



**IMS Health Incorporated Information Services Agreement
General Terms and Conditions (April 2005)**

>> Terms and Conditions

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1. LICENSE GRANTS AND SERVICES

a. Subject to the terms of this Agreement, IMS hereby grants to CLIENT, and CLIENT hereby accepts, non-exclusive, non-transferable licenses as set forth below.

(i) Data: With respect to data provided by IMS to CLIENT in any form (including machine-readable form) under the terms of this Agreement ("Data"), IMS grants to CLIENT a non-exclusive, non-transferable license to make copies of Portions (as "Portions" is defined below) of Data, to modify Data and to create derivative works incorporating Portions of Data, all of which may only be used by CLIENT internally and solely for CLIENT's own direct benefit and use in the United States; provided, however, Masterfile Data (as "Masterfile Data" is defined below) may only be used in conjunction with the Data and Services to which it relates (e.g., USC codes may only be used with IMS market research data). As used herein, the term, "Portions" means limited amounts of Data or Documentation (as "Documentation" is defined below), as the case may be, which an individual reasonably requires in order to perform their work for CLIENT. As used herein, the term "Masterfile Data" shall mean any Data which categorizes, classifies or identifies products, procedures, medical facilities, pharmacies, warehouses, distributors, prescribers or other entities, activities or persons, and any information derived therefrom. CLIENT may make one additional copy of the Data for archival purposes only.

(ii) Documentation: With respect to documentation and other textual and graphical material provided by IMS to CLIENT in any form (including printed and machine-readable form) relating to any Data, Software or Services ("Documentation"), IMS grants to CLIENT a non-exclusive, non-transferable license to make copies of Portions of the Documentation, to modify the Documentation and to create derivative works incorporating Portions of the Documentation, all of which may only be used solely for CLIENT's own direct benefit and use in the United States in support of CLIENT's use of the Data, Software, and Services. CLIENT may make one additional copy of the Documentation for archival purposes only.

(iii) Software: With respect to any computer programs (i.e., any set of statements, instructions or objects to be used directly or indirectly in a computer in order to bring about a certain result) provided by IMS to CLIENT for use with any Data ("Software"), IMS grants to CLIENT a non-exclusive, non-transferable license to operate Software in accordance with its documentation solely for CLIENT's own direct benefit and use in the United States for a purpose (or to achieve an effect) that is described in the documentation and consistent with the terms and conditions of this Agreement. Software may be used only on CLIENT's computer equipment, by the number of Users (as "User" is defined in the Schedule of Fees & Services or in any applicable rider), during the term, at the designated site ("Site"), and in accordance with any other terms (if any) as specified in the Schedule of Fees & Services or in any applicable rider, provided that, if the Software is used on any local area network, a separate copy of the Software is licensed from IMS for each terminal or personal computer that has access to such Software, and provided further that there exists software and/or hardware on the local area network capable of ensuring that the Software is not copied either in whole or in part to any other computer or onto any other medium of expression (e.g., magnetic media, CD-ROM). The Software may be copied, in whole or in part, only as may be necessary and incidental to use with Data on CLIENT's data processing equipment, for archival and back-up purposes, or to replace a worn or defective copy. The license for Software shall be limited to executable code (unless expressly stated otherwise) and shall be limited to use with Data.

(iv) Online Services: CLIENT may also have access to the Data through an IMS on-line Service ("Online Service"), subject to the constraints and requirements of the on-line Service and payment by CLIENT of applicable usage charges identified in the Schedule of Fees & Services or in any applicable rider. IMS hereby grants to CLIENT, and CLIENT hereby accepts, a non-exclusive, non-transferable limited license to access and use such Online Service made available by IMS to CLIENT.



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- b. With respect to any Data, Documentation or Software copied by CLIENT, in whole or in part, and any works derived in whole or in part from any Data, Documentation, or Software, all copies thereof shall include any copyright and proprietary notices provided by IMS with the respective Data, Documentation and Software and shall remain subject to the terms and conditions of this Agreement. CLIENT is expressly prohibited from sublicensing any Data, Documentation, Software, Online Service, or any information or materials derived therefrom. All right, title and interest (including all copyrights and other intellectual property rights) in the Data, Documentation, Software, and Services, including Online Services (in both print and machine-readable forms), belong to IMS. CLIENT agrees that IMS shall retain sole and exclusive ownership in the Data, Documentation, Software and Services, as currently existing or as modified over time, notwithstanding the fact that CLIENT, from time to time, may provide IMS with feedback or suggestions with respect to the Data, Documentation, Software or Services. IMS does not grant, and CLIENT does not receive, any title or other interest in any Data, Documentation, Software, or Online Service, except for those rights explicitly granted in this Agreement.

2. USE RESTRICTIONS

- a. Notwithstanding anything to the contrary in this Agreement, no license or right is granted under this Agreement to CLIENT to use or copy the Data, Software, or Services, and under no circumstances shall CLIENT use or copy or permit any other person or entity to use or copy the Data, Software, or Services, or any information derived therefrom, including but not limited to Masterfile Data, in any manner:
- (i) to attempt to reverse engineer or analyze the Data, Software, or Services for purposes of: (a) re-identifying methodologies or processes used to produce the Data, or (b) identifying or isolating the information associated with specific outlets, suppliers, prescribers, or other entities or individuals not explicitly identified in the Data provided to CLIENT;
 - (ii) which would violate any law or regulation by such use or copying, as the case may be;
 - (iii) which would violate the contractual restrictions of any third party data supplier, known by or made known to CLIENT, including but not limited to the American Medical Association and the American Osteopathic Association, governing the use of such third party's data incorporated in Data;
 - (iv) which would result in the disclosure to any third party of information regarding the algorithms, formulas, processes, or projection or statistical methods used by IMS to produce any of the Data; or
 - (v) which would aid CLIENT, for itself or for any other party, in the design, development, enhancement or modification of any product or service, which product or service, as the case may be, is in competition with any products or services of IMS, without IMS' prior written approval.
- b. CLIENT agrees that it shall not: allow any use of the Software other than by an authorized User; use any permitted copy of the Software simultaneously on more than one personal computer, workstation or access terminal, as the case may be; copy the Software, except and to the extent provided above; modify, reverse engineer, decompile or disassemble the Software; sublicense, distribute, disclose or transfer the Software in whole or in part, to any third party; use the Software other than at the respective Site, provided, however, that the Software may be used on a portable computer at locations other than the Site only if the primary office location of the individual is located at the Site; use any Software or any portion thereof after the earlier of any expiration, termination or cancellation of this Agreement or the license term of the Software; or use the Software with any third-party data.



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3. **OBLIGATIONS**

a. **IMS Obligations.**

(i) IMS will provide to CLIENT the Data, Software, and Services described in each Schedule of Fees & Services and in any applicable rider. IMS will also provide to CLIENT all Documentation which IMS customarily makes available to its clients for the respective Data, Software and Services received by CLIENT under this Agreement and as further specified in any applicable rider. IMS will employ reasonable precautions against error in gathering, storing, analyzing, processing and delivering the Data, in accordance with established information industry standards and data processing principles. IMS will provide reasonable amounts of assistance in connection with CLIENT's use of the Data and Software. Should additional assistance be required with respect to any Data or Software, including formal training of any of CLIENT's employees, such assistance shall be at the then current IMS rates or at such other rates as the parties may agree upon in writing.

(ii) IMS will provide to CLIENT standard Software support, as provided by IMS generally to all IMS clients licensing the Software, for no additional charge for the period indicated in the Schedule of Fees & Services during which fees for the Software are calculated and charged under this Agreement; provided, however, Software support is available only for the current release and, for a period of three (3) months from when the current release first becomes available, for the immediately prior release of the Software. Also, IMS will provide any additional support upon which IMS and CLIENT have agreed, for which IMS may charge additional fees. IMS reserves the right to charge CLIENT IMS' then-current fees for add-on Software products, Software application drivers, and/or increased functionality of the Software, should CLIENT order such products, drivers or increased functionality.

(iii) **New Delivery Vehicles/Product Upgrades.** For the respective period(s) indicated in the Schedule of Fees & Services during which fees for the applicable Data, Software, and/or Services are calculated and charged under this Agreement, CLIENT will receive the benefit of any Modification to the applicable Data, Software, and/or Services at no additional charge. Pricing for any Improvement to Data, Software, and/or Services and for any New Product shall be at the then-current IMS rates or at such other rates as the parties may agree upon in writing.

The term "Modification" as used herein shall mean any change to any Data, Software, and/or Services not encompassed by the term "Improvement" (e.g. error corrections to projection methodologies, minor changes in panel sizes, or changes in published delivery times for the applicable Data, Software, and/or Services other than as the result of an Improvement).

The term "Improvement" as used herein shall mean the substantial upgrading or addition of a function or feature to any Data, Software, and/or Services, which upgrading or addition does not constitute a New Product. Examples of an Improvement may include a significant improvement to the projection methodology or a significant change or increase in the panel size relating to IMS' collection of data.

The term "New Product" as used herein shall refer to both newly developed and/or offered Data, Software, and/or Services and to IMS data, software, and or services not previously purchased by CLIENT. This shall include, but not be limited to: IMS product line extensions; the application of new or additional projection methodologies to existing Data, Software, and/or Services; the application of new analytics or analytical tools to existing Data, Software, and/or Services; newly covered geographies in existing Data, Software, and/or Services; or reports, reporting levels, or services which are marketed or available from IMS for a fee independent of any of the Data, Software, and/or Services provided under this Agreement.



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b. Client Obligations.

(i) From time to time, IMS may request information from CLIENT which IMS reasonably determines is needed to provide the Data, Documentation, Software or Services. Upon receipt of a request from IMS, CLIENT shall endeavor to provide such information in its possession or control to IMS in a timely manner at CLIENT's expense; CLIENT hereby authorizes IMS to use such information in accordance with the terms of the request and this Agreement. Notwithstanding anything written in this Agreement to the contrary, CLIENT agrees to abide by the terms of the IMS HEALTH Policies Defining Client Responsibilities for Health Care Information (a current copy of which either has been provided to CLIENT or will be provided to CLIENT upon CLIENT's request) in connection with CLIENT's use and disclosure of Data. In the event Data licensed by CLIENT under this Agreement is identified in a Schedule of Fees & Services as being subject to third party terms, conditions or restrictions, CLIENT will do such acts and execute and deliver to IMS such further instruments as may be required in order to give effect to such third party terms, conditions and restrictions.

(ii) CLIENT has the sole responsibility for: (a) providing any hardware and software necessary to execute the Software, in accordance with the minimum hardware and software specifications identified by IMS; and (b) prior to the installation of the Software on a computer, properly installing and configuring said computer in accordance with the respective manufacturer's and IMS specifications.

(iii) CLIENT shall use commercially reasonable efforts to include in all contracts for the sale of pharmaceutical products with wholesalers, group purchasing organizations, retail chain pharmacies, mass merchandisers, mail order pharmacies and other CLIENT customers (each a "Company") the following provision:

Company agrees to offer to IMS Health Incorporated ("IMS") the opportunity to enter into a data supply relationship with Company on IMS's customary terms and conditions for similar data suppliers or on such other terms as the parties may agree. IMS is intended to benefit from this contract provision in order to ensure the broad availability of information products and services to serve the needs of the pharmaceutical industry.

4. PAYMENT AND ADJUSTMENT OF FEES AND CHARGES

a. CLIENT shall pay the amount of each invoice from IMS within thirty (30) days from the date of the invoice. In no event shall CLIENT deduct or set-off any amount(s) from or against any amount(s) owed to IMS under this Agreement without the prior written consent of IMS. If CLIENT fails to timely pay any amount in accordance with the terms of this Agreement, CLIENT shall pay, in addition to the invoice amount, interest at the rate of twelve percent (12%) per annum on the unpaid balance beginning thirty-five (35) days from the date of the invoice until such amounts are paid. In addition to any fees which CLIENT agrees to pay, CLIENT shall have the exclusive responsibility for and agrees to pay all applicable governmental sales, use, added value, ad valorem or other similar taxes, duties, fees, levies or other governmental charges now in force or enacted in the future, except for taxes based on IMS income.



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b. True-up Clause Provisions.

The following True-up Clause provisions apply only to the extent indicated in a Schedule of Fees & Services or elsewhere in this Agreement.

Fees set forth in an applicable Schedule of Fees & Services for Xponent® and DDD™ services reflect estimated prices for those services based upon forecasted volumes of sales of the applicable products (“Estimated Volume”). IMS shall calculate the actual aggregated volumes and actual prices for the applicable contract year(s) for such products and the actual fees for the corresponding services in accordance with and subject to the following paragraph.

The actual price and actual aggregated volume for such products and the actual fees for the corresponding services then received by CLIENT shall be adjusted for the applicable contract year(s) as follows:

(i) For the purposes of determining the actual aggregated volume for the applicable contract year(s), IMS shall use the actual aggregated volume of reported sales of the applicable products in IMS’ DDD and Xponent database(s) for the applicable period (“Actual Volume”).

(ii) If, at the end of the applicable contract year, the Actual Volume is greater than the Estimated Volume and such difference in volume exceeds ten (10%) percent of the Estimated Volume, the annual fees for such services shall be adjusted based upon the actual change in volume. (For example, in the event of a twelve (12%) increase in Actual Volume over the Estimated Volume, CLIENT shall be charged an additional twelve (12%) percent of the applicable annual fees, based upon standard IMS pricing formulas then in effect for customers such as CLIENT.) IMS shall invoice CLIENT such adjustment to the annual fee, such invoice due and payable within thirty (30) days from the date of the invoice.

c. Small Pharma Pricing Program Provisions.

The following Small Pharma Pricing Program provisions apply only to the extent indicated in a Schedule of Fees & Services or elsewhere in this Agreement.

The fees shown for DDD™ and/or Xponent® are the basic or minimum fees and are subject to adjustment based on the Small Pharma Pricing Program provisions set forth below.

Small Pharma Pricing Program:

(i) **Basic Small Pharma Pricing Program Requirements:** Fees set forth in an applicable Schedule of Fees & Services for Xponent® and/or DDD™ services reflect prices for those services based upon CLIENT meeting IMS’ Small Pharma Pricing Program requirements. Such requirements are that CLIENT have either: (i) annual revenues from sales in the United States of less than fifty million dollars (\$50,000,000), as calculated from the data in the IMS National Sales Perspectives reports for each most recent contract year; or (ii) both annual revenues from sales in the United States of less than one hundred million dollars (\$100,000,000), calculated as described above, and less than one hundred (100) sales agents engaged in sales on behalf of CLIENT in the United States, whether so engaged as employees and/or as non-employees, such as independent contractors or sales agents from a contract sales organization. As used in this Small Pharma Pricing Program provision, the term “sales agents” means sales persons and their managers for whose use or benefit the Data, Software, and Services are designed. If, at any time during the period in which the above-mentioned services are provided under this Agreement, CLIENT does not meet either of the above-mentioned requirements and CLIENT’s sales revenues or sales agents force size exceeds the applicable requirement measurements set forth above, effective from and after the next anniversary of the commencement of the said services under this Agreement, IMS may adjust the fees for such services to be in compliance with the lesser of either IMS’ standard fees for such services applicable to clients other than those meeting such Small Pharma Pricing Program requirements or such lower fees as IMS may fix for such services.



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(ii) Small Pharma Pricing Tiers: Each market or therapeutic class, as applicable, for which Data is licensed by CLIENT will be assigned to one of several price tiers established by IMS. Such price tiers are based on the annual dollar volume of sales, as calculated from the data in the IMS National Sales Perspectives reports and as may be projected by IMS for future periods, for the IMS USC 3 classes included in each applicable market or therapeutic class.

(iii) Services Fees and Fee Adjustments: In addition to the fee adjustment provisions set forth above in the sub-paragraph entitled "Basic Small Pharma Pricing Program Requirements", fees may be adjusted as described below. The Small Pharma Pricing Program fees due IMS for the IMS Xponent® and/or DDD™ services under an applicable Schedule of Fees & Services under this Agreement are calculated based on the applicable price tiers and on the number of CLIENT's sales agents engaged in sales on behalf of CLIENT as described in paragraph (i) above. Such fees are subject to adjustment on an annual basis effective as of any anniversary of the commencement of the applicable services under this Agreement, based on any increase in the number of CLIENT's sales agents, as measured by the information in the alignment files referred to below or by any other appropriate reliable source for such information. Any such adjustment will be made only to the fees for the annual billing periods following the annual period in which the above-mentioned information first indicates any such increase in the number of sales agents.

(iv) Data Required from CLIENT: For the purposes of enabling IMS to adjust the fees due IMS under this Small Pharma Pricing Program as stated above, CLIENT will provide to IMS: (i) periodically in accordance with a schedule established by IMS and provided to CLIENT, an alignment file (whether or not CLIENT is receiving aligned Data) in order for IMS to verify the number of CLIENT's sales agents as described above; and (ii) periodically, upon IMS' request, other information reasonably required and requested by IMS regarding CLIENT's annual United States sales revenues and the number of CLIENT's sales agents as described above.

(v) Applicability of True-up Clause: If, at any time during the period in which the above-mentioned services are provided under this Agreement, CLIENT does not meet the Small Pharma Pricing Program requirements and the fees for such services are adjusted as stated above, the True-up Clause provisions set forth above apply to the adjusted fees from and after the effective date of such adjustment.

5. CONFIDENTIALITY

- a. IMS shall not, at any time while this Agreement is in effect or thereafter, communicate, disclose or provide to any third party, any information provided by CLIENT to IMS in connection with this Agreement which CLIENT identifies on or about the time of its disclosure as confidential or which, by the nature or type of information, reasonably should be regarded as confidential information of CLIENT (collectively "Client Confidential Information"), except as expressly provided in this Agreement or otherwise expressly authorized by CLIENT in writing. CLIENT shall not, at any time during the term of this Agreement or thereafter, communicate, disclose or provide to any third party, any of the Data, Documentation or Software, the contents thereof, any information or materials derived therefrom, information relating to current or future IMS business plans, or any other information provided by IMS to CLIENT which IMS identifies on or about the time of its disclosure as confidential or which, by the nature or type of information, reasonably should be regarded as confidential information of IMS (collectively "IMS Confidential Information"), except as expressly provided in this Agreement or otherwise expressly authorized by IMS in writing. Each party hereto agrees to treat the confidential information of the other as confidential, using the same degree of care used by the receiving party to protect the receiving party's own confidential information, but in any event not less than a reasonable degree of care.



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- b. CLIENT may furnish all or any part of the Data to its consultants and independent contractors for use solely for the direct benefit of CLIENT in accordance with the provisions of this Agreement; provided, however, any use or possession of Data by consultants and/or independent contractors shall first require the full execution of an IMS Third Party Access Agreement or other appropriate IMS agreement by each such consultant and contractor and the other required signatory parties. Notwithstanding the foregoing, nothing herein shall prevent CLIENT from permitting access to Data by temporary employees under the direct supervision and control of CLIENT that work in offices or facilities occupied and controlled by CLIENT; provided such temporary employees are bound in writing under terms and conditions relating to restricted use and confidentiality which are substantially the same in all material respects as the terms and conditions contained in this Agreement. CLIENT shall not disclose the Data or use the Data in legal proceedings unless compelled by court order, provided IMS is given reasonable advance written notice for the purpose of obtaining the court's protection with respect to the Data.
- c. This Confidentiality provision does not apply to any information: (i) obtained from an issued or registered patent; (ii) available in the public domain through no fault of the receiving party of such information; (iii) independently developed by or on behalf of the receiving party without reference to the disclosing party's confidential information; or (iv) disclosed to the receiving party without restriction by a third party not having an obligation of confidence with respect to such information. No combination of information will be deemed to be within any of the above exceptions, whether or not the component parts of the combination are within one of the above exceptions, unless the combination itself is within one of the above exceptions.

6. TERMINATION AND EXPIRATION

- a. This Agreement shall become effective as of the Effective Date or other commencement date expressed in any signature document portion of this Agreement or in any other document entered into, agreed upon, or used from time to time by the parties that incorporates by reference these Information Services Agreement General Terms and Conditions and shall continue in effect through the delivery of all Data, Software, Documentation, and Services provided under this Agreement and payment by CLIENT for all such Data, Software and Services, in accordance with the terms of this Agreement and subject to the early termination rights set forth in this Agreement.
- b. Either party hereto may terminate this Agreement upon sixty (60) days advance written notice to the other party in the event of a material breach of this Agreement by the other party that has not been cured within such sixty-day period. In addition to the above, IMS may terminate this Agreement and any license granted to CLIENT under this Agreement immediately upon notice to CLIENT if: (i) CLIENT fails to pay IMS any license fees or other fees or charges due under this Agreement within ten (10) days of CLIENT's receipt of notice to do so from IMS; or (ii) CLIENT has not cured any material breach of the license or confidentiality provisions of this Agreement within ten (10) days of CLIENT's receipt of notice of such breach from IMS; or (iii) CLIENT becomes insolvent or seeks protection, voluntarily or involuntarily, under any bankruptcy law.
- c. IMS reserves the right to terminate any Data, Software, or Service at any time as a result of a discontinuance of production or support of such Data, Software, or Service generally with respect to all IMS clients. In the event of any such discontinuance and termination, IMS will use reasonable efforts to give CLIENT at least thirty (30) days advance written notice of any such termination. IMS will provide to CLIENT a credit in the amount of any fees pre-paid by CLIENT with respect to such discontinued Data, Software, or Service that are applicable to periods following the effective date of any such termination.
- d. Other than as stated above in this Termination and Expiration Paragraph, this Agreement may not be terminated or canceled by either party, in whole or in part, prior to the expiration of the periods indicated in any Schedule of Fees & Services as the periods during which the applicable Data, Software, and/or Services are to be provided.



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- e. Upon the expiration or termination of this Agreement for any reason, the rights and obligations of the parties hereto under the Paragraphs of this Agreement entitled "LICENSE GRANTS AND SERVICES", "USE RESTRICTIONS", "PAYMENT AND ADJUSTMENT OF FEES AND CHARGES", "CONFIDENTIALITY", "TERMINATION AND EXPIRATION", "LIABILITY AND REMEDIES", "REPRESENTATIONS AND WARRANTIES", "ASSIGNMENT", and "MISCELLANEOUS" which, by their nature, should survive the expiration or termination of this Agreement, shall survive and remain in effect after such expiration or termination; provided, however, in the event this Agreement is terminated by IMS as a result of a breach by CLIENT of a material provision of this Agreement, IMS may: (i) require that CLIENT cease any further Use of the Data, Software, Documentation, Services, and other IMS Confidential Information provided to CLIENT in connection with this Agreement and return to IMS all copies of the Data, Documentation, Software, and other IMS Confidential Information or any portion thereof which are then in CLIENT's control or possession; and/or (iii) cease performance of all of the IMS obligations under this Agreement without liability to CLIENT.
- f. The rights and remedies of the parties pursuant to Paragraphs (b) and (c) of this Termination and Expiration Paragraph shall be cumulative and in addition to all other rights and remedies available to IMS in law or in equity.

7. LIABILITY AND REMEDIES

- a. Any Data provided by IMS will reflect or be based on data and information provided by third parties. IMS requests from each third party data supplier ("Data Supplier") that the information contained in the Data be accurate, complete and timely. However, the Data Suppliers do not warrant and shall not be liable for the accuracy, completeness or timeliness of the Data. In addition, IMS disclaims any liability arising from the inaccuracy, incompleteness or late delivery of any Data, Documentation or Software unless due to the willful misconduct of IMS. IMS will not be responsible for any inaccuracy or incompleteness of the Data, Documentation or Software due to causes beyond its reasonable control. IMS shall not be liable for delays in accessing Data through on-line delivery systems or the temporary unavailability thereof. In no event shall IMS be liable for any consequential, special, exemplary, or similar types of damages, including but not limited to third party claims, whether foreseeable or not, arising in connection with this Agreement or any act or omission by IMS related to the transactions contemplated by this Agreement, even if IMS has been advised of the possibility of such damages. Any reliance on or decision based on Data, Documentation, Software or Services is the sole responsibility of CLIENT.
- b. The parties acknowledge and agree that a breach by either party of the applicable provisions of the Confidentiality Paragraph of this Agreement will cause the other party and/or their respective affiliates irreparable injury and damage which may not be compensable by money damages. Therefore, the parties agree that the non-breaching party or its respective affiliates may be entitled to injunctive or other relief to prevent such a breach and to secure enforcement of the Confidentiality Paragraph of this Agreement, in addition to any other remedies which may be available. Nothing in this Liability And Remedies Paragraph shall be construed as limiting the legal rights otherwise available to either party in the event of a breach of this Agreement by the other party. All remedies, fee reductions, penalties and credits which may be available to either party in the event of a breach of this Agreement by the other party, whether or not described in this Agreement, shall be cumulative.



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8. REPRESENTATIONS AND WARRANTIES

- a. CLIENT and IMS represent and warrant that they each have authority to enter into this Agreement and to grant the rights and license(s) provided herein.
- b. IMS further warrants for a period of sixty (60) days from CLIENT's receipt, that all Data provided under this Agreement will conform to the applicable IMS published specifications prevailing at the time of shipment or transmission of the Data. The entire liability of IMS and CLIENT's exclusive remedy for any breach of this warranty shall be for IMS to use commercially reasonable efforts to correct, in accordance with IMS operating procedures for data quality assurance, any such non-conformance which has been properly reported by CLIENT to IMS in writing within such sixty-day period.
- c. IMS further warrants that the Software will perform substantially in accordance with the applicable IMS published specifications prevailing at the time of CLIENT's receipt of the Software. However, IMS does not warrant that the operation of the Software will be uninterrupted or error free or that the functions contained in the Software will meet CLIENT's requirements.
- d. IMS further warrants that the media upon which any Data, Documentation or Software resides when delivered to CLIENT shall be free from defects in material and workmanship for a period of sixty (60) days after CLIENT's receipt. The entire liability of IMS and CLIENT's exclusive remedy for any breach of this warranty is to replace the defective media, provided that CLIENT notifies IMS in writing of such defect and returns to IMS the defective media during such sixty day warranty period.
- e. ALL THIRD PARTY DATA, DOCUMENTATION AND SOFTWARE WHICH MAY BE PROVIDED BY IMS TO CLIENT IN CONNECTION WITH THIS AGREEMENT IS PROVIDED ON AN "AS-IS" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, OTHER THAN THOSE AVAILABLE TO CLIENT FROM THE RESPECTIVE THIRD PARTY, IF ANY.
- f. THE WARRANTIES AND REPRESENTATIONS STATED WITHIN THIS AGREEMENT ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IMS does not warrant that any Data, Documentation, Software or Services provided by IMS to CLIENT will meet the needs or objectives of CLIENT. Notwithstanding any consultation with IMS personnel, CLIENT assumes sole responsibility for selection and suitability of the Data, Documentation, Software and Services (as well as any software, programming, equipment or services to be used with the Data, Documentation, Software and Services) in order to achieve the intended results and to meet the needs and objectives of CLIENT.

9. ASSIGNMENT

Neither party may assign or transfer this Agreement (including by operation of law) or any of its rights or obligations in connection with this Agreement to any third party without the express written consent of the other party, except as stated otherwise herein. CLIENT may not transfer or sublicense any Data, Documentation or Software to any third party without the express written consent of IMS, except as expressly authorized under this Agreement. Any attempt to assign, transfer or sublicense in breach of the foregoing shall be void. Notwithstanding the foregoing prohibitions, IMS shall have the right to assign its rights under this Agreement to any of its subsidiaries and affiliates, provided that no such assignment shall relieve IMS of its obligations under this Agreement if the assignee fails to perform. In addition, IMS and CLIENT each shall have the right to assign this Agreement (including by operation of law) to the surviving party of any merger, acquisition, or reorganization to which it is a party, or to the purchaser of all or substantially all of such assigning party's assets, provided, however, that no such assignment by CLIENT shall be to a competitor of IMS, and provided further that any assignment by Client to a permitted assignee shall not entitle such permitted assignee to receive the pricing extended to Client hereunder or to use any of the Data, Documentation, or Software for the benefit of the



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assignee's existing business (i.e., its business existing prior to such assignment); such pricing shall be subject to further agreement between such permitted assignee and IMS. Furthermore, IMS and CLIENT each shall have the right to delegate its obligations under and subject to this Agreement, provided that any delegatee of each party is bound in writing under terms and conditions relating to restricted use and confidentiality which are substantially the same in all material respects as the terms and conditions contained in this Agreement, and provided further that no such delegation shall relieve the delegating party of its obligations under this Agreement if the delegatee fails to perform. However, the foregoing rights of delegation shall not relieve CLIENT of its obligations to obtain IMS approval, or eliminate the need for an IMS Third Party Access Agreement or appropriate IMS agreement, as stated in the Confidentiality provision of this Agreement. The assigning or delegating party agrees to promptly notify the other party in writing of any such assignment or delegation on or about the time of its occurrence. This Agreement shall be binding upon and shall inure to the benefit of the parties and any of their successors, and any such successor that is a permitted successor under this Assignment Paragraph shall be deemed substituted for the respective party under the provisions of this Agreement. For the purposes of this Agreement, the term "successor" shall mean any person, firm, corporation or other business entity which at any time, whether by merger, acquisition, or otherwise, acquires all or substantially all of the assets or business of a party to this Agreement.

10. AMA/AOA THIRD PARTY DATA

a. AMA/AOA Data.

Any fields of Data specific to an identifiable physician, whether identified by name or other identifier (collectively "Physician Data") shall be treated by IMS and CLIENT as derived from the American Medical Association's Physician Professional Data ("AMA-PPD"). IMS is licensed to possess and sublicense AMA-PPD by the American Medical Association ("AMA") pursuant to a written agreement between IMS and the AMA (the "Database License Agreement"). Use of Physician Data is subject to the terms and conditions of the Database License Agreement and the applicable AMA agreement between an AMA-approved Database Licensee and CLIENT ("AMA Sublicense"). The continuing receipt and use of any Physician Data is contingent upon CLIENT meeting any requirements of the AMA, including but not limited to maintaining the appropriate AMA Sublicense and the continued payment of all applicable AMA license fees. Unless CLIENT maintains the appropriate AMA Sublicense and continues to pay all applicable AMA license fees, CLIENT must either return or destroy any Physician Data. CLIENT represents that CLIENT is licensed to receive AMA-PPD pursuant to the appropriate AMA Sublicense and/or shall execute such AMA Sublicense upon the request of IMS. In the event that the AMA changes any of the terms and conditions upon which it licenses AMA-PPD, IMS may modify this Agreement accordingly with respect to Physician Data in order to be consistent with such modified terms and conditions. In the event there is any inconsistency between this Agreement and any agreement between (a) the AMA and IMS, or (b) an AMA-approved Database Licensee and CLIENT, such AMA agreement(s) shall control with respect only to Physician Data. In all other respects, this Agreement shall remain in full force and effect. In addition, CLIENT agrees to abide by the policies governing the approved use of the American Osteopathic Association (AOA) supplied or AOA-derived data, a copy of which is set forth below.

b. Policies Governing The Approved Use Of The AOA Licensed Data.

The conditions imposed upon the use of the AOA Licensed Data are imposed without favor or exception. Accordingly, the American Osteopathic Association will make the AOA Licensed Data available through DATABASE LICENSEES subject to the Licensees' and Sublicensees' agreement to the following policies:

(i) The AOA Licensed Data will be made available only for communications, which are germane to the practice of medicine, its scientific or socioeconomic aspects, or of interest to the physician or medical student as a consumer.



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(ii) The AOA Licensed Data will not be made available for use in connection with the dissemination of distasteful materials.

(iii) The AOA Licensed Data will not be made available for use in connection with publicity or advertising, which might imply, through copy or layout, AOA endorsement of an organization, its products or services.

(iv) The AOA Licensed Data will not be made available for any communication, which would tend to mislead, misinform or deceive.

(v) The AOA Licensed Data will not be made available for any communication involving the promotion of the use or sale of any tobacco product. The AOA Licensed Data will not be made available for any communication involving the promotion of the sale of beer, wine and other spirits. In addition, the AOA Licensed Data will not be made available for any communication involving the incidental advertising of the use or sale of any tobacco product. Notwithstanding the foregoing, the AOA Licensed Data may be made available for communications involving the incidental advertising of the sale of beer, wine and other spirits and communications containing editorial copy, which refers to the use of tobacco, beer, wine and other spirits.

11. MISCELLANEOUS

- a. **Entire Agreement.** This Agreement, including its attachments, constitutes all of the terms and conditions with respect to the subject matter of this Agreement and supersedes prior proposals, agreements and representations related to its subject matter, whether written or oral. No modification, amendment or waiver of any of the provisions of this Agreement shall be binding upon the parties unless made in writing and duly executed by authorized representatives of CLIENT and IMS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. This Agreement shall take precedence over CLIENT's additional or different terms and conditions, to which notice of objection is hereby given. Neither the commencement of performance nor delivery by IMS shall be deemed or construed as acceptance of CLIENT's additional or different terms and conditions. The headings of the paragraphs of this Agreement are used for convenience only and shall not affect the meaning or interpretation of the terms and conditions of this Agreement. If IMS has elected to provide services prior to the formal signature and acceptance of these terms and conditions, acceptance by the CLIENT of delivery of the services provided hereunder shall constitute acceptance of these terms and conditions by the CLIENT until formal signature of this Agreement.
- b. **Force Majeure.** Except for the obligation to pay money properly due and owing, either party shall be excused from any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, failure of performance by the other party, earthquake, labor disputes, riots, governmental requirements or actions, inability to secure materials on a timely basis, failure of computer equipment, failures or delays of sources from which information or data is obtained and transportation difficulties.
- c. **Waiver/Severability.** The failure to enforce at any time the provisions of this Agreement or to require at any time performance by the other party of any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Agreement, or the right of any of the parties thereafter to enforce each and every provision in accordance with the terms of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable by any judgment of a tribunal of competent jurisdiction, the remainder of this Agreement shall not be affected by such judgment, and this Agreement shall be carried out as nearly as possible according to its original terms and intent. However, if the original intent of the parties cannot be preserved, this Agreement shall terminate upon the effective date of such judgment.



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- d. Governing Law.** This Agreement will be governed by the laws of the Commonwealth of Pennsylvania regardless of the choice of laws rules of any forum.
- e. Publicity.** Neither party will originate any written publicity, news release, or other public announcement relating to this Agreement without the prior written approval of the other party; provided, however, either party shall have the right to announce to the public the existence of this Agreement, the general nature of services to be provided (e.g., market research services, sales management services), and the duration of this Agreement. No publicity, press release or public announcement by IMS shall indicate CLIENT is endorsing any of the IMS Data, Documentation, Software or Services without the express written consent of CLIENT.
- f. Client Data.** In order to receive access to sales management information services from IMS, CLIENT agrees to submit Client Data (as defined below) in accordance with the terms of the DDD Direct Sales Policy as may be amended from time to time. The term "Client Data" as used herein refers to certain data provided by CLIENT to IMS relating to direct sales of CLIENT's pharmaceutical products by CLIENT to its customers. Client Data includes elements of data reflecting CLIENT's weekly/monthly sales of pharmaceutical products made to any unaffiliated party. IMS will handle Client Data in accordance with the Confidentiality Paragraph of this Agreement, subject to the terms outlined in this paragraph. IMS may only use Client Data as follows: (i) for inclusion, where applicable, in the Data and Services provided to CLIENT under this Agreement; and (ii) for use in any of the IMS reports and services, provided that the Client Data is converted and standardized with the data of third parties. Without limiting the rights of IMS under the preceding sentence, IMS may, for example, use Client Data for the calculation and reporting of (a) total market values (e.g., the combination of indirect, mail order and/or direct sales distribution) and (b) direct sales totals and indices (i.e., the combination of direct sales data from various pharmaceutical companies) for the benefit of IMS clients.
- g. Notices.** All notices or demands required solely in connection with this Agreement shall be given and made in writing and shall be delivered personally or sent pre-paid to the respective addresses set forth on the first page of the signature document of this Agreement (a) by certified or registered first class mail with return receipt requested or (b) by an internationally-recognized common carrier's overnight courier service. If such notice is to IMS, the notice shall be sent to the attention of "Vice President, Sales", with a copy to the Vice President – Law Department. If such notice is sent to CLIENT, the notice shall be sent to the attention of the individuals designated in writing by CLIENT.