

**35844**

**SALES SERVICES AGREEMENT  
BY AND BETWEEN  
TMS Health  
AND  
ACTAVIS KADIAN LLC**

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**Dated: April 23, 2009**

PLAINTIFFS TRIAL  
EXHIBIT

**P-04853\_00001**

## SALES SERVICES AGREEMENT

**THIS SALES SERVICES AGREEMENT** (this "Agreement"), is made and dated as of April 23, 2009 (the "Effective Date"), by and between **ACTAVIS KADIAN LLC**, a limited liability company duly organized and existing under the applicable laws of the State of Delaware, having offices at 60 Columbia Rd., Bldg. B, Morristown, NJ 07960 ("Actavis") and **TMS Health** a corporation duly organized and existing under the applicable laws of the State of **Florida**, and having a principal place of business at 4950 Communications Avenue, Suite 300, Boca Raton, Florida 33431 ("Company") who together may be referred to collectively as the "**Parties**", or individually as a "**Party**".

### PRELIMINARY STATEMENTS

**A.** Actavis is in the business of developing, marketing and selling pharmaceutical products in the Territory, as defined herein, including but not limited to the extended release morphine sulfate pharmaceutical product known as Kadian® (the "Product").

**B.** Actavis desires to engage Company to conduct a tele-detailing program to promote the sale of Kadian® in the Territory under the terms and conditions set forth in this Agreement.

**C.** Company has the ability to provide the services of its tele-sales force to conduct such a tele-detailing program and desires to be so engaged by Actavis pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the Parties, intending to be legally bound hereby, do agree as follows:

### ARTICLE 1 DEFINITIONS

**1.1 Definitions.** For purposes of this Agreement, the following terms, when used in capitalized form, shall have the meaning designated to them under this Section, unless otherwise specifically indicated:

(a) "Act" shall mean the Federal Food, Drug and Cosmetic Act, as amended, and the regulations promulgated thereunder from time to time.

(b) "Adverse Drug Experience" shall mean shall mean any adverse drug experience, as defined by 21 C.F.R. 314.80, associated with the use of the Product.

(c) "Affiliates" shall mean, in relation to a Party, any person, corporation, firm, partnership or other entity, whether *de jure* or *de facto*, which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with such Party. An entity shall be deemed to control another entity if it: (i) owns, directly or indirectly, at least fifty percent (50%) of the outstanding voting securities or capital stock (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of such other entity, or has other comparable ownership interest with respect to any entity other than a corporation; or (ii) has the power, whether pursuant to contract, ownership of securities or otherwise, to direct the management and policies of the entity.

(d) **“Applicable Laws”** shall mean all applicable federal, state and local laws, ordinances, rules, regulations or guidance applicable to this Agreement or the activities contemplated under this Agreement, including without limitation, the SafeRx Act, the PDMA, the Medicare/Medicaid Anti-kickback Statute set forth at 42 U.S.C. §1320a-7b(b) and equivalent state laws and regulations (the **“Anti-kickback Statute”**), the Office of the Inspector General Compliance Guidance for Pharmaceutical Manufacturers (68 Fed. Reg. 23,731) (**“OIG Guidance”**), the Revised PhRMA Code on Interactions with Healthcare Professionals (effective January 1, 2009)(**“PhRMA Code”**), as same may be amended from time to time, whether such laws and regulations are now or hereafter in effect.

(e) **“Company Sales Force”** shall mean the Company Representatives designated and used by Company from time to time to conduct the Program and who shall be used exclusively for the Program, which, as of Effective Date, totals no less than four (4) Company Representatives (less current vacancies)

(f) **“Company Representatives”** shall mean any of Company’s employees, agents, consultants and representatives, including without limitation the Company Sales Force, used by Company in connection with the conduct of the Program.

(g) **“FDA”** shall mean the United States Food and Drug Administration, or any successor entity thereto.

(h) **“Governmental Authority”** shall mean any federal, state, local or foreign governmental authority, agency or other body.

(i) **“Kadian®”** shall mean morphine sulfate extended-release capsules indicated for once or twice daily administration for the relief of moderate to severe pain.

(j) **“PDMA”** shall mean the Prescription Drug Marketing Act of 1987, as amended, and the regulations promulgated thereunder from time to time.

(k) **“Prescribers”** shall mean, as mutually identified by Actavis and Company, (i) medical doctors and doctors of osteopathy that are primary care physicians (i.e., internal medicine practitioners, family practitioners and general practitioners), pain specialists, podiatrists, orthopedic specialists, physical medicine and rehabilitation specialists, neurologists and anesthesiologists, and (ii) other health care professionals, or para-professionals as indicated by Actavis from time to time that are legally authorized to write prescriptions for the Product located in the Territory pursuant to Applicable Laws (**“Targeted Prescribers”**).

(l) **“Product”** shall mean Kadian®.

(m) **“Product Call”** shall mean a telephone contact by a Company Representative with a Prescriber in the Territory, during which time the promotional message involving the Product is presented with the level of detail typically contained in an in-person presentation of the Product.

(n) **“Product Call Commencement Date”** shall mean the date upon which the Company Representatives commence conducting Product Calls in the Territory or such other date as may be established by mutual written agreement of the Parties.

(o) **“Product Labeling”** shall mean all labels and other written, printed or graphic matter upon (i) any container or wrapper utilized with the Products or (ii) any written material accompanying the Products, including, without limitation, Product package inserts, each of which have been provided by Actavis to Company.

(p) **“Product Promotional Materials”** shall mean all written, printed or graphic material, other than Product Labeling, provided by Actavis to Company and intended for use by Company Representatives in connection with Product Calls, including visual aids, file cards, premium items, clinical studies, reprints, business cards, identification tags and any other promotional support items that Actavis deems necessary or desirable to conduct the Program.

(q) **“SafeRx Act”** shall mean that SafeRx Amendment Act of 2008, passed by the District of Columbia Council and effective as of March 26, 2008 which requires pharmaceutical sales representatives to be licensed in Washington D.C. and be subject to regulations as promulgated by the District of Columbia Department of Health and the Board of Pharmacy.

(r) **“Serious Adverse Drug Experience”** means any Adverse Drug Experience occurring at any dose that results in any of the following outcomes: death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect.

(s) **“Territory”** shall mean the United States and its territories, possessions and commonwealths, as same may be amended from time to time upon the mutual agreement of the Parties.

(t) **“Wolters Kluwer Data”** shall mean data from Wolters Kluwer Health which measures total number of prescriptions written for the Product by each Prescriber in the Territory during a specified time period as set forth in this Agreement, or, in the event that at any time during the Term of this Agreement such data shall not be available from Wolters Kluwer Health, comparable data from a source mutually agreed to in writing by Company and Actavis.

**1.2 Interpretation.** Unless the context clearly indicates otherwise, the following rules shall govern the interpretation of this Agreement:

(a) The definitions of all terms defined in this Agreement shall apply equally to the singular, plural, and possessive forms of such terms;

(b) All references in this Agreement to “days” shall mean calendar days, unless otherwise specifically indicated; and

(c) All references to “Articles” and “Sections” shall mean the corresponding Articles and Sections of this Agreement.

## **ARTICLE 2**

### **APPOINTMENT OF COMPANY; RESPONSIBILITIES**

**2.1 Appointment of Company.** Actavis hereby appoints Company as a non-exclusive provider of Product Calls, and Company hereby accepts such appointment, to carry out the Program under the terms and conditions set forth in this Agreement. Company shall use the Company Sales Force to conduct Product Calls as contemplated by this Agreement. In connection therewith, Company shall during the term of this Agreement maintain an experienced, well-trained sales force of Company



Representatives to conduct Product Calls in accordance with Actavis' marketing plans for the Product, and consistent with Company's obligations under this Agreement.

**2.2 Responsibilities of Company.** Company shall have the following responsibilities, among others set forth in this Agreement (including, but not limited to, the Proposal attached hereto as Exhibit A and incorporated herein (the "Proposal")), in connection with the Program:

(a) Company shall cause each Company Representative who is part of the Company Sales Force to attend and successfully complete the Training Program prior to any such Company Representative conducting Product Calls. Thereafter, the Training Program will be conducted on an annual basis for the Company Sales Force. All training will occur at TMS facilities. The expenses (including travel and accommodations, but excluding training materials) for the Company Sales Force to attend and complete the Training Program, and any and all subsequent training conducted by Company, which the Company Representatives shall be required to attend, shall be paid for by Company and shall take place at the locations and on the dates set forth in Section 6.2(b) or at such other place and time as mutually agreed between the Parties.

(b) Subject to Actavis' obligations to reimburse Company for certain marketing related expenses as set forth herein, Company shall be responsible for all costs and expenses incurred by Company Representatives in performing the Program, including Company Representatives' salaries and bonuses and related taxes, customary review and planning sessions, telephone service, Product Call calling costs, cost to maintain a project director and any other costs associated with starting up and maintaining the Company Sales Force, as well as the costs of tracking the Product Calls made under this Agreement.

(c) The Company Sales Force shall, during each of the call cycles, conduct Product Calls in the Territory consistent with a level reasonably expected to achieve twenty percent (20%) completed call rate of Targeted Prescribers. In the event that the foregoing requirements are not met in any applicable call cycle, the Parties agree to meet in a prompt manner to review and discuss the Program in good faith to determine: (i) whether the foregoing requirements need to be modified at such time; and/or (ii) whether Actavis elects to continue the Program.

(d) The Company Sales Force shall also mail Product Promotional Materials to Prescribers in the Territory as a follow-up to Product Calls.

(e) Company shall promptly remove or reassign from the Program any Company Representative who fails to comply with the terms of this Agreement, any Applicable Laws, including, without limitation the Anti-Kickback Statute.

(f) Company shall use only Product Promotional Materials and the detailed script provided by or on behalf of Actavis. Company acknowledges and agrees that, as between the Parties, Actavis shall own all right, title and interest in and to the Product Promotional Materials and the detailed script, including, but not limited to, all copyrights therein, and, for the avoidance of doubt, nothing in this Agreement shall be construed to qualify the Product Promotional Materials as a "joint work" (or other term of similar import) under Title 17 of the United States Code or other applicable law.

(g) Company shall limit its statements, discussions, Product Calls and claims regarding the Product, including those as to safety and efficacy, to those that are consistent with the Product Labeling, Product Promotional Materials and script provided to Company, and shall, following the Training Program, ensure the Company Sales Force does not make any representation, statement, warranty or guaranty with respect to the Product that is deceptive or misleading, or that disparages the

Product or the good name, goodwill or reputation of Actavis. Company shall not add, delete, modify or distort claims of safety or efficacy while conducting Product Calls, nor make any changes in the Product Promotional Materials including the script. The Company Sales Force shall conduct Product Calls in adherence to the terms of this Agreement and consistent with the script provided by Actavis. Additionally, the Company Sales Force shall conduct Product Calls in compliance with the American Medical Association Guidelines on Gifts to Physicians from Industry and other Applicable Laws. Company shall limit its activities under this Agreement to conducting Product Calls, mailing Product Promotional Materials and soliciting sales for the Product in accordance with the terms and conditions set forth in this Agreement.

(h) Company shall be responsible for any errors, acts or omissions of any of any Company Representatives performing the Program.

(i) During the Term of this Agreement, Company shall not directly or indirectly within the Territory, market, sell, offer for sale, detail or promote, or perform product sale calls, either face to face or by telephone, e-mail, mail of the like, including but not limited to all products being in direct or indirect competition of the Product, if that would affect the providing of the services by the Company in accordance with the terms of this Agreement.

### **2.3 Responsibilities of Actavis**

Except for the limited, non-exclusive rights licensed or granted to Company pursuant to the terms of this Agreement, Actavis shall retain all rights and control in, and with respect to, the Product, including, but not limited to, the manufacturing, import, marketing, use, offering, sale and development of the Product. In furtherance and not in limitation of the foregoing, Actavis shall retain the following responsibilities, among others set forth in this Agreement, in connection with the Program:

(a) Actavis shall retain control over and make all decisions with respect to the marketing, planning, and strategy of the Product, and Actavis shall have the sole right and responsibility for establishing and modifying the terms and conditions of the sale of the Product, including without limitation, terms and conditions such as the price at which the Product shall be sold, whether the Product shall be subject to any discounts, the distribution of the Product, and whether credit is to be granted or refused in connection with the sale of any Product. Additionally, Actavis shall be responsible for all negotiations and contracting with Managed Care Organizations, Hospital Group Purchasing Organizations, State Medicaid Programs, State Patient Assistance Programs, Medicare Part D Programs, FSS, PHS or any other public or private sector reimbursement or purchasing organization, such negotiations and contracting, if any, to be conducted at Actavis' sole and absolute discretion; provided that Actavis shall give Company reasonable advance notice of any material change or amendment to any of the foregoing contracts which affect Company's obligations under this Agreement so that Company may adjust its promotional activities under this Agreement accordingly.

(b) Actavis shall be solely responsible for determining the content, quantity and the method of distribution of the Product Promotional Materials.

(c) Actavis shall, at its expense, prepare marketing plans for conducting Product Calls. Actavis shall retain full control of all activities with respect to the Product, including the preparation and implementation of marketing plans for conducting Product Calls. Such marketing plans may include matters such as the following: (1) the level of marketing support for the Product; (2) establishing a Product Call plan, including a detailed script; (3) the list of Target Prescribers; (4) the Product Promotional Materials (including quantities); and (5) the guidelines for the use of Actavis-

supplied Product Promotional Materials. No Product samples shall be utilized or distributed in connection with the Company Sales Force conducting Product Calls.

(d) Actavis shall compensate Company for its services in accordance with the terms of this Agreement.

(e) Actavis or an entity on behalf of Actavis, shall provide Company, at Actavis' expense, with all of the training materials for the Training Program as described herein.

(f) Actavis shall be responsible for any expenses associated with its own sales force, including any meeting attendance or coordinated activities between Company and the Company Sales Force.

(g) At monthly intervals beginning with the Product Call Commencement Date, Actavis shall, at its cost and expense, submit to Company or cause to be submitted to Company payer data as well as Wolters Kluwer Data for the immediately preceding one (1) month period, as such data becomes available.

(h) If any state taxing authorities determine that sales or excise taxes are applicable to Company's services performed under this Agreement, Company shall properly accrue and Actavis shall pay such sales or excise taxes to the appropriate states. In addition, Actavis shall be responsible for the payment of any applicable use taxes related to the supply to Company of Product Promotional Materials under this Agreement.

(i) Actavis shall maintain all regulatory approvals required in order to market the Products and shall comply in all material respects with all Applicable Laws in connection with the conduct of Actavis' business pursuant to this Agreement, including, without limitation, all applicable requirements under the Act.

(j) Actavis shall promptly provide Company with copies of all written notices and other material written communications from the FDA and/or any other regulatory agencies that may affect Company's ability or right to undertake the Product Calls contemplated by this Agreement.

**2.4 Scope Changes in the Program.** Except as otherwise provided in this Agreement, in the event that Actavis requests a substantial change in the scope of the Program or in the services to be performed by Company or Company Representatives under this Agreement, Company and Actavis shall, in good faith, negotiate appropriate written contract revisions required by both Parties to implement such changes or perform such additional services.

**2.5 Orders for the Product.** Actavis shall, in a manner consistent with its contractual commitments, be exclusively responsible for accepting and filling purchase orders for the Product, and for processing billing and returns with respect to the Product. If Company receives an order for the Product, it shall promptly transmit such order to Actavis for acceptance or rejection, which acceptance or rejection shall be at Actavis' sole discretion. At no time shall Company have any power or authority to accept or reject orders on behalf of Actavis, nor shall Company represent explicitly or implicitly to any third party that it has such authority.

**ARTICLE 3**  
**COMPENSATION**

**3.1 Fees.** In consideration for Company conducting the Program in the manner set forth in this Agreement, and performing the general services required under this Agreement, all as set forth in this Agreement, and in accordance with the terms and conditions set forth in this Agreement, Actavis shall pay to Company Dedicated Fees for Physician Inside Sales Program, as more fully described in Exhibit A, attached hereto and incorporated herein.

**3.2 Payment Schedule; Quarterly and Monthly Invoices.** The Set-up Fee shall be invoiced upon the execution of this Agreement. The Program Fees shall be invoiced on a monthly basis to Actavis. The expenses for which Company seeks reimbursement from Actavis shall be invoiced on a monthly basis to Actavis. Each invoice for the Program Fees shall contain: (i) the number of agents performing services during each applicable month covered by such invoice multiplied by the base fee per agent, and (ii) the number Product Promotional Materials mailed during each applicable month covered by such invoice multiplied by the base fee per mailing. Each invoice seeking expense reimbursement from Actavis shall (i) describe in reasonable detail all expenses for which Company seeks reimbursement from Actavis in connection with conducting the Program, and (ii) be accompanied by reasonable documentation supporting such expenses. All invoices submitted to Actavis by Company under this Agreement shall be accompanied by a good faith certification that the amounts claimed thereunder are accurate.

**3.3 Records; Monthly Reports.** Company shall keep complete and accurate records in sufficient detail of the number and type of Product Calls conducted under this Agreement, and the number and type of Product Promotional Materials mailed during the term of this Agreement and for a one-year period following the expiration or earlier termination of this Agreement, and complete and accurate data collection and reporting systems for Product Calls and Product Promotional Material mailings. Company shall determine actual compensation due to Company under this Agreement on a Product Call and Product Promotional Material mailing basis through the use of its current sales force automation program used to track Product Calls and Product Promotional Material mailings performed under this Agreement. No later than ten (10) calendar days after the end of each month during the Program, Company shall submit to Actavis a written report and an electronic file thereof (and substantiation therefor) setting forth: (i) the number and type of Product Calls made by Company Representatives and the identity (name, address and phone number) of each Prescriber to whom such Product Calls were made within the Territory during the preceding month; and (ii) the number and type of mailings of Product Promotional Materials made by Company Representatives and the identity (name, address and phone number) of each Prescriber to whom such mailings were made within the Territory during the preceding month.

**3.4 Audits.** Upon the reasonable request of Actavis and no more frequently than once every three (3) month period, Company shall permit Actavis or its authorized representatives at all reasonable times to (a) have access to the Product Call and Product Promotional Material mailing records maintained by Company and each Company Representative, and (b) audit any other records maintained by Company in connection with the Program. Any and all audits undertaken by Actavis pursuant to this Section shall be performed at the sole and exclusive expense of Actavis.

**3.5 Payments.** All payments to be made by Actavis to Company pursuant to this Section shall be made by check or wire transfer, as mutually agreed by the Parties, within thirty (30) days of Actavis' receipt of the invoice from Company. If the payments are to be made by wire transfer, such payments shall be made to the designated account of Company in accordance with wiring instructions to be provided.

**3.6 Withholding Payments.** Notwithstanding anything to the contrary in this Agreement, Actavis may withhold amounts due to Company that are reasonably necessary to compensate Actavis for Company not fulfilling its obligation to deliver the Product Call as outlined in this Agreement. If any portion of an invoice is disputed, then Actavis shall pay the undisputed amounts as set forth herein and the Parties shall use good faith efforts to reconcile the disputed amount as soon as practicable.

**3.7 State and Federal Taxes.** With respect to any payments paid by Actavis to Company under this Agreement, Company shall be responsible for all payments to Company Representatives, including (i) withholding FICA (Social Security and Medicare taxes) from payments made to Company Representatives; (ii) make state or federal unemployment compensation or disability contributions on behalf of Company Representatives; or (iii) withhold state or federal income tax from payments made to Company Representatives. Company is obligated by law to report as income all compensation received by Company pursuant to this Agreement. Company is responsible for all taxes, if any, imposed on it in connection with its performance of services under this Agreement, including any federal, state and local income, sales, use, excise and other taxes or assessments thereon. Company's duty to account to the relevant tax and other authorities shall be Company's sole responsibility.

#### **ARTICLE 4** **REPRESENTATIONS, WARRANTIES AND COVENANTS**

**4.1 Representations, Warranties and Covenants of Company.** Company represents, warrants and covenants to Actavis as follows:

(a) Company is duly organized, validly existing, and in good standing under the laws of the state in which it is incorporated.

(b) Company has the authority to enter into this Agreement and that it is not bound by any other agreement, obligation or restriction, and shall not assume any other obligation or restriction or enter into any other agreement, which would interfere with its obligations under this Agreement.

(c) The execution and the delivery of this Agreement and the consummation of the transactions contemplated hereby will not: (i) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute an event of default under, any instrument, agreement, mortgage, judgment, order, award, or decree to which Company is a party or by which Company is bound; or (ii) require the affirmative approval, consent, authorization or other order or action of any court, Governmental Authority or of any creditor of Company.

(d) Company has the requisite personnel, facilities, equipment, expertise, experience and skill to perform its obligations under this Agreement and to render the services contemplated by this Agreement; and it covenants that it shall perform the services in a professional, ethical and competent manner.

(e) Company and each Company Representative is, and throughout the Term shall remain, in compliance with all requirements of Applicable Laws including without limitation, the Act, the PDMA, the SafeRx Act, GDEA and the Anti-kickback Statute.

(f) For purposes of Actavis providing the FDA with certification pursuant to Section 306(k) of the Act, Company warrants that no person performing services under the Program pursuant to this Agreement has been suspended, debarred or convicted of crimes pursuant to Sections 306(a) and (b) of the Act; and Company agrees to notify Actavis immediately upon the occurrence of any such debarment, conviction, or inquiry relating to a potential debarment, of any person performing the Program



pursuant to this Agreement and agrees that said person shall be immediately prohibited from performing the Program under this Agreement.

(g) Neither Company nor any Company Representatives: (i) has been, nor currently is, excluded pursuant to 42 U.S.C. §1320a-7 or similar state exclusion authority, suspended, debarred, or otherwise ineligible to participate in any federal health care program as that term is defined in 42 U.S.C. §1320a-7b(f) or comparable state programs; (ii) has been, nor currently is, debarred or disqualified pursuant to the Generic Drug Enforcement Act of 1992, as amended, in 31 U.S.C. §335 ("GDEA"); (iii) has not been convicted of a criminal offense related to the provision of health care items or services or any other offense that may lead to exclusion under 42 U.S.C. §1320a-7 or similar state exclusion authority; or (iv) to Company's knowledge, is not under investigation or otherwise aware of any circumstances (including the receipt of any notice, warning or reprimand) which may result in being excluded from participation in any federal or state health care program or result in suspension, debarment or disqualification under the GDEA. If any change in circumstance occurs to make the foregoing statement inaccurate, Company must notify Actavis in writing immediately and Actavis shall have the right to immediately terminate this Agreement.

(h) Company covenants that, during the term of this Agreement and in connection with the Program, neither Company nor any Company Representative will knowingly or willfully engage in any activity, or request or suggest to Actavis that Actavis engage in any activity, which would violate any provision of 42 U.S.C. §1320a-7b(b), as interpreted by 42 C.F.R. 1000, et seq., as amended.

(i) Nothing in this Agreement shall be deemed to authorize Company or its Affiliates to act for, represent or bind Actavis or any of its Affiliates other than as specifically provided by this Agreement.

**4.2 Representations, Warranties and Covenants of Actavis.** Actavis represents, warrants and covenants to Company as follows:

(a) Actavis is duly organized, validly existing, and in good standing under the laws of the state in which it is incorporated.

(b) Actavis has the authority to enter into this Agreement and that it is not bound by any other agreement, obligation or restriction, and shall not assume any other obligation or restriction or enter into any other agreement, which would interfere with its obligations under this Agreement.

(c) Actavis covenants that it shall abide by all Applicable Laws in connection with its performance of its obligations under this Agreement.

(d) Actavis has all necessary authority and right, title and interest in and to any copyrights, trademarks, trade secrets, patents, inventions, know-how and developments related to the Product which right, title and interest is necessary to the making, use, sale, offering for sale or promotion of the Product in the Territory.

(e) Actavis represents and warrants to Company that, Actavis possesses good title to or has the valid right to use the Trademarks, free and clear of any claims or encumbrances and that none of said trademarks have been transferred or assigned.

**4.3 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING A WARRANTY AS TO THE QUALITY OR FITNESS

FOR ANY PARTICULAR PURPOSE, ARE HEREBY EXCLUDED AND DISCLAIMED BY EACH PARTY AND THEIR RESPECTIVE AFFILIATES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF PERFORMANCE UNDER THESE SUPPLIER TERMS (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES, PROFITS OR DATA, WHETHER IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OTHER THAN IN THE CASE OF PERSONAL INJURY, WILLFUL INTENT, GROSS NEGLIGENCE OR CLAIMS BY THIRD PARTIES FOR SUCH INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.

**ARTICLE 5**  
**STATUS OF COMPANY AND COMPANY REPRESENTATIVES**

**5.1 Company as Independent Contractor.** Company is being retained and shall perform under this Agreement strictly as an “independent contractor.” Company Representatives performing services under this Agreement shall not be, and shall not be considered to be, employees of Actavis for any purpose. Neither Party shall have any responsibility for the hiring, termination, compensation, benefits or other conditions of employment of the other Party’s employees.

**5.2 No Actavis Benefits.** Company understands and agrees that neither Company, nor any Company Representatives, are eligible to participate in any benefits programs offered by Actavis to its employees, or in any pension plans, profit sharing plans, insurance plans, health, vacation pay, sick pay, any other fringe benefits or any other employee benefits plans offered from time to time by Actavis to its employees. Company acknowledges and agrees that Actavis does not, and shall not, maintain or procure any workers’ compensation or unemployment compensation insurance for or on behalf of Company Representatives, and shall make no state temporary disability or family leave insurance payments on behalf of Company Representatives, and Company agrees that neither Company, nor any Company Representatives, will be entitled to these benefits in connection with performance of the Program under this Agreement. Company acknowledges and agrees that it shall be solely responsible for paying all salaries, wages, benefits and other compensation which its employees, including Company Representatives may be entitled to receive in connection with the performance of the services under this Agreement.

**5.3 No Joint Venture.** Nothing contained in this Agreement shall be construed as making the Parties joint venturers or, as granting to either Party the authority to bind or contract any obligations in the name of or on the account of the other Party or to make any guarantees or warranties on behalf of the other Party.

**ARTICLE 6**  
**TRAINING AND SALES MEETINGS**

**6.1 Training Expenses.** Company shall plan, manage and pay for all travel, living and other expenses of the Company Sales Force and any other Company Representatives associated with the training of the Company Sales Force. In accordance with the then current Actavis Travel and Expense Policy, Actavis shall plan, manage and pay for all travel, living and other expenses of any Actavis employees associated with the training of the Company Sales Force. Company shall plan, manage and pay for conference room and other meeting space expenses associated with the training of the Company Sales Force.



## 6.2 Training Programs.

(a) Company will work together with Actavis to organize a training program for the Company Sales Force to conduct Product Calls (the "**Training Program**"). Actavis shall provide, at its own expense, all training materials as well as reasonable cooperation, time and guidance of Actavis' employees and/or consultants as necessary or appropriate to conduct the Training Program, in conjunction with Company, to fully train the Company Sales Force to properly conduct Product Calls.

(b) The Training Programs shall be held on the following dates at the following locations:

(i) TMS Boca Raton Facility at mutually agreed upon dates.

(c) Any other Training Programs shall take place at such time and at such locations as mutually acceptable to both Parties.

## ARTICLE 7

### TRADEMARKS; INTELLECTUAL PROPERTY RIGHTS

7.1 **Trademark License Grant.** Actavis hereby grants to Company, and Company hereby accepts from Actavis, a non-exclusive, non-transferable, and royalty-free right and license, during the Term of this Agreement, to use the Trademarks solely in connection with conducting the Program pursuant to this Agreement. Company shall not remove or alter any trade names, Trademarks, copyright notices, serial numbers, labels, tags or other identifying marks, symbols or legends affixed to any Product Promotional Materials, training materials, documentation or containers or packages.

7.2 **Termination of Use.** Immediately upon the expiration or termination of this Agreement, (a) the non-exclusive, non-transferable, and royalty-free right and license granted pursuant to this Agreement shall automatically terminate, (b) Company shall cease and desist from use of any Trademark in any manner except as may be required in connection with the winding down of the Program under this Agreement and (c) Company shall, at the option of Actavis, return or destroy all advertising or other printed materials in the possession of Company bearing the Trademarks.

7.3 **Reservation of Rights.** Company acknowledges Actavis' exclusive proprietary rights in and to any Trademark, subject to the license and right granted herein. Subject to the foregoing license, this Agreement does not constitute a grant to Company of any property right or interest in the Product, or the trademarks, patents or patent applications associated or used in connection therewith or any other trademarks which Actavis owns or controls or any patents, patent rights or any other intellectual property. Company agrees that all use of the Trademarks by Company shall inure to the benefit of and be on behalf of Actavis. Company shall not challenge the title or ownership of Actavis to the Trademarks or attack or contest the validity of the Trademarks. All goodwill accruing to the Trademarks as a result of the use of the Trademarks in the performance of this Agreement shall belong solely to Actavis.

## ARTICLE 8

### COMMUNICATIONS; MONITORING THE PROGRAM

8.1 **Communications with Third Parties.** Company shall communicate to Actavis all written, and to the extent the same are reasonably apparent to the Company Sales Force, material oral comments, statements, requests and inquiries of the Prescribers, the medical profession or any other third parties relating to the Product or the marketing thereof that are received by Company which Company Representatives are unable to answer in connection with the terms of the Agreement. All responses to the

Prescribers, the medical profession or such other third parties shall be handled solely by Actavis. Company shall provide all necessary assistance to Actavis to the extent deemed necessary by Actavis to fully respond to such communications.

**8.2 Governmental Authorities.** All responses to Governmental Authorities concerning the Product or the marketing thereof, shall be the sole responsibility of Actavis, except to the extent any notice with respect to PDMA compliance is directed to Company. Company shall assist Actavis with respect to communications from Governmental Authorities to the extent deemed reasonably necessary by Actavis to fully respond to such communications.

**8.3 Customer Communications.** Company shall assist Actavis with respect to sales promotion and customer communications (as requested by Actavis) within the Territory and shall keep Actavis advised of market, economic, regulatory and other developments which may affect the sale of the Product in the Territory.

**8.4 Compliance with Applicable Laws.**

(a) Each Party shall use commercially reasonable efforts to maintain in full force and effect all necessary licenses, permits and other authorizations required by Applicable Laws to carry on its duties and obligations under this Agreement. Each Party shall comply with all Applicable Laws, provided that Company shall be solely responsible for compliance with those Applicable Laws pertaining to the activities conducted by it under this Agreement (including but not limited to those Applicable Laws that apply to documentation and records retention pertaining to the Program provided under this Agreement). Each Party shall cooperate with the other to provide such letters, documentation and other information on a timely basis as the other Party may reasonably require to fulfill its reporting and other obligations under Applicable Laws to applicable Governmental Authorities. Except for such amounts as are expressly required to be paid by a Party to the other under this Agreement, each Party shall be solely responsible for any costs incurred by it to comply with its obligations under Applicable Laws. Each Party shall conduct its activities under this Agreement in an ethical and professional manner.

(b) Company hereby agrees to use commercially reasonable efforts to notify Actavis of any Serious Adverse Drug Experience or Adverse Drug Experience within twenty-four (24) hours of the time such Serious Adverse Drug Experience or Adverse Drug Experience, as the case may be, becomes known to Company. As provided herein and except as required by any Applicable Laws, Actavis shall have the sole discretion to determine whether any Adverse Drug Experience or Serious Adverse Drug Experience relating to the Product be reported to the FDA or any other Governmental Authority.

**8.5 Reasonable Cooperation.** Actavis and Company each hereby agrees to use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper to make effective the transactions contemplated by this Agreement, including such actions as may be reasonably necessary to obtain approvals and consents of any Governmental Authorities and other persons as may be required.

**ARTICLE 9**  
**RETURNS; RECALLS**

**9.1 Returned or Recalled Products.**

(a) **Returns.** Any of the Product returned to Company shall, at Actavis' expense, be shipped to the facility designated by Actavis, with any shipping or other documented direct cost to be paid by Actavis. Company shall advise the customer who made the return that the Product has been returned to Actavis, but shall take no other actions with respect to such return without the prior written consent of Actavis.

(b) **Recalls, Market Withdrawals and Stock Recoveries.** Actavis shall be solely responsible for obtaining and receiving any Product that has been the subject of a recall, market withdrawal or stock recovery, and any and all costs and expenses relating thereto.

**ARTICLE 10**  
**CONFIDENTIALITY**

The Parties have entered into a separate mutual confidential disclosure agreement ("**Confidential Disclosure Agreement**") dated April 3, 2009, a copy of which is attached to this Agreement as **Exhibit B**, to cover the exchange of confidential information and materials relating to the terms and conditions contained in this Agreement.

**ARTICLE 11**  
**NON-SOLICITATION**

During the Term of this Agreement and for a period of one (1) year thereafter, Company shall not employ, contract with, or solicit, directly or indirectly, any employee of Actavis, wherever located without the prior written consent of Actavis.

**ARTICLE 12**  
**TERM; TERMINATION**

**12.1 Term of the Agreement.** The initial term of this Agreement shall commence as of the Effective Date, and shall terminate on December 31, 2009 (or for a longer period of time if mutually agreed upon by the Parties in writing), unless earlier terminated by either Party pursuant to the provisions of this Agreement (as may be extended as set forth in this Section, the "**Term**"). Following the initial Term, this agreement will automatically renew for an additional one (1) month and continue to do so unless either party gives the other notice of cancellation pursuant to section 12.3.

**12.2 Termination for Breach.** Either Party shall have the right to terminate this Agreement upon the material breach of any of the terms and conditions of this Agreement by the other Party if such breach is not cured within thirty (30) days after the breaching Party's receipt of written notice from the other Party specifying the nature of such breach.

**12.3 Convenience.** Either Party may, upon written notice to the other Party of not less than fourteen (14) days, terminate this Agreement for their convenience at any time and for any reason.

**12.4 Termination by Actavis.** Actavis shall have the right to immediately terminate this Agreement upon delivery of written notice by Actavis to Company, as follows:

(a) For patient safety reasons or in the event of a product recall or other action on the part of the FDA which results in the Product being removed from the market, if such a recall or other FDA action has a material adverse effect on the commercial viability of the Product; or

(b) As a consequence of the occurrence of the violation of the Medicare and Medicaid Anti-Kickback Statute (42 U.S.C §1320(a) – 7b(b)) by Company or any Company Representatives who render services under this Agreement.

**12.5 Bankruptcy; Insolvency.** Either Party may terminate this Agreement upon the occurrence of either of the following:

(a) The entry of a decree or order for relief by a court of competent jurisdiction in respect of the other Party in an involuntary case under the Federal Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal or state insolvency or other similar law and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; or

(b) The filing by the other Party of a petition for relief under the Federal Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal or state insolvency or similar law.

**12.6 Consequences of Termination.**

(a) In the event that this Agreement is terminated by either Party pursuant to this Section, at Actavis' request, the Parties shall discuss in good faith the expeditious winding-down of the Program.

(b) The termination of this Agreement shall not affect Actavis' obligation to pay any amount of the Set-up Fee or the Program Fees properly due and payable under the provisions of this Agreement through the Effective Date of such termination (with payment of amounts due attributable to periods prior to the effective date of such termination being made on the earlier of the applicable dates established pursuant to Article 3 or on the effective date of such termination); provided, however, that in the event that this Agreement is terminated by Company pursuant to Section 12.3 within sixty (60) days of the Effective Date, Company shall be required to refund the Set-up Fee to Actavis.

(c) Actavis shall pay or reimburse Company for all outstanding costs and expenses properly due and payable hereunder (with payment of amounts due attributable to periods prior to the effective date of such termination being made on the earlier of the applicable dates established pursuant hereto or on the effective date of such termination).

(d) The termination of this Agreement shall not affect any rights or obligations of the Parties under this Agreement which by their terms are intended to survive such termination.

(e) Upon expiration or termination of this Agreement for any reason: (i) Company shall discontinue performing the Program, return all Actavis confidential information to Actavis as provided in the Confidential Disclosure Agreement, and return to Actavis all Product Promotional Materials, and Actavis shall return all Company confidential information to Company as provided in the Confidential Disclosure Agreement, in each case, within thirty (30) days following the termination, and

(ii) for the avoidance of doubt, unless otherwise agreed between the Parties as set forth herein, the license granted by Actavis to Company pursuant hereto, including, but not limited to, the right to use all the Trademarks, shall automatically immediately terminate.

**12.7 Accrued Rights, Surviving Obligations.**

(a) Termination or expiration of this Agreement for any reason shall (i) be without prejudice to any rights (including any remedies for breach of this Agreement) that shall have accrued to the benefit of either Party prior to such termination or expiration; and (ii) not relieve either Party from obligations that are expressly indicated to survive termination or expiration of this Agreement.

(b) All of the Parties' rights and obligations hereunder shall survive termination or expiration of this Agreement pursuant to applicable statutes of limitations.

**ARTICLE 13  
INDEMNIFICATION**

**13.1 Indemnification by Company.** Company shall indemnify, defend and hold Actavis and its Affiliates and their respective directors, officers, employees, agents, successors and assigns harmless from and against any and all losses, claims, suits, actions, damages, assessments, interest charges, penalties, costs and expenses (including reasonable attorneys' fees), arising out of third party claims resulting from:

(a) the breach by Company of any of its representations, warranties or covenants in this Agreement;

(b) a negligent or willful act or omission on the part of Company or any of its directors, officers or Company Representatives.

(c) any claims brought by or on behalf of any member of the Company Sales Force or any other Company Representative in connection with his or her employment or retention by Company or the performance of Company's obligations under this Agreement; or

(d) Company's, or any Company Representatives', violation of any Applicable Laws;

except, in each case, to the extent such claims are covered by Actavis' indemnification of Company pursuant hereto. The indemnification obligations of Company shall survive the expiration or termination of this Agreement pursuant to applicable statutes of limitations.

**13.2 Indemnification by Actavis.** Actavis shall indemnify, defend and hold Company and its Affiliates and their respective directors, officers, employees, agents, successors and assigns harmless from and against any and all losses, claims, suits, actions, damages, assessments, interest charges, penalties, costs and expenses (including reasonable attorneys' fees), arising out of:

(a) claims or suits by third parties arising out of any injuries to persons and/or damage to property resulting from: (i) the Product's non-conformance with its specifications; (ii) defects in the manufacture or packaging of Product; (iii) any recall of the Product, or any seizure of the Product by any Governmental Authority, in either case, arising out of, relating to, or occurring as a result of, any failure of Actavis, or any party with which Actavis may contract, to manufacture or package the Product in accordance with any applicable government regulation or cGMP's; or (iv) the inaccuracy of or defects

in any data, information, Product Promotional Materials or Product Labeling about the Product provided to Company by Actavis, including but not limited to submissions to the FDA about the Product;

(b) a negligent or willful act or omission on the part of Actavis or any of its employees, agents, consultants or representatives;

(c) Actavis' violation of any Applicable Laws; or

(d) the breach by Actavis of any of its representations, warranties or obligations under this Agreement;

except to the extent such claims are covered by Company's indemnification of Actavis pursuant hereto. The indemnification obligations of Actavis above shall survive the expiration or termination of this Agreement pursuant to applicable statutes of limitations.

### 13.3 Claim Procedures.

(a) Notice. A Party seeking indemnification under this Agreement (an "Indemnified Party") shall give the indemnifying Party (the "Indemnifying Party") prompt written notice of any action, claim, demand, discovery of fact, proceeding or suit for which indemnification is sought ("Claim"); provided, however, that the failure of an Indemnified Party to give such prompt notice shall not reduce the Indemnifying Party's obligations under this Agreement except to the extent that the Indemnifying Party's defense of any such matter is actually prejudiced thereby.

(b) Defense and Settlement. For any Claim based on any claim, action or proceeding made or brought by any third party, the Indemnifying Party (or its insurer) has the right to control the defense, settlement or disposition of any Claim using counsel of its choice and on terms that the Indemnifying Party deems are appropriate, except that the Indemnified Party may, at its expense, participate in that defense, settlement or disposition using counsel of its own choice. With respect to any Claim relating solely to the payment of money damages, and which could not result in the Indemnified Party's becoming subject to injunctive or other equitable relief or otherwise materially adversely affect the business of the Indemnified Party in any manner, and as to which the Indemnifying Party shall have acknowledged in writing the obligation to indemnify the Indemnified Party under this Agreement, the Indemnifying Party shall have the sole right to defend, settle or otherwise dispose of such Claim, on such terms as the Indemnifying Party, in its sole discretion, shall deem appropriate. Otherwise, the Indemnifying Party may not settle or compromise any such Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

(c) Litigation Support. In the event and for so long as an Indemnifying Party actively is contesting or defending against any Claim in connection with this Agreement, the Indemnified Party shall cooperate with the Indemnifying Party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the Indemnifying Party.

(d) Limitation on Liability. In no event shall either Party's liability to the other Party during the Term of this Agreement exceed the aggregate fees actually paid to the Company under this Agreement, provided that the foregoing limitation shall not apply to liability arising out of violation of applicable laws, fraud or willful misconduct on the part of such Party or its employees or agents.



#### 13.4 Insurance

(a) Commercial General Liability. Company shall be covered during the Term by Commercial General Liability Insurance held by Company, including Contractual Liability, insuring the indemnity set forth in the Agreement with limits of not less than \$3,000,000 applicable to bodily injury, sickness, or death in any one occurrence; and not less than \$3,000,000 for loss of or damage to property in any one occurrence.

(b) Workers Compensation. To the extent required by applicable law, Company shall maintain at all times during the Term and for two (2) year thereafter Workers' Compensation Insurance (including Occupational Disease) in accordance with the laws in the jurisdiction(s) of the Territory.

(c) Before performance of the Program commences, Company will furnish Actavis with insurance certificates certifying that the insurance coverage specified in this Agreement are in force and that Actavis will be given thirty (30) days' written notice prior to any cancellation or material change. Where applicable, Company shall name Actavis as an additional insured.

#### ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Force Majeure. Failure of either Party to fulfill or perform its obligations under this Agreement shall not subject such Party to any liability if such failure is caused or occasioned by, without limitation, acts of God, acts of the public enemy, fire, explosion, flood, drought, war, riot, sabotage, embargo, strikes or other labor disputes (which strikes or disputes need not be settled), compliance with any order, regulation, or request of government or by any other event or circumstance of like or different character to the foregoing beyond the reasonable control and without the fault or negligence of such Party (a "**Force Majeure Event**"), provided such Party uses commercially reasonable efforts to remove such Force Majeure Event and commence performance under this Agreement as soon as possible following the removal of such Force Majeure Event and gives the other Party prompt notice of the existence of such Force Majeure Event.

14.2 Notices. Unless otherwise explicitly set forth in this Agreement, any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered: (i) when delivered personally; (ii) three (3) days after being sent first class mail, via the United States postal service, with postage prepaid, return receipt requested; or (iii) one (1) business day after being sent via a recognized overnight courier service, postage prepaid, signature required; in each case, to the addresses of each Party set forth below, or to such other address or addresses as shall be designated in writing in the same matter:

If to Company, to:

TMS Health  
4950 Communications Avenue, Suite 300  
Boca Raton, Florida 33431  
Telephone: 561-226-5000



If to Actavis, to:

Actavis Kadian LLC  
60 Columbia Road, Bldg. B  
Morristown, NJ 07960  
Attention: Terry Fullem  
Telephone: 973-889-6634

with a copy to:

Actavis Kadian LLC  
60 Columbia Road, Bldg. B  
Morristown, NJ 07960  
Attention: Legal Department  
Facsimile: 973-993-4306

**14.3 Relationship of the Parties.** In making and performing this Agreement, the Parties are acting, and intend to be treated, as independent entities and nothing contained in this Agreement shall be construed or implied to create an agency, partnership, joint venture, or employer and employee relationship between Actavis and Company. Except as otherwise provided in this Agreement, neither Party may make any representation, warranty or commitment, whether express or implied, on behalf of or incur any charges or expenses for or in the name of the other Party. No Party shall be liable for the act of any other Party unless such act is expressly authorized in writing by both Parties.

**14.4 Entire Agreement; Modification.**

(a) This Agreement and the Exhibits attached to this Agreement contain the entire understanding of the Parties with respect to the subject matter of this Agreement and thereof and supersedes all previous and contemporaneous verbal and written agreements, representations and warranties with respect to such subject matter. This Agreement shall not be strictly construed against either Party.

(b) This Agreement may be waived, amended, supplemented or modified in whole or in part only by a written agreement executed by each of the Parties and specifically stating that it modifies or amends this Agreement.

**14.5 Severability.** If any provision of this Agreement or any other document delivered under this Agreement is prohibited or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or enforceable nor the remaining provisions of this Agreement, nor render unenforceable such provision in any other jurisdiction, unless the effect of rendering such provision ineffective would be to substantially deviate from the expectations and intent of the respective Parties in entering into this Agreement. In the event any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the Parties shall use best efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes of this Agreement.

**14.6 No Waiver; Cumulative Remedies.** No failure or delay on the part of either Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy under this Agreement. No waiver of any

provision of this Agreement shall be effective unless the same shall be in writing and signed by the Party giving such waiver. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law. The waiver by any Party of any breach of any covenant, agreement, representation or warranty contained in this Agreement shall not be a waiver of any other default concerning the same or any other covenant, agreement, representation or warranty contained in this Agreement. A Party's waiver of a default or breach on the part of Company shall not constitute a waiver of any other default; but shall constitute a waiver of only the particular breach or default then involved.

**14.7 Public Announcements.** Any public announcements or similar publicity with respect to this Agreement or the transaction contemplated in this Agreement, including, without limitation, any promotional or similar literature prepared by or on behalf of Company, shall be at such time and in such manner and content as the Parties shall both agree in writing, provided that nothing in this Agreement shall prevent either Party from, upon notice to and an opportunity to review by the other Party, making such public announcements as such Party's legal obligation requires.

**14.8 Successors; Assignments.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and permitted assigns. Company may not assign or subcontract any rights or delegate any of its duties under this Agreement without Actavis' prior written approval. Actavis may, without Company's consent, assign this Agreement to an Affiliate or to a successor to substantially all of the business or assets of the assigning company or the assigning company's business unit responsible for performance of this Agreement.

**14.9 Change of Law.** It is the intention of the Parties to conform strictly to all Applicable Laws, including but not limited to the Act, the PDMA, the Safe Rx Act and the Anti-kickback Statute. Accordingly, in the event that arrangements contemplated by this Agreement violate any Applicable Laws, the Parties agree to negotiate in good faith such changes to the structure and terms of the transactions provided for in this Agreement as may be necessary to make these arrangements, as restructured, lawful under Applicable Laws, without materially disadvantaging either Party, and this Agreement shall be deemed reformed in accordance with the terms negotiated by the Parties.

**14.10 Governing Law.** This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to choice of law rules.

**14.11 Dispute Resolution.** If a dispute or controversy regarding any matter under this Agreement arises between the Parties which they are unable to resolve, each of the Parties shall (subject to any applicable cure period as set forth in this Agreement) be entitled to submit to the other Party written notice of such dispute, which shall set forth in reasonable detail the nature of the dispute. For a period of thirty (30) days after the date of the receiving Party's receipt of such dispute notice, the Parties shall seek to resolve such dispute by good faith negotiation. If at the end of such thirty (30) day period the dispute remains unresolved, the Parties may seek relief for such dispute using any appropriate administrative or judicial mechanism which may be available. The provisions of this Section shall survive the termination of this Agreement and shall not restrict in any way the Parties' rights to seek preliminary injunctive or other equitable relief from any court having jurisdiction.

**14.12 Headings.** All article and section headings are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**14.13 Exhibits.** All exhibits referred to in this Agreement form an integral part of this Agreement and are incorporated into this Agreement by such reference.

**14.14 Counterparts.** This Agreement shall become binding when any one or more counterparts of this Agreement, individually or taken together, shall bear the signatures of each of the Parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the Party whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Parties, by their duly authorized representatives, have executed this Sales Services Agreement as of the date first set forth above.

**ACTAVIS KADIAN LLC**



By: \_\_\_\_\_

Name: Terrence D. Fallon

Title: VP, Commercial Development

**TMS HEALTH**

By: \_\_\_\_\_

Name: Guy Amato

Title: CEO

# **Request for Proposal**

**Presented to**

**Actavis Kadian LLC**

**By**

**Barbara Ginn  
TMS Health**

**4950 Communication Avenue, Suite 300**

**Boca Raton, FL 33431**

**(561) 226-5000**

**[www.tmshealth.com](http://www.tmshealth.com)**

Exhibit A  
PROPOSAL

April 13, 2009

**CLIENT:** Actavis Kadian LLC  
**PROJECT:** Actavis Physician Office Company Sales Force

**BACKGROUND:**

Actavis through its affiliate, Actavis Elizabeth LLC, has the right, title and interest necessary to sell, offer for sale, or promote the Product in the Territory. The Product is an extended release morphine product that is a Schedule II drug. Actavis sees a phased approach to this program offered by TMS Health, LLC ("TMS Health"). Phase I will include TMS Health covering the top Targeted Prescribers identified by Actavis that currently prescribe Kadian. Phase II will allow TMS Health to cover additional Targeted Prescribers identified by Actavis. Phase III will allow Actavis to further identify Targeted Prescribers for TMS Health to cover while allowing TMS Health to continue to cover the Targeted Prescribers not reached during the first two Phases. TMS Health is providing a dedicated Company Sales Force, direct mailing, and fulfillment of clinical information/vouchers. All capitalized terms used herein shall have the same meaning ascribed thereto in the main text of the Agreement, unless otherwise defined in this Proposal.

**PROGRAM OUTLINE:**

A. Program Scope:

TMS will provide detail calls, mailing, and faxes to prescribers assigned by Actavis on an ongoing basis.

B. Target Market:

Office based Anesthesiology, PCP's, Physical Medicine (PM&R) & small no. Neurologists

Phase I – 1,600 Target Prescribers (assume for 3 call cycles) April, May, June  
Phase II – 2,500 Target Prescribers (assume for 3 call cycles) July, August, September  
Phase III – 2,500 Target Prescribers (assume for 2 calls cycles) October, November, December (6 week call cycles)

The Parties agree to meet upon the completion of each Phase to review and discuss the Program in good faith to determine: (i) whether and how cost savings may be achieved; and/or (ii) whether Actavis elects to continue the Program.

C. Program Components:

Physician Offices:

- Monthly calls.
  - Follow up mail with clinical information and voucher as requested.
1. TMS Health and Actavis (and/or a third party consultant on behalf of Actavis) will develop a training program geared to the Detailing and Voucher Program to insure the message and delivery is consistent within the marketing plan. The training program will include:
    - a. Program goals and objectives.
    - b. Kadian® Product Information.
    - c. Features and benefits of Kadian®.
    - d. Competitive information.
    - e. Personalized mailing.
    - f. Call guide review.
    - g. Role-Play.
    - h. Compliance.
    - i. Representative certification.
  2. All Representatives will have prior communications, sales process, industry, and computer training.
  3. TMS Health will provide each Completed Call fulfillment a mailing.
  4. A Completed Call is defined as a contact that communicates the objectives of the program by education on Product information to the Targeted Prescribers. Each Completed Call will include:
    - a. Introduction of Actavis to the appropriate contact.
    - b. Features and Benefits of Kadian®.
    - c. Fair balance.
    - d. Information regarding the Kadian® Co-Pay Voucher/Card.
    - e. Personalized mailing.
    - f. Where requested clinical information
  5. A toll-free number for return calls will be provided. The appropriate greeting will be announced on all incoming return calls.
  6. Database updates will occur during the three call cycles and TMS Health will provide the following information:
    - a. Corrected phone numbers.
    - b. Collect fax numbers (if needed).
    - c. Corrected addresses.
    - d. Client response documents.

7. Reporting will be provided to on a weekly, monthly, and call cycle completion basis as more fully described in the Agreement. Reports will include:

- a. Summary of Dispositions/Results.

D. Reporting:

TMS Health will provide reporting both week-to-date and project-to-date on a weekly basis as more fully described in the Agreement. Reporting will include:

1. Number of completed detail calls including the names of the Targeted Prescribers.
2. Result of call.
3. Vouchers Requested.
4. Client response documents/special notes.

Reporting will be based on an overall summary and can be hard copy or e-mail.

**START DATE:** Upon Execution of this Agreement

**PROGRAM DURATION:** Until December 31, 2009

**DEDICATED FEES FOR PHYSICIAN INSIDE SALES PROGRAM ()**

One-Time Set-up Fee \$7,500

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Staff time for project set-up and client coordination, Computer programming, import and database set-up, fax function set-up, inbound toll free number set-up, report set-up, phone system set-up, script development.

TELE-DETAILING (FEES COMMENCE WITH TRAINING) \$ 252,000

4 agents x \$7000 per month x 9 months = \$252,000

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**PERSONALIZED MAILING** **\$21,625**  
**(LETTER, KADIAN SAMPLES, DETAIL AID)**

17,300 Mailings x \$1.25 each = \$21,625

Postage not included and will be billed as a pass through

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**PROJECT MANAGEMENT** **\$18,000**

\$2,000 per month x 9 months

*Includes daily review of results and sample call productivity, remote monitoring with Actavis, daily reports, and Quality Assurance/Goal Achievement*

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**ESTIMATED TOTAL** **\$299,125**



EXHIBIT B

CONFIDENTIAL DISCLOSURE AGREEMENT