is required, ValueCentric will communicate this requirement in writing to the Customer seven (7) days prior to the event.

c) Customer Trading Partner transactions received by ValueCentric shall be processed, cleansed and transmitted to Customer within three (3) hours of receipt by ValueCentric.

## **Disaster Recovery**

ValueCentric will provide disaster recovery for restoration as required.

- a) Hot live backup site to continue processing should primary server(s) be unavailable. This switch shall appear seamless to the Customer.
- b) Offsite storage or back-up, with internal disaster recovery procedures.
- c) Annual testing of back-up mechanisms.
- d) Network connectivity for ValueCentric maintained lines.
- e) Recovery equipment and procedures.

Disaster Declaration, will be made by ValueCentric, with examples to follow.

- a) Loss of the building due to fire.
- b) Loss of power to the facility.
- c) Inability to access the facility due to chemical spill, etc.

In the event of disruption to processing capability, ValueCentric will alert Customer immediately, to assist Customer in making alternate arrangements to not lose daily activity or order review. ValueCentric will convene immediately and include Customer representative(s) on recovery activity updates every two hours.

ValueCentric will guarantee that all files and data are or have been backed-up in support of normal security procedures, so as to not impact ongoing business or Customer relationships.

ValueCentric will do everything possible to be available within forty-eight (48) hours of disaster declaration.

**Recoverability** - The prior workday files, programs, and data will be available for restoration purposes in the event of a problem of any source of nature. Further, the files and databases that contain historical information on customer movement will be able to be restored on a specific customer basis within twenty-four (24) hours.

ValueCentric will backup Customer data and programs, and all supporting tables and control information every two hours in addition to hot site data replication to assure that not more than one day will be lost in a situation. The back-ups will be retained for one week. Incoming EDI information will be archived within ValueTrak Software for two (2) years to assure availability to recovery.

**Security** - ValueCentric and Customer will work jointly to identify Customer's security functions and responsibilities. ValueCentric will provide security by assigning the appropriate levels of protection to the service files, data, and programs.

To protect customer data, ValueCentric utilizes a thorough and multi-layered security infrastructure to prevent unauthorized access to key resources. All inbound traffic (i.e. user access) destined for ValueTrak is first analyzed by a dual firewall configuration to ensure only valid ports are used, and that no known IDS signatures are present. For traffic allowed through the firewalls, a redundant set of managed switches duplicates the port-based protection provided by the firewalls. Traffic that is allowed through the switch layer can access Application-layer resources on ValueTrak's Application Server Cluster. No customer data resides on the Application Servers. All data is stored behind another set of managed switches, which allows inbound requests on one port and from one source – the Application Server cluster. Requests made directly from the Internet are not allowed. All servers used within the ValueTrak architecture are protected using real-time virus scanning with daily Virus Definition updates.

User access to ValueTrak is limited to authorized, registered users only. Users must login in order to access any resources made available through ValueTrak. ValueTrak forces strong passwords to prevent brute force attacks, and will lock-out users that fail to successfully login after three consecutive attempts. Users will not be able to access ValueTrak until their account is unlocked by ValueTrak Member Services or their Corporate Administrator (as assigned by the Customer).

To validate our security infrastructure, ValueCentric has contracted with industry-leading Qualys™ to perform daily penetration testing and vulnerability analysis on the ValueTrak architecture. ValueTrak management reviews these test results daily to ensure that ValueTrak's servers are protected from the latest threats and vulnerabilities.

ValueCentric will allow Customer to access information for only those Trading Partners that are engaged with Customer.

ValueCentric will guarantee that no other participant will be allowed access to either Customer, its Affiliates or Trading Partner information or data.

**Documentation** - All documentation will be available online only and will be updated as changes are made.

## **SCHEDULE F**

### **Escrow Services**

ValueCentric has a two-party escrow agreement with Escrow Associates LLC, 1010 Huntcliff, Suite 1330, Atlanta, GA 30330 for the escrow of the ValueTrak Software for Hosted Service Agreements (the "Escrow Agreement"). Hosted Service Customers are eligible to access source code according to the provisions of Section 7 of this Agreement. A copy of the referenced Escrow Agreement is available upon request and shall be forwarded to Customer within twenty (20) days of any request to enable Customer to be listed under said escrow.