

38535



Wolters Kluwer
Health

Proposal

Prescriber Payer Data Adhoc for Kadian

Prepared for: Actavis Inc. ("Client" or "Actavis")

January 30, 2009

Prepared by:

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and

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PLAINTIFFS TRIAL
EXHIBIT

P-04852_00001

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2394 E. Camelback Road, Phoenix, Arizona 85016

The cost to receive this one time prescriber adhoc is \$55,387 plus \$70,324 in applicable data agent fees and sales taxes.

Billing Schedule

The full cost of the project will be invoiced to Client upon receipt of signature. Any changes to the project requested by Client may incur additional charges.

Client Contact Information

Nathalie Leitch
Actavis Inc.
60 Columbia Road Bldg B
Morristown, NJ 07960
NLeitch@actavis.com
(973)889-6968

Authorization

This proposal and the attached Terms and Conditions will serve as the agreement ("Agreement") between Wolters Kluwer Health and Client with respect to Wolters Kluwer Health's provision of services as outlined in the preceding proposal.

Accepted and agreed to as of the 30th day of January, 2009.

ACTAVIS INC.

[Handwritten Signature]

(signature)

[Handwritten Name]

(printed name)

[Handwritten Title]

(title)

SOURCE HEALTHCARE ANALYTICS, INC.

[Handwritten Signature]

(signature)

Carol Livingston

(printed name)

Vice President,
Customer Operations

(title)



[Handwritten] 3-19-09

Terms and Conditions

1. Term and Termination. This Agreement shall begin upon execution by both parties and shall terminate upon the final date of delivery of the services and data as identified in the Proposal; provided, however, Sections 2, 4, 5, 6, 7(d), 7(e) and 7(h) shall survive any termination of this Agreement. Either party may terminate this Agreement if the other breaches any of its obligations hereunder and fails to cure such breach within thirty (30) days after receipt of written notice thereof.

2. Data Use.

a. Permitted Uses. Notwithstanding anything to the contrary contained in the Proposal, except as otherwise permitted under this Agreement, any data provided to Client in connection with the Services (the "Data Product") shall be used by Client for internal business analysis only.

b. Prohibited Uses. Except for the Permitted Use(s) set forth in Section 2(a) above, the Data Product may not be used for any other purpose including, by way of illustration and not limitation, (i) to identify a patient, pharmacy or hospital provider; (ii) by and for the account and benefit of any person, company or entity other than Client or its wholly owned subsidiaries, or (iii) for any unlawful purpose. Except as permitted in this Agreement, Client will not permit any Data Product, in whole or in part, or a copy thereof to pass into the possession of any other person, subsidiary, affiliate, contractor, agent, partner, company or other entity. The Data Product shall be delivered to Client in de-identified format, and will not include names, addresses, or any other information that identifies a patient, pharmacy or hospital provider. Client agrees that it shall not attempt, nor shall it permit its customers, end users or any third party acting on its own behalf or on behalf of Client to attempt, directly or indirectly, to re-identify the Data Product. Client shall not, nor shall it permit its customers, end-users or any third parties to use or attempt to use the Data Product alone, or in conjunction with any other data, to identify any patient, pharmacy or hospital. Even when the Data Product is used by Client for the Permitted Use(s) set forth in the Agreement, Client shall ensure that the Data Product is not used in any way to exhibit, reference, access or generate patient or individual pharmacy or hospital provider level data, and that all records contained in the Data Product will be aggregated when used and/or referenced in internal reports and studies. Client represents and warrants that it will not attempt to link, on an individual basis, any other information to the Data Product; and it maintains, and will continue to maintain, appropriate access controls to physically, technically, and administratively separate any such information from the Data Product, and from any products produced using all or any part of the Data Product.

c. Compliance. Client shall monitor the Data Product and shall promptly notify Wolters Kluwer Health in the event that any patient, pharmacy or hospital identifiable data is received by Client. Wolters Kluwer Health shall have the right to monitor and periodically audit, upon prior written notice and during normal business hours, the Data Product for compliance with the requirements herein. Wolters Kluwer Health may suspend delivery of the Data Product immediately upon notice from Client, or in the event that Wolters Kluwer Health has commercially reasonable reason to believe, that identifiable data would be or is included in the Data Product. Client shall promptly return any Data Product containing identifiable data, and destroy any copies thereof, and any Client products containing such Data Product whether or not held by a third party as allowed under the Permitted Use(s).

d. Equitable Relief. Client acknowledges that Wolters Kluwer Health has an obligation to handle medical information in a legally appropriate and confidential manner. In addition to any other remedy or right hereunder, Wolters Kluwer Health shall have the right to obtain equitable relief in the event that Client breaches any obligation herein.

e. Effects of Termination. Upon termination of this Agreement for any reason, all uses of any Data Product provided to Client in connection with the Services shall terminate. Within sixty (60) days after termination, however occurring, Client shall return to Wolters Kluwer Health all original source data provided to Client hereunder. In lieu of such Data Product being returned to Wolters Kluwer Health, Wolters Kluwer Health will accept written confirmation of destruction executed by a duly authorized officer of Client indicating the data has been properly destroyed or erased. Client may retain archive files of Data Product for compliance purposes only if required by applicable law but only for as long as applicable law requires the archival of Data Products, or otherwise permitted pursuant to corresponding data agent sublicense agreement(s).

3. Payment.

a. Except as expressly stated to the contrary herein, all charges for Services will be due and payable within forty-five (45) days from receipt of the invoice. Wolters Kluwer Health may suspend delivery of Services if payment is not received in accordance with the terms described herein. Suspension of Services for nonpayment shall not be deemed to be a material breach of this Agreement.

b. Client agrees to be responsible for and pay and discharge when due any and all federal, state and local sales, use or other such tax that may be levied, assessed, imposed or charged in connection with the performance of this Agreement. Client hereby agrees to indemnify and hold Wolters Kluwer Health harmless against any loss, damage, interest assessed or penalty whatsoever in any way arising from the failure of Client to pay such tax or Wolters Kluwer Health's failure to collect such tax from Client.

c. Client is responsible for any and all data agent fees for any data agent contractor agreements, if Client elects to include such data agent information for prescribers in the Services provided under this Agreement.

4. Confidentiality.

a. The parties acknowledge that the Data Product provided by Wolters Kluwer Health to Client under this Agreement, as well as information regarding the business of the Client supplied by Client to Wolters Kluwer Health (collectively referred to as "Confidential Information") is proprietary and confidential to each respective party and that the parties have the right only to use such Confidential Information in accordance with the terms of this Agreement. The Confidential Information shall be used solely for the benefit of the parties or their subsidiaries and affiliates and shall not be sold, transferred, disclosed, in whole or in part, or given to any third party, without the prior written consent of the disclosing party. The Confidential Information shall be disclosed only to agents or contractors of the parties to the extent necessary for them to provide services on behalf of the respective party; provided that, any agent, contractor or third party of Client shall execute a Third Party Data Use Agreement (available upon request).

b. The Confidential Information supplied herein shall not be quoted or attributed to the disclosing party, including without limitation advertising or press releases, without the disclosing party's prior written consent, which shall not be unreasonably withheld.

c. Client agrees that under no circumstances will Client directly or indirectly share or discuss the Data Product or any reports provided under this Agreement with any pharmacies or prescribers or with any person employed by any such pharmacies or prescribers.

d. Client represents that its field sales personnel are under obligations of confidentiality with respect to the use and application of all Data Product, information, reports and delivery systems provided under this Agreement.

e. The parties shall hold all Confidential Information supplied herein in strict confidence, unless (1) such information is already known to the receiving party at the time of disclosure, (2) is already publicly available or becomes so through no fault of the receiving party, (3) is discovered or developed by the receiving party independently of any disclosure by the disclosing party, (4) is obtained from a third party who has acquired a legal right to possess and disclose such Confidential Information, (5) is required by a governmental authority or by order of a court of competent jurisdiction to disclose any Confidential Information, provided that the receiving party (a) will give the disclosing party prompt notice thereof so that the disclosing party may seek an appropriate protective order prior to such required disclosure and (b) reasonably cooperate with the disclosing party in its efforts to seek such protective order, or (6) release of such Confidential Information is consented to by the disclosing party.

5. Warranty; Limitation of Liability.

a. Wolters Kluwer Health shall use its reasonable efforts to be both complete and accurate in compiling the Data Product and in performing Services hereunder, provided, however, no representation or warranty, express or implied, is made by Wolters Kluwer Health with respect thereto. Without limiting the generality of the foregoing, to the extent that Wolters Kluwer Health delivers to Client any Data Product containing payer-level data, then Client acknowledges that the "estimated payer amount" field

provided by Wolters Kluwer Health in such Data Product is not sufficiently accurate to represent the true payer price and accordingly, should only be used by Client directionally and not in any contract negotiations.

b. Except for direct damages due to Wolters Kluwer Health's gross negligence or willful misconduct, Wolters Kluwer Health shall have no liability for direct, indirect or consequential loss or damage by reason of errors or omissions in the compilation of the Data Product or in performance of Services hereunder.

6. Indemnification. Each party shall indemnify and hold harmless the other party from and against any and all loss, damage or expense (or claims of damage or liability) asserted by third parties and arising solely out of or solely caused by the indemnifying party's negligence or willful misconduct in connection with that party's obligations under this Agreement.

7. Miscellaneous.

a. No party shall be considered in default because of any failure in performance of this Agreement if said failure arises out of causes beyond said party's reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or a public enemy, acts of the Government in its sovereign or contractual capacity, acts of terrorism, fires, floods, epidemics, quarantine restrictions, strikes, or freight embargoes.

b. In the event a contracted delivery date falls on Saturday, delivery will be made the previous business day. If the delivery date falls on a Sunday or on a Wolters Kluwer Health holiday, delivery will be made the next business day thereafter.

c. The terms and conditions of any purchase order shall in no way supersede or replace these Terms of Agreement.

d. All notices required by this Agreement shall be given by certified or registered mail, return receipt requested, or by any type of express mail or express delivery service for which a receipt will be obtained. Notices to Wolters Kluwer Health shall be delivered to the attention of the Legal Department, 2394 East Camelback Road, Phoenix, Arizona 85016. Notices to Actavis Inc., shall be delivered to: 60 Columbia Road, Building B. Morristown, NJ 07960, Attn: Nathalie Leitch, with a copy, not to constitute notice sent to the same address to the attention of the Legal Department.

e. This Agreement shall be construed and enforced in accordance with laws of the State of Delaware.

f. This Agreement may be modified only in writing, signed by the parties.

g. Neither party may assign, transfer or delegate any portion of this Agreement without the express prior written consent of the other party, which shall not be unreasonably withheld. Client acknowledges that Wolters Kluwer Health has the right to subcontract the Services provided hereunder, in whole or in part, to an affiliate or other third party. Notwithstanding anything to the contrary herein, in the event Wolters Kluwer Health subcontracts its obligations hereunder to either an affiliate or third party, Wolters Kluwer Health shall remain ultimately responsible for the performance of its obligations hereunder.

h. Each party will comply with all laws and regulations applicable to its operations insofar as they relate to the matters covered by this Agreement.

i. It is expressly agreed that this Agreement embodies the entire contractual agreement of the parties in relation to the subject matter hereof and that no other agreement or understanding, verbal or otherwise, exists between the parties at the time of execution hereunder, with respect to such subject matter.