

Clinical Effectiveness

# HCPCS and NDC Database Solution

RFP 6116 Z1 — Technical Proposal — ORIGINAL

**CONFIDENTIAL & PROPRIETARY**

Prepared for:  
State of Nebraska

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Wolters Kluwer

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August 22, 2019

State Purchasing Bureau  
State of Nebraska, Department of Administrative Services  
RFP # 6116 Z1  
1526 K St. Ste. 130  
Lincoln, NE 68508

Dear State Purchasing Bureau:

I am enclosing the RFP Response from Wolters Kluwer for RFP# 6116 Z1. We look forward to working with you and your team.

I would welcome the opportunity to further discuss this response with you. If you have questions or would like to schedule a call, please contact me at your convenience.

Sincerely,

*Michael Laib*

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Enclosure



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## Confidentiality Statement

## Confidentiality Statement

The information contained within this Proposal is confidential and proprietary and may be used solely for the purpose of evaluating the potential license of offerings and/or services provided by Wolters Kluwer Clinical Drug Information, Inc. (sometimes collectively referred to as "Wolters Kluwer" or "WKCDI") identified in this Proposal. This Proposal is non-binding on each party. Neither this Proposal, nor any oral or written communication concerning the matters covered by this Proposal, shall create any binding obligations on any party; only those obligations set forth in a separate written definitive agreement negotiated and executed by all parties in a form approved by each party shall be binding upon the parties. Any information contained within this Proposal may only be disclosed to directors, officers, employees, and agents of the recipient organization who need to know such information for the purpose of evaluating this Proposal. The information contained within this Proposal shall not be communicated to anyone outside of the recipient organization without the express written permission of Wolters Kluwer.



# 1. Corporate Overview

## a. Bidder Identification and Information

The bidder should provide the full company or corporate name, address of the company's headquarters, entity organization (corporation, partnership, proprietorship), state in which the bidder is incorporated or otherwise organized to do business, year in which the bidder first organized to do business and whether the name and form of organization has changed since first organized.

•• Full company or corporate name	Wolters Kluwer Clinical Drug Information, Inc. ("WKCDI")
•• Address of the company's headquarters	1100 Terex Road Hudson, Ohio 44236
•• Entity organization (corporation, partnership, proprietorship)	Corporation
•• State in which the bidder is incorporated or otherwise organized to do business	Ohio
•• Year in which the bidder first organized to do business	1978
•• Whether the name and form of organization has changed since first organized	We were founded as Lexi-Comp, Inc. Our name changed to Wolters Kluwer Clinical Drug Information, Inc., effective as of April 8, 2015. It was a pure name change for branding purposes - not any type of reorganization, sale, merger, or other type of change.

## b. Financial Statements

The bidder should provide financial statements applicable to the firm. If publicly held, the bidder should provide a copy of the corporation's most recent audited financial reports and statements, and the name, address, and telephone number of the fiscally responsible representative of the bidder's financial or banking organization.

If the bidder is not a publicly held corporation, either the reports and statements required of a publicly held corporation, or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information, should be submitted in such a manner that proposal evaluators may reasonably formulate a determination about the stability and financial strength of the organization. Additionally, a non-publicly held firm should provide a banking reference.

The bidder must disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the organization, or state that no such condition is known to exist.

The State may elect to use a third party to conduct credit checks as part of the corporate overview evaluation.

### Financial Statements

Wolters Kluwer Clinical Drug Information, Inc. (WKCDI) is a subsidiary of Wolters Kluwer Health, Inc. Our ultimate parent company, Wolters Kluwer, N.V. is a publicly traded company. You can access Wolters Kluwer's financial information at <https://wolterskluwer.com/investors>. We have also included our 2018 Annual Report. Please see Attachment 2.

Wolters Kluwer N.V. Shares are listed on the Amsterdam stock exchange and the ticker is "WKL."

### Litigation

WKCDI does not have any judgments, pending or expected litigation, or financial reversals that would affect its ability to license the offerings outlined in its Proposal in response to this RFP.

#### c. Change of Ownership

**If any change in ownership or control of the company is anticipated during the twelve (12) months following the proposal due date, the bidder should describe the circumstances of such change and indicate when the change will likely occur. Any change of ownership to an awarded contractor(s) will require notification to the State.**

As of the date of our Proposal in response to this RFP, we do not anticipate a change of ownership in the next 12 months.

#### d. Office Location

**The bidder's office location responsible for performance pursuant to an award of a contract with the State of Nebraska should be identified.**

Our office location is:

1100 Terex Road  
Hudson, Ohio, 44236

#### e. Relationships with the State

**The bidder should describe any dealings with the State over the previous five (5) years. If the organization, its predecessor, or any Party named in the bidder's proposal response has contracted with the State, the bidder should identify the contract number(s) and/or any other information available to identify such contract(s). If no such contracts exist, so declare.**

We have several Lexicomp Online customers at the Department of Health & Human Services, the Nebraska Department of Correctional Services Pharmacy, and the University of Nebraska.

#### f. Bidder's Employee Relations to State

**If any Party named in the bidder's proposal response is or was an employee of the State within the past twenty-four (24) months, identify the individual(s) by name, State agency with whom employed, job title or position held with the State, and separation date. If no such relationship exists or has existed, so declare.**

**If any employee of any agency of the State of Nebraska is employed by the bidder or is a subcontractor to the bidder, as of the due date for proposal submission, identify all such persons by name, position held with the bidder, and position held with the State (including job title and agency). Describe the responsibilities of such**

persons within the proposing organization. If, after review of this information by the State, it is determined that a conflict of interest exists or may exist, the bidder may be disqualified from further consideration in this proposal. If no such relationship exists, so declare.

We will name a specific State of Nebraska team once we are vendor of choice. At that time, we can provide the assigned team's qualifications to you, including if any of the named team members are former State of Nebraska employees.

Regarding our general employee population, Wolters Kluwer is a global company with more than 18,000 employees worldwide. We do not track previous employment history since employees are not required to disclose their entire employment history to us.

**g. Contract Performance**

If the bidder or any proposed subcontractor has had a contract terminated for default during the past ten (10) years, all such instances must be described as required below. Termination for default is defined as a notice to stop performance delivery due to the bidder's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the bidder or litigated and such litigation determined the bidder to be in default.

It is mandatory that the bidder submit full details of all termination for default experienced during the past ten (10) years, including the other Party's name, address, and telephone number. The response to this section must present the bidder's position on the matter. The State will evaluate the facts and will score the bidder's proposal accordingly. If no such termination for default has been experienced by the bidder in the past ten (10) years, so declare.

If at any time during the past ten (10) years, the bidder has had a contract terminated for convenience, non-performance, non-allocation of funds, or any other reason, describe fully all circumstances surrounding such termination, including the name and address of the other contracting Party.

We are not aware of any circumstances during the past ten (10) years where a customer has terminated a contract with WKCDI for default.

WKCDI's standard form of license agreement does not permit termination for convenience, and absent extraordinary circumstances, WKCDI does not permit customers to terminate contracts for convenience. However, WKCDI is unable to confirm whether this has occurred in the past ten (10) years. In any event, for confidentiality purposes, WKCDI would be unable to share with you the identity of any such parties.

**h. Summary of Bidder's Corporate Experience**

The bidder should provide a summary matrix listing the bidder's previous projects similar to this solicitation in size, scope, and complexity. The State will use no more than three (3) narrative project descriptions submitted by the bidder during its evaluation of the proposal.

The bidder should address the following:

- i. Provide narrative descriptions to highlight the similarities between the bidder's experience and this solicitation. These descriptions should include:

<b>a. The time period of the project;</b>	Six months (estimated).
<b>b. The scheduled and actual completion dates;</b>	The customer's project teams drove the project timeline and completion date. WKCDI acted as consultants to their development and clinical staff who facilitated the use of our data from an IT and Clinical perspective.
<b>c. The Contractor's responsibilities;</b>	We provided tier one implementation help, involving sample code, assistance with environment stand up, and clinical input regarding the use of the GPI and other proprietary concepts.
<b>d. For reference purposes, a customer name (including the name of a contact person, a current telephone number, a facsimile number, and e-mail address);</b>	Jennifer Roberts, CPPB Senior Procurement Specialist, AHCCCS Division of Business and Finance 701 E. Jefferson St. Phoenix, AZ 85034 P 602.417.4629 <a href="http://www.azahcccs.gov">www.azahcccs.gov</a>
<b>f. Each project description should identify whether the work was performed as the prime Contractor or as a subcontractor. If a bidder performed as the prime Contractor, the description should provide the originally scheduled completion date and budget, as well as the actual (or currently planned) completion date and actual (or currently planned) budget</b>	Prime. We don't use subcontractors.

## Project Overview

### Background

In 2008, a Midwestern state government authorized creation of an All-Payer Claims Database (APCD) to serve as a repository of data from pharmacy, insurance, pharmacy benefit managers (PBMs), and providers across the state. All providers and benefits businesses are required to submit pharmacy and medical claims data (scrubbed of HIPAA-protected information) to the APCD. The only claims that are exempt are cash-pay transactions as well as Veterans Affairs (VA) and Indian Health Service (IHS) claims.

"Creating a database like this is sensitive and expensive," says the lead researcher from the outside team chosen to lead the data analysis for the state. Even with personal patient information and identifiers removed from the claims, there is a great deal of concern about privacy. Therefore, access to the data is only limited to a small number of state employees.

The primary goal, the lead researcher explains, is to aggregate the state's data in such a way that he and other analysts can uncover and track big picture trends and present them to lawmakers and healthcare policymakers to inform decision-making. "We need to use this information to be wiser to avoid getting to a tipping point," he says. "We can't sustain a healthcare system that's any care at any cost."

### The Challenges

The APCD has two primary categories of stored data:

1. Medical claims data.
2. Pharmacy claims data.

The pharmacy claims category takes all prescriptions in the state from the last five years and divides them into brands, generics, specialty brands, and specialty generics, with intent to examine price and usage trends over time. Independent researchers publish reports on each sub-group to help inform policymakers, legislators, large employers, and other stakeholders in the state, the lead researcher explains.

His work with the APCD requires him to sift through a large raw data dump and turn it into a cogent analysis of broad spending and usage trends, including:

- How many claims are processed
- How much the state spends on medications
- Changes in total drug spend over time
- How much of the changes in drug spend are due to price or due to usage
- How many residents of the state are "touched by these drugs"

The researcher also looks at more intricate deltas, including, for example, whether generic drug usage goes up or down over a time-period and the rates at which brand usage increases, or if the introduction of a new OTC medication creates new user volume overall or if it reduces usage of branded prescription products.

"These are fairly simple concepts, but they have complex implications," the researcher says. "Once we know the trends, we can identify problem areas and develop policy recommendations around the data. Then we can use the database to track the policy and its implementation and impact on the state."

But a "data dump with no structure" provides no meaningful information. In order to find trends within the massive amounts of data the state's insurance companies and PBMs are providing, researchers needed a meaningful, flexible classification system for drug information that "would allow natural groupings that are relevant," the lead researcher explains.

### The Solution

With more than a decade's experience using Medi-Span drug data in his work, the researcher said it was the obvious choice to integrate with the APCD for data classification and analysis.

The researcher praises the "excellent" grouping variables made possible by the Medi-Span proprietary Generic Product Identifier, or GPI. He notes that the 14-character GPI allows grouping by broad categories (e.g., cardiac drugs) down to specific dosage form, allowing flexibility in how the team parses and analyzes claims data.

"I prefer the GPI," he says. "It is a scheme that would cover any drug on the market or that could come onto the market. It covers every NDC, and no NDC could fit in more than one place. It's both exhaustive and mutually exclusive."

When claims data comes in to the APCD, it includes NDC, product name, generic name, and other attributes about the drug in various coded formats, depending on its source. The Medi-Span data set links

an NDC to each prescription and uses standard proprietary descriptors to standardize information, regardless of its source coding. This helps the research team align content within the database and standardize it for analysis. At the GPI's most specific level – what the researcher calls the "GPI 14" – he engages all 14 characters and values in the identifier when sorting drug data. It is a "critical grouping level," as it shows those drugs that are exact AB matches in the FDA Orange Book and are thus able to be substituted for each other by pharmacists without consulting physicians or other prescribers.

Medi-Span data also provides useful fields for grouping claims data, such as usual dose and usual duration, which helps the researcher analyze key trends. "Medi-Span has greatly enhanced the value of the data," he says. "If we put all this information in one place so we can look at it and drive decisions, it can be very powerful."

- ii. **Contractor and subcontractor(s) experience should be listed separately. Narrative descriptions submitted for subcontractors should be specifically identified as subcontractor projects.**

We will not use license the content proposed in our Proposal in response to this RFP.

- iii. **If the work was performed as a subcontractor, the narrative description should identify the same information as requested for the Contractors above. In addition, subcontractors should identify what share of contract costs, project responsibilities, and time period were performed as a subcontractor.**

Not applicable.

- i. **Summary of Bidder's Proposed Personnel/Management Approach**

**The bidder should present a detailed description of its proposed approach to the management of the project.**

**The bidder should identify the specific professionals who will work on the State's project if their company is awarded the contract resulting from this solicitation. The names and titles of the team proposed for assignment to the State project should be identified in full, with a description of the team leadership, interface and support functions, and reporting relationships. The primary work assigned to each person should also be identified.**

**The bidder should provide resumes for all personnel proposed by the bidder to work on the project. The State will consider the resumes as a key indicator of the bidder's understanding of the skill mixes required to carry out the requirements of the solicitation in addition to assessing the experience of specific individuals.**

**Resumes should not be longer than three (3) pages. Resumes should include, at a minimum, academic background and degrees, professional certifications, understanding of the process, and at least three (3) references (name, address, and telephone number) who can attest to the competence and skill level of the individual. Any changes in proposed personnel shall only be implemented after written approval from the State.**

We assign a member of our Implementation team to work with the State throughout the deployment of the data files into the State's applications(s). While we do not manage projects for our customers as they deploy Medi-Span data files, our assigned team member works with you as you define the project scope and timeline, providing suggestions and assistance to the project plan, as appropriate. We typically support implementations through conference calls and e-mail.

We can also support the State with sample code and other forms of information. In addition, the Implementation team includes a clinical pharmacist who can assist with best practices and other more clinically-oriented questions around the data files licensed by the State. The Implementation team has access to our other areas of the organization, such as the Content team who develops and maintains the data that would be licensed by the State. Though seldom necessary, if WKCDI and the State determine that further support is

needed, we would agree to attend up to three onsite meetings with the State’s development team throughout the course of the project.

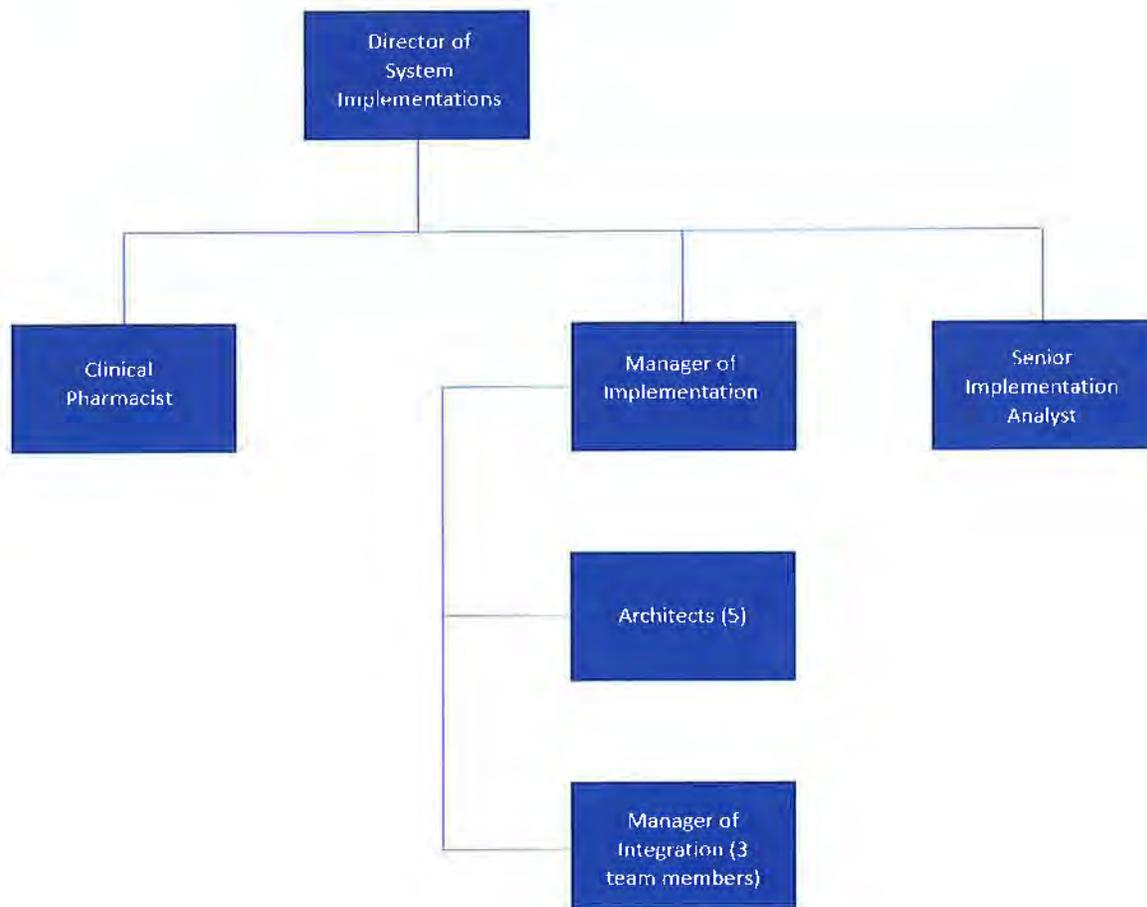
A pharmacist from our Clinical Sales Support team provides an overview of Price Rx Pro and/or Facts & Comparisons eAnswers for licensed users, if needed.

Because we are included on a vast number of RFPs, our policy is to assign a specific team once we are vendor of choice. The Implementation team consists of experienced software architects who have assisted customers in deploying the data files identified in this RFP response. These individuals hold degrees in areas such as advanced mathematics and computer science. The clinical pharmacist on the team holds a Doctor of Pharmacy degree with experience in all facets of pharmacy services.

Once the license agreement has been signed and executed by both parties, the assigned WKCDI Implementation team members possess the necessary skills for a successful implementation of the licensed solutions. If changes in personnel are necessary during the implementation, our commitment to the highest quality support will remain. The Director of Implementations and the Manager of Implementation are available during the implementation to receive feedback and address any opportunities for improvement needed to support the State.

We regard detailed organizational charts, resumes, and other information about its employees as confidential and personal. However, a high-level organizational chart of our Implementation team is provided in Figure 1.

*Figure 1. WKCDI Implementation Team’s Organizational Structure.*



j. **Subcontractors**

**If the bidder intends to subcontract any part of its performance hereunder, the bidder should provide:**

- i. **name, address, and telephone number of the subcontractor(s);**
- ii. **specific tasks for each subcontractor(s);**
- iii. **percentage of performance hours intended for each subcontract; and**
- iv. **total percentage of subcontractor(s) performance hours.**

We will not be using subcontractors.



## 2. Technical Approach

The technical approach section of the Technical Proposal should consist of the following subsections:

- a. Response Requirements: Section V.E.
- b. Traceability Matrix: Section V.F.

### a. Response Requirements: Section V.E.

The bidder should provide the following information in response to this RFP.

1. Please provide a summary of the bidder's understanding regarding this RFP and its requirements.

Our understanding is the State is seeking data files and a searchable website to support the State's activities relative to the Affordable Care Act pertaining to Medicaid reimbursement of Physician-Administered Drugs, and all aspects of the Medicaid reimbursement and the drug rebate program. The State is seeking data files and a searchable website primarily focused on Healthcare Common Procedure Coding System (HCPCS) codes, the mapping of HCPCS codes to National Drug Codes (NDCs), and related information to support its activities. The state has identified multiple requirements in support of this endeavor.

2. The Contractor must provide data file, in a State approved format, at a minimum of monthly that contains at a current HCPCS level II quantity to NDC quantity unit conversion.

**The Contractor must review for current NDCs, HCPCS, CPT codes, including Not Otherwise Classified codes (NOC) for drugs. When it is determined by the State that codes are missing or invalid in the crosswalk Contractor must send corrected files within five (5) business days to the State as requested by the State. Describe how bidder will meet this requirement.**

Flat (data) files are available for the solutions identified as such within the WKCDI response. We update the designated data files monthly as total files or incremental updates. A weekly frequency is also available.

The Centers for Medicare and Medicaid Services (CMS) updates HCPCS codes on a quarterly basis. We review the updates as CMS publishes them. In-between CMS HCPCS updates, we maintain mappings between Level II HCPCS codes and NDCs as new/modified NDCs become available from pharmaceutical manufacturers. Any additions, changes, or deletions to HCPCS/NDC mappings are reflected in the monthly update to the HCPCS Codes Database data file. The HCPCS codes description file is typically empty for months outside of the CMS quarterly update (e.g., February, March, May, June, and so forth).

When WKCDI and the State agree that an update to mappings between HCPCS and NDCs is needed in-between monthly updates due to an error or inadvertent omission, WKCDI can provide the State with a weekly update file on a one-time basis.

WKCDI does not offer mappings between CPT codes, or Level III HCPCS codes, and NDCs.

HCPCS codes that are extremely broad are not mapped to NDCs (for example, J3490 "Unclassified drugs" and J9999 "Not otherwise classified, antineoplastic drugs"). WKCDI customers find such mappings to be irrelevant and have requested that they be excluded from the database since they add clutter, while not enhancing value. However, WKCDI is amenable to including mappings for select NDCs, on request from the State, but has no plans to map these broad, non-specific HCPCS codes to large numbers of NDCs.

Note: Throughout this response, where WKCDI has indicated "NDCs," this abbreviation refers to National Drug Codes, as well as Universal Product Codes (UPCs), and Health Related Items (HRIs), as appropriate.

3. **The Contractor must provide the HCPCS/CPT code level description. This includes the description of, at a minimum but not limited to;**
  - a. covered-outpatient drugs;
  - b. radiopharmaceuticals;
  - c. contrasts; and
  - d. vaccines.

**Describe how bidder will meet this requirement.**

Medi-Span Electronic Drug File (MED-File) v2 is a comprehensive drug database that supports the items listed above, as well as many others. As applicable, NDCs present in MED-File v2 are mapped to HCPCS codes in the HCPCS Codes database. As of the August 7, 2019 monthly issue of HCPCS Codes database, there are 58,963 HCPCS/NDC mappings. A HCPCS code may map to zero, one, or many NDCs. Likewise, an NDC may map to zero, one, or many HCPCS codes.

The HCPCS Codes Database provides both short and long HCPCS code descriptions.

WKCDI does not offer mappings between CPT codes, or Level III HCPCS codes, and NDCs.

4. **The Contractor must provide the manufacturer’s specific drug strength, dosage form, unit of measure and package size. This includes, but is not limited to identification of:**
  - a. single dose;
  - b. multi-dose vials;
  - c. syringes;
  - d. auto-injectors;
  - e. kits; and
  - f. tablets.

**Describe how bidder will meet this requirement.**

MED-File v2 provides dosage form, strength, packaging, and other attributes for NDCs.

5. **The Contractor must provide a HCPCS/CPT code to NDC unit conversion for accurate rebate unit calculation. Describe the methodology used for conversion calculations.**

WCKDI does not provide a HCPCS code to NDC unit conversion. Within MED-File v2, the Package Size Unit of Measure is assigned in accordance with the standards set forth by the National Council for Prescription Drug Programs (NCPDP). Values for the Package Size Unit of Measure are Each, Gram, or Milliliter.

The HCPCS Codes Database includes a Mapping Indicator to describe the association between the HCPCS code and the NDC. HCPCS codes may be strength, dose, or package-size specific. This indicator identifies if user intervention is needed to derive the appropriate billing amount. Values for the Mapping Indicator include:

ID	Description
1	Strength-specific: direct match to NDC-UPC-HRI
2	Package size-specific; direct match to NDC-UPC-HRI

ID	Description
3	Strength-specific; mapped to appropriate drug product
4	Package size-specific; mapped to appropriate drug product
A	Item is a kit and requires two HCPCS to be submitted for billing
B	Reserved for future use
C	Reserved for future use
ZZ	Indirect mapping. Could be submitted using HCPCS but is not the best mapping.

IDs 3, 4, and ZZ require user review to determine the appropriate billing amount prior to submitting.

In addition, we offer a data file specific to ASP-based pricing for Medicare Part B, namely Payment Allowance Limit – Part B (PAL-B) v2. This file includes the quarter date, revision date, HCPCS code, payment allowance limit (aka ASP), HCPCS dosage, package size, package quantity, billable units (per package and per NDC). It also provides a Not Otherwise Classified File (NOC File). Information is provided for 16 quarters of data.

We do not offer mappings between CPT codes, or Level III HCPCS codes, and NDCs.

- 6. The Contractor must provide HCPCS/CPT billing units min/max for FDA approved dosing of the procedural code. The min/max limits will be based on the adult and pediatric populations for proper utilization. Describe how bidder will meet this requirement and what resources are used.**

The State's response in Addendum One (August 12, 2019) reads "The billing minimum and maximum age/gender refer to FDA approved indication of use for safe and effective treatment based on clinical trial results and daily doses. This drug data will be used for claim processing."

The Drug Dosing and Administration Database (DDAD) provides comprehensive data to perform:

- Dose
- Frequency
- Duration screening based in inputs, including:
  - Age
  - Weight
  - Renal function
  - Indication
  - Co-morbidities
  - Dose type for all age ranges, neonates through geriatrics

The dosing ranges (minimum on one end, maximum on the other) are/can be associated to NCPDP billing units (Each, Gram, or Milliliter). Dosing ranges are not limited to those provide in FDA-approved labeling and may also reflect standards of care as documented in the literature, clinical guidelines, and other qualified sources that reflect the way drugs are dosed in clinical practice.

The Drug Indications Database provides FDA-approved indications and off-label uses for drugs, along with additional supporting attributes. In cases where age is associated with use of a drug (for example, a drug is

indicated for diabetes, only in adults 18 years of age or greater), the age information is provided as a restriction to the drug indication data record.

Both the Drug Dosing and Administration Database and the Drug Indications Database require the use of the Medical Conditions Master Database, a proprietary medical condition/disease vocabulary and hierarchy. Mappings between the proprietary medical condition vocabulary and ICD-10-CM/PCS is also available.

We do not provide HCPCS/CPT billing unit min/max related to FDA-approved dosing or drug indications.

**7. The Contractor must provide updates of new codes and alerts related to new or changes to HCPCS /CPT codes or drugs in a State approved frequency, format, and distribution point. Describe how bidder will meet this requirement.**

Please see our response to Question 2. The monthly data file is available as either a total replacement file or an incremental update. The incremental update provides only those records that have been added, changed, or deleted since the previous monthly update.

We can deliver the following data files, as described in this RFP response, as secure FTP push or pull, or through a secure Web delivery portal:

- Medi-Span Electronic Drug File (MED-File) v2 Pricing
- HCPCS Codes Database
- Payment Allowance Limit – Part B (PAL-B) v2
- Drug Dosing and Administration Database
- Drug Indications Database
- Medical Conditions Master Database
- ICD-10-CM/PCS Medical Condition Mapping File
- Medicare Plans File
- Medicaid Rebate File

We do not offer mappings between CPT codes, or Level III HCPCS codes, and NDCs.

**8. The Contractor website must provide FDA age and gender minimum/maximums for proper utilization. Describe how bidder will meet this requirement. Include information on resources utilized.**

The State's response in Addendum One (August 12, 2019) reads "The billing minimum and maximum age/gender refer to FDA approved indication of use for safe and effective treatment based on clinical trial results and daily doses. This drug data will be used for claim processing."

FDA approved indications and off-label uses are available in Facts & Comparisons eAnswers, a vendor-hosted, web-based drug reference tool.

**9. The Contractor must provide a searchable website which is State user accessible and provides information to obtain historical and current information which includes, but is not limited to the following:**

**a. HCPCS/CPT to NDC crosswalk;**

The complete HCPCS codes mappings to NDCs are not available in a searchable website. HCPCS information in Price Rx Pro, a vendor-hosted, web-based tool, is limited to those HCPCS that are directly associated to Medicare Part B (sourced from CMS' ASP drug price files).

We do not offer mappings between CPT codes, or Level III HCPCS codes, and NDCs.

**b. HCPCS Procedural code description;**

HCPCS code descriptions in Price Rx Pro are limited to those HCPCS codes that are directly associated to Medicare Part B (sourced from CMS' ASP drug price files).

**c. NDC drug name description;**

Price Rx Pro includes drug names.

**d. Manufacturer NDC drug strength and package size;**

Drug strength, package size, and other attributes are available for NDCs in Price Rx Pro.

**e. Effective termination and reactivation dates of HCPCS/CPT codes;**

Price Rx Pro does not include this date information for HCPCS codes. As noted in our response to Question 9a, HCPCS information in Price Rx Pro is limited to that associated directly to ASP drug pricing, including the ASP Quarter Date and ASP Revision Date. The HCPCS Codes Database data file does provide Added Dates, Action Effective Dates, and Termination Dates for HCPCS codes.

We do not offer mappings between CPT codes, or Level III HCPCS codes, and NDCs.

**f. Drug name to NDC crosswalk;**

Price Rx Pro provides a Product Name for all NDCs included in this web-hosted tool.

**g. Code to NDC conversion calculator for NDC unit billing ;**

As noted in our response to Question 9a, HCPCS information in Price Rx Pro is limited to that associated directly to ASP drug pricing for Medicare Part B. This information includes

- Quarter date
- Revision date
- HCPCS code
- Payment allowance limit (aka ASP)
- HCPCS dosage
- Package size
- Package quantity
- Billable units (per package and per NDC).

**h. FDA approved date;**

Price Rx Pro includes the FDA approval date.

**i. Drug FDA designation status;**

The State's response in Addendum One (August 12, 2019) reads "Designation status refers to FDA status such as orphan, break-through, fast track, accelerated approval, or priority review status when new drugs are FDA approved."

WKCDI does not support this requirement.

**j. FDA clinical indications for approved use including indications for self-administration;**

FDA approved indications and off-label uses are available in Facts & Comparisons eAnswers, a vendor-hosted, web-based drug reference tool.

**k. HCPCS/CPT FDA and Compendia Minimum and Maximum units;**

The State's response in Addendum One (August 12, 2019) reads "The billing minimum and maximum age/gender refer to FDA approved indication of use for safe and effective treatment based on clinical trial results and daily doses. This drug data will be used for claim processing."

FDA approved indications and off-label uses are available in Facts & Comparisons eAnswers, a vendor-hosted, web-based drug reference tool.

This indication information is not associated to HCPCS codes or to CPT codes.

**l. FDA age edits for all age ranges;**

The State's response in Addendum One (August 12, 2019) reads "The billing minimum and maximum age/gender refer to FDA approved indication of use for safe and effective treatment based on clinical trial results and daily doses. This drug data will be used for claim processing."

FDA-approved indications and off-label uses are available in Facts & Comparisons eAnswers, a vendor-hosted, web-based drug reference tool. Age information, specific to indications, is provided, as applicable.

Dosing data for FDA-approved indications and off-label uses is available in Facts & Comparisons eAnswers. Age ranges, and their associated dosing, are not limited to the information provided in FDA-approved labeling and may also reflect standards of care as documented in the literature, clinical guidelines, and other qualified sources that reflect the way drugs are dosed in clinical practice.

Age-related precautions and contraindications are available in Facts & Comparisons eAnswers. Information is not limited to the information provided in FDA-approved labeling and may also reflect standards of care as documented in the literature, clinical guidelines, and other qualified sources based on available evidence.

**m. ICD-10 CM diagnosis codes associated with FDA approved HCPCS/CPT drug codes;**

WKCDI does not provide a direct association between ICD-10-CM diagnoses and HCPCS codes, either through a searchable website or through data files. However, the State would be able to associate ICD-10-CM codes to FDA approved indications, then to NDCs (or the reverse), using data files including MED-File v2, Drug Indications Database, Medical Conditions Master Database, and the ICD-10-CM/PCS Medical Conditions Mapping File. As described earlier, NDCs are mapped to HCPCS codes in the HCPCS Codes Database.

WKCDI does not offer mappings between CPT codes, or Level III HCPCS codes, and NDCs.

**n. Medicare resources: Medicare part B and D designation;**

Medicare Part B and/or Part D designations are not available in a searchable website. However, the Medicare Plans File, available as a data file, provides these designations.

**o. Rebate effective start and termination dates;**

Dates associated to Medicaid rebate information are not available in a searchable website. However, the Medicaid Rebate File, available as a data file, provides several dates:

- CMS Termination Date
- CMS FDA Approval Date
- CMS Date Entered Market
- CMS Reactivation Date

**p. Manufacturer effective termination and reactivation dates of an NDC;**

Price Rx Pro includes a single effective date for an NDC. In addition, the Market Start Date as reported in the FDA NSDE File and the Market Start Date when reported by the Manufacturer to WKCDI are also included in Price Rx Pro. In the event that an NDC is reactivated, it retains its original effective date.

**q. Clinical summary; recommendations for prior authorization criteria.**

Drug monographs are provided in Facts & Comparisons eAnswers. Drug monographs do not provide any information specific to prior authorization criteria. However, information in drug monographs can be used by the State to establish its desired prior authorization criteria.

**r. Average Wholesale price, (AWP),**

Price Rx Pro includes current and all available historic AWP for an NDC.

**s. Wholesale Acquisition Cost (WAC),**

Price Rx Pro includes current and all available historic WAC for an NDC.

**t. Average Sales Price (ASP), and**

The State's response in Addendum One (August 12, 2019) reads "The ASP pricing or average sales price, which is the average between manufacturer sales price and purchasers, and Medicare Part B Average Sales Pricing (ASP Plus 6% reimbursement methodology) will be separate pricing information for Medicare Part B covered drugs as applicable."

CMS states:

"Where applicable, the payment amounts in the quarterly ASP files are 106 percent of the Average Sales Price (ASP) calculated from data submitted by drug manufacturers."

CMS publishes payment allowance limited under the umbrella heading of "ASP Drug Pricing Files," per their website: <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice/2019ASPFiles.html>.

Price Rx Pro includes current and historic ASP pricing (payment allowance limits) specific to HCPCS/NDCs included in Medicare Part B, as defined by CMS per the above website. This information includes:

- Quarter date
- Revision date
- HCPCS code
- Payment allowance limit (aka ASP)
- HCPCS dosage
- Package size
- Package quantity
- Billable units (per package and per NDC)

Current and historic information is available.

Note: ASP data, outside of that published at the above website, is not available. The ASP published by CMS is generally 106% of the ASP calculated from data submitted to CMS by drug manufacturers, as noted on the CMS website.

**u. Medicare Part B current pricing with effective dates.**

Please refer to our response to Question 9t.

**Current pricing should be updated at a minimum of quarterly. Describe how bidder will meet this requirement and what resources are used.**

AWP, Direct Price (DP), and WAC drug pricing are updated daily in the MED-File v2 data file on normal business days. Customers of MED-File v2 will receive drug pricing updates based on the frequency specified in their license agreement (e.g., daily, weekly, or monthly). Drug pricing in Price Rx Pro is updated daily on normal business days.

CMS updates ASP pricing on a quarterly basis and reflected in the PAL-B v2 data file and in Price Rx Pro, accordingly.

## b. Traceability Matrix: Section V.F.

The bidder should provide the following information in response to this RFP.

Column Description	Bidder Responsibility
Req #	The unique identifier for the requirement as assigned by DHHS, followed by the specific requirement number. This column is dictated by this RFP and should not be modified by the bidder.
Requirement	The statement of the requirement to which the bidder should respond. This column is dictated by the RFP and must not be modified by the bidder.
(1) Comply	<p>The bidder should insert an "X" if the proposed solution complies with the requirement. Describe in the response how the proposed solution meets the requirement. The bidder should leave blank if the proposed solution does not comply with the requirement.</p> <p>If left blank, the Bidder should also address the following:</p> <ul style="list-style-type: none"> <li>• Capability does not currently exist in the proposed system, but is planned in the near future (within the next few months)</li> <li>• Capability not available, is not planned, or requires extensive source-code design and customization to be considered part of the bidder's standard capability</li> <li>• Requires an extensive integration effort of more than 500 hours</li> </ul>
(a) Core	The bidder should insert an "X" if the requirement is met by existing capabilities of the core system or with minor modifications or configuration to existing functionality.
(b) Custom	The bidder should insert an "X" if the Bidder proposes to custom develop the capability to meet this requirement. Indicate "custom" for those features that require substantial or "from the ground up" development efforts.
(c) 3rd Party	The Bidder should insert an "X" if the Bidder proposed to meet this requirement using a 3rd party component or product (e.g., a COTS vendor, or other 3rd party). The Bidder should describe the product, including product name, its functionality and benefits in their response.

The following requirements describe what is needed to support DHHS technical project operations.

Each requirement is identified by the following first three characters:

PTT	Production, Test and Training Requirements
INT	Interfaces/Imports/Exports Requirements

***Production, Test and Training Requirements***

DHHS requires three separate environments (Production, Test, and Training) in order to operate and maintain the new software on an ongoing basis:

**Production Environment** - a real-time setting where software and hardware setups are configured and installed for the purpose of supporting the organization's daily operations.

**Test Environment** – A test environment is required that mirrors the live production environment, including hardware and software. This test environment will be used to test application changes before they are deployed to production. This step is an important part of quality assurance, where all changes are tested to minimize the risk of adverse reactions in the production environment. While it is necessary to mirror all of the functions of the production environment, it is not necessary to maintain the same load capacity.

**Training Environment** – A training environment is also required that allows DHHS to provide hands-on training to users. This environment would allow DHHS to maintain unique data for use in training and conduct training without interference with the test or production environments. This environment will have occasional use.

Req #	Requirement	(1) Comply	(a) Core	(b) Custom	(c) 3rd Party
PTT-1	Describe how the solution supports several environments, i.e., production, training and test environments.				
<p><b>Bidder Response</b></p> <p>We provide the data files around which the State may develop its user systems/applications. We do not provide environments for its customers to deploy, train, or test such applications. Environments for searchable websites are not applicable. If licensed, the State would have access to Price Rx Pro and/or Facts &amp; Comparisons eAnswers, both of which are vendor-hosted, web-based reference tools.</p>					

**Interfaces/Imports/Exports Requirements**

The proposed software solution is required to be able to interface with the Nebraska Medicaid Information System and that of its business partners.

Req #	Requirement	(1) Comply	(a) Core	(b) Custom	(c) 3rd Party
INT-1	Describe the solution's automated approach to managing interfaces.				
<b>Bidder Response</b> We provide the data files around which the State may develop its user systems/applications. We do not provide, nor will we be responsible for, interfaces with the State system or systems that are associated with the State's business partners.					
INT-2	Describe how the solution's interfaces secure and protect the data and the associated infrastructure from a confidentiality, integrity and availability perspective.				
<b>Bidder Response</b> We provide the data files around which the State may develop its user systems/applications. We do not provide, nor will we be responsible for, interfaces with the State system or systems that are associated with the State's business partners.  Therefore, confidentiality, integrity, and availability of the State's data is outside the scope of responsibility of WKCDI. Neither Price Rx Pro or Facts & Comparisons eAnswers, as vendor-hosted, web-based reference tools would house any State-specific data.					
INT-3	Describe how the solution has the capability to notify System Administrators/ system support staff if an interface is not available for any reason.	X	X		
<b>Bidder Response</b> We provide the data files around which the State may develop its user systems/applications. We neither provide nor host these systems or interfaces. Price Rx Pro and Facts & Comparisons eAnswers are vendor-hosted, Web-based reference tools, hosted in redundant data centers, geographically based, to maximize their availability. If either tool is unavailable, licensed Price Rx Pro or Facts & Comparisons eAnswers users will be redirected to a URL that provides a message indicating the respective tool is unavailable.					

Req #	Requirement	(1) Comply	(a) Core	(b) Custom	(c) 3rd Party
INT-4	Describe how the solution conducts end-to-end testing of file distribution with interface partners both internal as well as all external business partners to ensure transaction requirements are met. For example, MCO's, DMA and other business partners.	X	X		
<b>Bidder Response</b>  We provide the data files around which the State may develop its user systems/applications. On licensure, we will work with the State and/or its business partners, as specified in the executed license agreement, to confirm the State and/or its business partners can retrieve the data files from the designated FTP or WKCDI-hosted web delivery site. Any further testing is the responsibility of the State. Licensed users of Price Rx Pro and/or Facts & Comparisons eAnswers will be provided a user name/password to access these vendor-hosted, web-based reference tools. Each licensed user will then be able to test their access.					

Attachment A Mandatory  
Requirements Checklist (MRC)

# Attachment A

## Mandatory Requirements Checklist (MRC)

Request for Proposal Number 6116 Z1

Bidders must respond to the Mandatory Requirements Checklist using the matrix format provided.

The responses in the MRC must indicate that the bidder intends to comply with each individual requirement by initialing the Acceptance box. Initialing the box with a no will be considered as not meeting the requirements of the bid and the bidder's proposal will be disqualified.

	MANDATORY REQUIREMENTS	COMPLY Y/N	INITIALS OF ACCEPTANCE
1	The Contractor must transmit crosswalk HPCPCS and NDC data to a secure SFTP site at the discretion of the State. Files must be able to transfer to the State and State partners which include but are not limited to DHHS, MCO and DMA.	Yes	

Form A Contractor  
Proposal Point of Contact

# Form A

## Contractor Proposal Point of Contact

**Request for Proposal Number 6116 Z1**

Form A should be completed and submitted with each response to this solicitation. This is intended to provide the State with information on the contractor's name and address, and the specific person(s) who are responsible for preparation of the contractor's response.

Preparation of Response Contact Information	
<b>Contractor Name:</b>	Wolters Kluwer Clinical Drug Information, Inc.
<b>Contractor Address:</b>	1100 Terex Road Hudson, Ohio 44236
<b>Contact Person &amp; Title:</b>	Michael Laib, Regional Sales Director
<b>E-mail Address:</b>	Michael.Laib@wolterskluwer.com
<b>Telephone Number (Office):</b>	1.480.706.0188
<b>Telephone Number (Cellular):</b>	1.602.820.2930
<b>Fax Number:</b>	

Each contractor should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the contractor's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
<b>Contractor Name:</b>	Wolters Kluwer Clinical Drug Information, Inc.
<b>Contractor Address:</b>	1100 Terex Road Hudson, Ohio 44236
<b>Contact Person &amp; Title:</b>	Michael Laib, Regional Sales Director
<b>E-mail Address:</b>	Michael.Laib@wolterskluwer.com
<b>Telephone Number (Office):</b>	1.480.706.0188
<b>Telephone Number (Cellular):</b>	1.602.820.2930
<b>Fax Number:</b>	

Request for Proposal for  
Contractual Services Form

## Request for Proposal for Contractual Services Form

By signing this Request for Proposal for Contractual Services form, the contractor guarantees compliance with the procedures stated in this Solicitation, and agrees to the terms and conditions unless otherwise indicated in writing and certifies that contractor maintains a drug free work place.

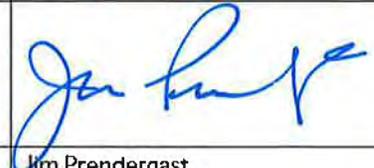
Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603 DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

\_\_\_\_\_ NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this Solicitation.

\_\_\_\_\_ I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. § 73-107 and wish to have preference, if applicable, considered in the award of this contract.

\_\_\_\_\_ I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. §71-8611 and wish to have preference considered in the award of this contract.

**FORM MUST BE SIGNED USING AN INDELIBLE METHOD (NOT ELECTRONICALLY)**

<b>FIRM:</b>	Wolters Kluwer Clinical Drug Information, Inc.
<b>COMPLETE ADDRESS:</b>	1100 Terex Road Hudson, Ohio 44236
<b>TELEPHONE NUMBER:</b>	1.781.392.2464
<b>FAX NUMBER:</b>	1.781.642.8890
<b>DATE:</b>	9/10/19
<b>SIGNATURE:</b>	
<b>TYPED NAME &amp; TITLE OF SIGNER:</b>	Jim Prendergast Director of Global Contracts and Order Management



# Terms and Conditions

## II. Terms and Conditions

Bidders should complete Sections II through VI as part of their proposal. Bidder should read the Terms and Conditions and should initial either accept, reject, or reject and provide alternative language for each clause. The bidder should also provide an explanation of why the bidder rejected the clause or rejected the clause and provided alternate language. By signing the solicitation, bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State of Nebraska is soliciting proposals in response to this solicitation. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for this solicitation.

The bidder should submit with their proposal any license, user agreement, service level agreement, or similar documents that the bidder wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the bidder's proposal as the document will not have been included in the evaluation process. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the Addendum to Contract Award have been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

1. If only one Party has a particular clause then that clause shall control;
2. If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Parties have a similar clause, but the clauses conflict, the State's clause shall control.

### A. General

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X  	Contractor requires that the definitive agreement be on Contractor's form of license agreement. While the license agreement would be consistent with the terms and conditions of this Request for Proposal (as modified per Contractor's response), this license agreement would supersede any and all prior and contemporaneous agreements, understandings, promises and representations, including without limitation, the Request for Proposal and Addenda, Amendments to the solicitation, Questions and Answers, and Contractor's proposal. The license agreement would also contain a number of additional terms and conditions standard to Contractor's form that are not currently addressed in the Request for Proposal. As an overview, these terms and conditions would include matters such as:  (a) grant of license and scope and limitations of use;

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			(b) disclaimers by Contractor as to matters relating to practice of medicine, use by licensed professionals, and medical advice; (c) disclaimer of warranties; (d) limitation of liability; (e) audit rights with respect to the State's use; and (f) certain pass-through provisions required by third party licensors.

The contract resulting from this solicitation shall incorporate the following documents:

1. Request for Proposal and Addenda;
2. Amendments to the solicitation;
3. Questions and Answers;
4. Contractor's proposal (Solicitation and properly submitted documents);
5. The executed Contract and Addendum One to Contract, if applicable; and,
6. Amendments/Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to solicitation and any Questions and Answers, 4) the original solicitation document and any Addenda, and 5) the Contractor's submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

**B. Notification**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

Contractor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

**C. Buyers Representative (Contract Manager)**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
<p style="text-align: center;">X</p> 			

The State reserves the right to appoint a Buyer's Representative to manage [or assist the State Purchasing Bureau Buyer in managing] the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities. If a Buyer's Representative is appointed, the Contractor will be provided a copy of the appointment document, and is required to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

**D. Governing Law (Statutory)**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

**[Contractor Comment: Contractor is unable to agree to the broad statement that all provisions of the final contract will but subject to the State's Constitution, statutes, common law, regulations and sovereign immunity. Please identify the laws that the State anticipates being applicable to this engagement so that we may review and consider their applicability to and impact on this engagement.]**

**E. Beginning of Work**

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

**F. Change Orders or Substitutions**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	Contractor provides a remote access service. Change orders with respect to this service are inapplicable. Changes to the scope of use of the service will be addressed via a formal amendment to the contract.

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the solicitation. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

In the event any product is discontinued or replaced upon mutual consent during the contract period or prior to delivery, the State reserves the right to amend the contract or purchase order to include the alternate product at the same price.

\*\*\*Contractor will not substitute any item that has been awarded without prior written approval of SPB\*\*\*

**G. Notice of Potential Contractor Breach**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
	X 		Contractor views the requirement to provide notification of any breach or anticipatory breach as not customary for these types of arrangements.

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**H. Breach**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	Contractor is unwilling to provide cost of cover damages.  Incidental and consequential damages (along with indirect, special and punitive damages) will be disclaimed by the parties in the absence of a breach of Contractor's intellectual property rights by the State.  The State's failure to make payments due under the contract shall be deemed a material breach of the contract.

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby. OR In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections.

**I. Non-Waiver of Breach**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**J. Severability**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

**K. Indemnification**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	<p>Contractor does not believe it is reasonable to provide broad indemnification for these matters. Contractor is willing to indemnify the State for third party infringement claims arising from Contractor's solutions as follows:</p> <p>Contractor's obligation to indemnify the State for intellectual property infringement is limited to a third party claim that the licensed content provided by the State infringes any valid copyright, unless such claim arises from and to the extent of:</p> <ul style="list-style-type: none"> <li>(a) the combination or use of the licensed content, the information contained therein, or results derived therefrom with any software, data, information or materials not furnished by Contractor,</li> <li>(b) the use of the licensed content, the information contained therein, or results derived therefrom other than as permitted under the definitive agreement, or</li> </ul>

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			(c) any modifications to the licensed content or results derived therefrom by any individual or entity other than Contractor, in which case Contractor will have no indemnification obligations.

1. General

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2. Intellectual Property (Optional)

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this solicitation.

3. Personnel

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

4. Self-Insurance

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement,

Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

5. The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

**L. Attorney's Fees**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
	X 		Contractor does not typically agree to attorney's fees provisions. However, should Contractor be awarded this contract, Contractor would be willing to consider including such a provision in connection with the negotiation of the definitive agreement.

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if ordered by the court, including attorney's fees and costs, if the other Party prevails.

**M. Assignment, Sale, or Merger**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

Either Party may assign the contract upon mutual written agreement of the other Party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**N. Contracting with Other Nebraska Political Sub-Divisions of the State or Another State**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

The Contractor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

**O. Force Majeure**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

**P. Confidentiality**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			While this provision is acceptable, Contractor would require that the definition of "confidential information" in the definitive agreement contains customary carve-outs.  Also, to clarify, Contractor provides content and data as part of its remote access service. Contractor will not receive or collect (and does not desire to receive or collect) personal information of individuals in connection with this engagement.

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**Q. Office of Public Counsel (Statutory)**

If it provides, under the terms of this contract and on behalf of the State of Nebraska, health and human services to individuals; service delivery; service coordination; or case management, Contractor shall submit to the jurisdiction of the Office of Public Counsel, pursuant to Neb. Rev. Stat. §§ 81-8,240 et seq. This section shall survive the termination of this contract. **[Contractor Comment: This provision is inapplicable.]**

**R. Long-Term Care Ombudsman (Statutory)**

Contractor must comply with the Long-Term Care Ombudsman Act, per Neb. Rev. Stat. §§ 81-2237 et seq. This section shall survive the termination of this contract. **[Contractor Comment: This provision is inapplicable.]**

**S. Early Termination**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	Contractor is unwilling to grant the termination rights included in the following subsections of this Section S (Early Termination): 2, 3.a., 3.d., 3.h., 3.i. and 3.j. Contractor does not permit customers to terminate for convenience and the other subsections are already addressed through the termination right in Section H above.

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - f. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - g. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - h. Contractor intentionally discloses confidential information;
  - i. Contractor has or announces it will discontinue support of the deliverable; and,
  - j. In the event funding is no longer available.

**T. Contract Closeout**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			For clarity, subsections 1 and 2 of this Section T are inapplicable. Contractor is granting the State access to Contractor's remote access service. Contractor will not be creating any deliverables as part of this engagement.

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;

3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor Contractor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor Contractor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.

### III. Contractor Duties

#### A. Independent Contractor/Obligations

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the bidder's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any subcontractor engaged to perform work on this contract.

**B. Employee Work Eligibility Status**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	Contractor will not perform any services within the State of Nebraska. Accordingly, this provision is not applicable.

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>
2. The completed United States Attestation Form should be submitted with the solicitation response.

3. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
4. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

**C. Compliance with Civil Rights Laws and Equal Opportunity Employment / Nondiscrimination (Statutory)**

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all subcontracts for goods and services to be covered by any contract resulting from this solicitation.

**D. Cooperation with Other Contractors**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
(S) X			

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

**E. Permits, Regulations, Laws**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X (S)	Contractor does not guarantee that it has the full legal right to the materials, supplies, equipment, software and other items used to execute the contract, but, as provided above, Contractor does indemnify the State to the extent Contractor's remote access service infringes any third party intellectual property.

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the contract. The

Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

**F. Ownership of Information and Data / Deliverables**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	<p>The State's use of the content and data delivered to the State by Contractor will be limited to the State's internal business purposes and the other standard restrictions on use contained in Contractor's standard form license agreement.</p> <p>Contractor is granting the State access to Contractor's remote access service. Contractor will not be creating any deliverables as part of this engagement.</p>

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

**G. Insurance Requirements**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	<p>Contractor will provide insurance coverage as described in Table 1.</p> <p>Contractor will, upon written request, provide the State with commercially acceptable proof of insurance evidencing that the above-noted insurance requirements have been satisfied. Except in the case of routine renewal cycles, Contractor shall endeavor to provide the State with at least thirty (30) calendar days' prior written notice of cancellation or nonrenewal of the policies. All insurance policies will be issued by insurance companies with an A.M. Best Rating of not less than A-, a Standard &amp; Poor's rating of not less than A- or its industry equivalent rating.</p>

*Table 1. WKCDI Insurance Coverage.*

Type of Coverage	Coverage Amounts
US Workers Compensation	Statutory Limits
US Employer's Liability	\$1,000,000 each accident/disease/employee

Type of Coverage	Coverage Amounts
US Automobile Liability	\$1,000,000 combined single limit per accident
Comprehensive General Liability	\$1,000,000 per occurrence \$2,000,000 general aggregate
US Umbrella/Excess Liability	\$4,000,000 each occurrence/general aggregate
Professional Media Liability (aka Errors & Omissions). Such policy shall remain in force for at least one year beyond termination of the agreement or Contractor shall purchase a one (1) year extended reporting endorsement on the last applicable program.	\$1,000,000 per claim made \$2,000,000 general aggregate

The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the contract, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any subcontractor to commence work until the subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within one (1) year of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and one (1) year following termination or expiration of the contract.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.

#### 1. **Workers' Compensation Insurance**

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in

which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

## 2. Commercial General Liability Insurance and Commercial Automobile Liability Insurance

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
Independent Contractors	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included

Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000 per occurrence
<b>PROFESSIONAL LIABILITY</b>	
All Other Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim / Aggregate
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

**1. Evidence of Coverage**

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

MLTC  
 Pharmacy Program Specialist  
 301 Centennial Mall South  
 Nebraska State Office Building  
 Lincoln, NE 68509

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**2. Deviations**

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.

**H. Notice of Potential Contractor Breach**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
	X 		Contractor views the requirement to provide notification of any breach or anticipatory breach as not customary for these types of arrangements.

If Contractor breaches the contract or anticipates breaching the contract the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

**I. Antitrust**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**J. Conflict of Interest**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	Contractor is able to certify that to its knowledge there does not now exist a relationship between Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this solicitation or project. Contractor is unwilling to certify, however, that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its goods and services hereunder or which creates an actual or an appearance of conflict of interest. While Contractor does not intend to take any such action, this statement is too vague and far-reaching for Contractor to be able to provide this certification. Similarly, given the size of Contractor and the difficulty in monitoring such restrictions, Contractor is unwilling to agree to a non-solicitation clause.

By submitting a proposal, bidder certifies that there does not now exist a relationship between the bidder and any person or entity which is or gives the appearance of a conflict of interest related to this solicitation or project.

The bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its goods and services hereunder or which creates an actual or an appearance of conflict of interest.

The bidder certifies that it will not knowingly employ any individual known by bidder to have a conflict of interest.

The Parties shall not knowingly, for a period of two (2) years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the solicitation or project, or who had any influence on decisions affecting the Solicitation or project.

**K. State Property**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

**L. Site Rules and Regulations**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

The Contractor shall use its best efforts to ensure that its employees, agents, and subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

**M. Advertising**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods or services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**N. Nebraska Technology Access Standards (Statutory)**

Contractor shall review the Nebraska Technology Access Standards, found at <http://nrtc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

**[Contractor Comment: Contractor does not warrant that any of its solutions will comply with the Nebraska Technology Access Standards, WCAG 2.0 or any similar guidelines or standards.]**

**O. Disaster Recovery/Back Up Plan**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	<p>Contractor maintains a business continuity plan, which covers ongoing operations. The scope of the document includes facilities, staff, infrastructure, and operational processes and procedures that are used given a specific business disrupting event. Each year, the business walks through a given disaster scenario, most recently the walk through simulated a localized power outage that lasted 72 hours, testing the processes for remote operations. Contractor does not share a copy of this document as it contains Contractor confidential information.</p> <p>Contractor content, hosted applications, and operational systems are hosted out of a remote tier 3 data center and have a Recover Time Objective (RTO) of less than four (4) hours.</p>

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to

continue delivery of goods and services as specified under the specifications in the contract in the event of a disaster.

**P. Drug Policy**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**Q. Warranty**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	Contractor's standard license agreement, which will govern this engagement and supersede any contrary provisions in the Request for Proposal, provides the following language:  Disclaimer of Warranties.  1. The licensed content provided under this agreement is furnished by [Contractor] and accepted by licensee "AS IS" and without any warranty or condition whatsoever. [Contractor] disclaims any warranty that the licensed content or the content itself will meet any authorized user's particular requirements or that access to the licensed content will be uninterrupted or error-free. [Contractor], its affiliates and licensors make no representations, warranties or conditions with respect to the licensed content hereunder, and [Contractor], its affiliates and licensors disclaim all representations, warranties and conditions of any kind or nature, express or implied, arising out of or related to this agreement, the licensed content or results derived therefrom, including, but not limited to, any warranties or conditions regarding accuracy, quality, correctness, completeness, comprehensiveness, suitability, system availability, compatibility, merchantability, fitness for a particular purpose, title, noninfringement or otherwise (irrespective of any course of dealing, custom or usage of trade). Licensee acknowledges

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			<p>that [Contractor] does not have control over content that has been modified by licensee or an authorized user as set forth in section 2.11 or content that is subject to user control as set forth in section 2.16, and as such, [Contractor], its affiliates and licensors make no representations, warranties or conditions with respect to such content.</p> <p>2. Licensee acknowledges that the licensed content may be subject to limitations, delays, latency issues and other problems inherent in the use of the internet and electronic communications, and that [Contractor] is not responsible for any delays, delivery failures or other damage resulting from such problems. [Contractor] disclaims responsibility for any errors, viruses, or other harmful components introduced to the licensed content after they leave [Contractor's] control. [Contractor] receives data and information from many independent sources, including drug manufacturers, research institutions, and government agencies. [Contractor] cannot, and does not, independently review, verify, test, investigate or substantiate any of the content for correctness, accuracy, timeliness or completeness, including with respect to any content descriptions, prices or information concerning medical devices, and disclaims all responsibility for any errors therein and for any adverse consequences resulting therefrom. In addition, the licensed content may not necessarily cover all possible uses, diagnoses, treatment options, directions, precautions, drug interactions, dosage limitations, local practices or adverse effects applicable to a particular drug or treatment or a particular patient. Although the content covers a wide range of prescription and non-prescription drugs, it does not include all drugs, vaccines, devices and diagnostic agents. Accordingly, and without limiting the foregoing, the absence of a warning for a given drug or drug combination is not an indication that the drug, dosage or drug combination is safe, appropriate or effective for any particular patient.</p> <p>3. The licensed content that may be provided to licensee or its authorized users may provide information about medications, but the licensed content is limited, intended to be just one of many sources of referential material used by a licensed professional, and may be confusing to certain patients when not interpreted by a healthcare professional. The licensed content is not intended, and licensee agrees not to rely on, and agrees to instruct authorized users and authorized recipients not to rely on the licensed content as a substitute for the knowledge, expertise, skill, verbal counseling, physical</p>

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
			demonstration of an administration technique, or judgment of pharmacists, physicians, or other healthcare professionals.  4. No [Contractor] employee or agent is authorized to make any statement that adds to or amends the warranties, conditions or limitations contained in this agreement.

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

## IV. Payment

### A. Prohibition Against Advance Payment (Statutory)

Neb. Rev. Stat. §§81-2403 states, "[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency."

### B. Taxes (Statutory)

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

### C. Invoices

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. **Invoices shall be sent to the following email address:**

[dhhs.MedicaidPharmacyunit@nebraska.gov](mailto:dhhs.MedicaidPharmacyunit@nebraska.gov). The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**D. Inspection and Approval**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
		X 	Contractor is providing a remote access service and is not conducting "work" in the sense of the word as it is used here. Accordingly, this provision is inapplicable.

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

**E. Payment (Statutory)**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within Solicitation Response (Initial)	NOTES/COMMENTS:
X 			

Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. Late Payment (Statutory)**

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408).

Subject to Funding / Funding out Clause for Loss of Appropriations (Statutory)

The State's obligation to pay amounts due on the Contract for a fiscal year following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

#### **G. Right to Audit**

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. §84-304 et seq.) The State may audit and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.



DRAFT COPY - DO NOT SIGN THIS DOCUMENT  
WOLTERS KLUWER CLINICAL DRUG INFORMATION  
CONTENT LICENSE AGREEMENT

THIS WOLTERS KLUWER CLINICAL DRUG INFORMATION CONTENT LICENSE AGREEMENT is entered into by and between Wolters Kluwer Clinical Drug Information, Inc., an Ohio corporation ("WKCDI"), and INSERT FULL LEGAL NAME OF LICENSEE ("Licensee").

1. DEFINITIONS. In addition to any definitions described within the body of the Agreement, the parties agree to the following definitions:

1.1. "Agreement" means this Content License Agreement, including any and all applicable addenda, exhibits, attachments and amendments agreed to by the parties in writing.

1.2. "Authorized Recipient" means an individual person who is a patient or customer of an Authorized User and is in a group of individual persons expressly permitted access to certain Content as described in the Permitted Use set forth in Exhibit 1, Section E.

1.3. "Authorized User" means a person or entity defined as an "Authorized User" as set forth in Exhibit 1, Section G, or such other person or entity approved in writing by WKCDI to access or use the Licensed Content under the terms of this Agreement.

1.4. "Content" means the information supplied by WKCDI, its affiliates and their respective licensors and made available within the Licensed Content. Unless otherwise stated, Content includes Third Party Material, if any.

1.5. "Documentation" means, individually or collectively, any WKCDI documentation manual, user manual, developer manual, implementation manual, release note, web-site notice, read-me note, specification, technical bulletin, or similar information and documentation related to the Licensed Content, however titled, including updates and modifications thereto, in any form, supplied to Licensee or made available to Licensee by WKCDI.

1.6. "Effective Date" means the date set forth in Exhibit 1, Section B.

1.7. "Fee Term" means the twelve (12) month billing period beginning on the Effective Date and each successive twelve month billing period thereafter.

1.8. "Initial Term" means the number of years from the Effective Date as set forth in Exhibit 1, Section C.

1.9. "License Fees" means the fees set forth in Exhibit 1, Section F, and any other payments due to WKCDI under this Agreement.

1.10. "Licensed Content" means the WKCDI solutions identified in Exhibit 1, Section D.

1.11. "Licensee" means the person or entity identified in Exhibit 1, Section A.

1.12. "Permitted Use" means the explicit, limited use of the Licensed Content set forth in Exhibit 1, Section E, subject to the restrictions set forth in the Agreement.

1.13. "Renewal Term" means any of the successive renewal periods of length following the Initial Term as set forth in Exhibit 1, Section C and as further defined in Section 3.1.

1.14. "Term" means the Initial Term and any Renewal Terms as set forth in Exhibit 1, Section C.

1.15. "Third Party Material" means any data, information, content, software, or other material supplied or licensed to WKCDI by third parties and made available as part of the Licensed Content.

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2.1. License Grant. Subject to all the conditions in the Agreement, during the Term, WKCDI grants to Licensee, and Licensee accepts, a limited, non-exclusive, non-transferable license to access and use the Licensed Content (including Documentation) in conformance with the Permitted Use. This is not a sale of the Licensed Content or of a copy of the Licensed Content. Any use or attempted use of the Licensed Content other than for the Permitted Use and in accordance with this Agreement is prohibited.

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2.3. Authorized Users Compliance. Licensee shall use reasonable means to ensure Authorized Users' compliance with the terms of this Agreement. Licensee shall be directly liable for any breach of the terms of this Agreement by any Authorized User. Licensee shall promptly report to WKCDI any breach of this Agreement by an Authorized User, but in no event later than two (2) business days after becoming aware of an actual breach.

2.4. License Restrictions. Unless expressly within the scope of a Permitted Use, neither Licensee nor any Authorized Users may: (a) use, permit the use of, permit access to, or distribute the Licensed Content to any third-party, (b) print all or any substantial portion the Licensed Content, (c) modify, translate, reverse engineer, decompile, disassemble, or attempt to derive or alter any of the Licensed Content or any underlying source code or software, (d) use the Licensed Content to provide service bureau, time sharing, or similar services to third parties, including any parent, subsidiary, or other affiliate of Licensee, (e) distribute or sublicense the Licensed Content, or make any attempt to do so, (f) sell, assign, transfer, rent, lease, pledge, or encumber the Licensed Content or make any attempt to do so, (g) alter, remove, or hinder delivery of any Content in the Licensed Content, including without limitation any formatting, ordering or placement of Content, or any copyright, disclaimer, warning, data expiration date, or last updated date included in the Content, (h) take any action compromising the enjoyment and use of the Licensed Content by any other WKCDI customer, or (i) take any action compromising WKCDI's rights in the Licensed Content. This Section shall not prohibit Licensee from making a copy of Licensed Content as part of Licensee's automated information archival, backup, or disaster recovery systems, provided that such copy is not otherwise used or restored except for in the Permitted Use.

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2.7. No Competition. Under no circumstances shall Licensee use the Licensed Content, any portion thereof or any information derived therefrom, to develop or to assist any third party in developing any content, product(s) or service(s) in any format similar to, or which could be competitive with, the Licensed Content or any other content or service(s) provided by WKCDI or an entity under common ownership with WKCDI.

2.8. Use of Names. Except as provided in this Section, neither WKCDI nor Licensee will use the name of the other party, or any trademark or service mark owned by the other party, except: (a) as expressly permitted in this Agreement, (b) as authorized in writing by the other party, or (c) as required by law or the rules of a stock exchange listing a party's securities. At no time shall Licensee state or imply to any third party that WKCDI has any responsibility or liability for any services of Licensee. WKCDI authorizes Licensee to display the name "Wolters Kluwer Clinical Drug Information, Inc." and the name(s) of any relevant WKCDI content in Licensee developed user manuals, screen displays and reports, and in Content that is electronically displayed or printed or distributed in hard copy to an Authorized User or Authorized Recipient solely to indicate that WKCDI is the owner and source of the Licensed Content.

2.9. Agreement Confidentiality. Licensee shall treat the Agreement as WKCDI's confidential information and may not disclose this Agreement or any other terms herein, including particularly but not exclusively the License Fees set forth in Exhibit 1, Section F, to any third party. Prior to executing this Agreement or promptly upon receiving notice that any law (including without limitation any Freedom of Information Act), legal process, judicial order, or governmental or regulatory mandate requires or may require Licensee to disclose any portion of the Agreement, Licensee shall notify WKCDI so that WKCDI may take appropriate action, at its own expense, to protect such confidential information. WKCDI acknowledges that if Licensee is a public entity, Licensee's obligations under this Section may be limited by law, and nothing in this Section shall be deemed to require Licensee to act in contravention of such applicable law.

2.10. Implementation; Updates. Licensee agrees to obtain, install and maintain, at its expense, all third party services, hardware, non-WKCDI software and other technology necessary to access, update and use the Licensed Content. WKCDI is not required to provide any updates, enhancements or modifications to the Licensed Content except as specifically set forth in Exhibit 1 or, in the case of web-hosted Licensed Content, as is generally made available to all users of such Licensed Content at no additional fee while Licensee is under active subscription for such Licensed Content.

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2.12.4 Standards and practices in medicine change as new data become available. Licensee acknowledges that: (a) Authorized Users should consult a variety of sources and not rely solely on the Licensed Content to provide information potentially relevant to patient care decisions or counseling, and (b) Authorized Users must also regularly review manufacturer published product information regarding prescription drugs for potential changes in usage, dosing, contraindications, interactions, and adverse effects.

2.13. Medi-Span Trial License. During the Term, upon written request by Licensee, and written approval by WKCDI at WKCDI's sole discretion (which request and approval may be by fax or other electronic means), WKCDI may grant Licensee a limited, one-time, trial, non-exclusive, non-transferable license solely to evaluate WKCDI Content not previously included in the Licensed Content ("Trial Content"). The evaluation period shall not exceed ninety (90) days unless the parties otherwise agree in writing ("Trial Period"). In the event that WKCDI grants a trial license, all the provisions of this Agreement apply to the use of the Trial Content except Section 4, and in all other respects the Trial Content is considered to be included in the Licensed Content during the Trial Period. Licensee may only use the Trial Content for purposes of evaluating the suitability of the Trial Content for use by Licensee. No updates to the Trial Content will be provided during the Trial Period. At the conclusion of the Trial Period, Licensee shall: (a) cease use of the Trial Content, (b) delete any and all copies of the Trial Content or data derived therefrom from any applicable computer system, and (c) at Licensee's expense, return to WKCDI any physical copies of the Trial Content in Licensee's possession. In order for Trial Content to become Licensed Content and be included in this Agreement after the Trial Period, the parties must agree to add the Trial Content to the Licensed Content in a signed amendment to the Agreement

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2.15.3 If the Permitted Use allows Licensee or an Authorized User to access the Licensed Content through a WKCDI web-hosted application or web site use of the Content shall be subject to any posted "terms of use," "disclaimer," "legal notice," "acceptable usage policy" or similar message displayed with the Content (although in the event of a conflict with a provision of this Agreement, this Agreement shall control). In addition, Licensee and its Authorized Users and Authorized Recipients shall not: (a) download or print all or any material portion of the Content, (b) access or attempt to access the WKCDI web site utilizing any data mining tool, robot, spider or other data harvesting or extraction tool, (c) share usernames or passwords with persons who are not Authorized Users or make any attempt to under-report the number of persons who are Authorized Users when any such report is required to be made to WKCDI, or (d) attempt to access Content or portions of any WKCDI web site to which the Authorized User does not have authorized access.

2.15.4 If a use statement set forth in the Permitted Use: (a) has a specific effective date that is after the Effective Date of this Agreement, and (b) specifically allows for developmental use, then Licensee may be permitted access to the identified Licensed Content for that use in advance of that specific date for purposes of development and internal testing only. The Content covered by a use statement described in this paragraph is considered Licensed Content during the period of development and testing.

2.16. Additional Conditions for Use of Medi-Span Clinical. If the Licensed Content includes any Medi-Span Clinical Access Software, Medi-Span Application Programming Interfaces ("Medi-Span Clinical APIs"), Medi-Span Clinical API Data (each individually a "Medi-Span Clinical Data") or any software tool permitting Licensee or Authorized Users to filter or customize displays or alerts (collectively, the "Medi-Span Clinical Content"), the following additional provisions apply to such Licensed Content:

2.16.1 The Medi-Span Clinical Content and any included alert management tools are designed to allow Licensee to use its discretion to program software, applications or other Authorized User interfaces to permit Authorized Users to customize, filter, deactivate, or suppress certain content contained in the Medi-Span Clinical Content, including without limitation drug safety alerts relating to drug-drug interactions, drug-allergies, route of administration, therapy duplication, etc. ("User Control"). Licensee is solely responsible for determining whether, and to what extent, User Control is implemented or available to Authorized Users. WKCDI is unable to monitor and will not monitor Licensee's implementation or use of User Control. WKCDI, its affiliates and licensors shall not assume or incur any liability or alleged liability of any kind that may arise out of Licensee's or its Authorized Users' implementation or use of User Control.

2.16.2 If Licensee implements or uses User Control, Licensee agrees to include the following professional responsibility disclaimer notice so that it is displayed to each Authorized User at the time User Control is first implemented, at the time an Authorized User first accesses Content subject to User Control, and each time the parameters of User Control are modified thereafter:

"The user of this application acknowledges that the professional duty to the patient in providing health care services (including the dispensing of prescription drugs and drug information, substitution of one drug product for another or the availability of generic substitutable alternative drug products, and answering questions a patient may have) lies solely with the health care professional providing direct patient care and/or pharmaceutical services. This application is designed to provide the user with certain "alerts" related to drug safety, which may include, but not be limited to, alerts pertaining to: drug, food and herbal medication interactions; drug-to-drug interactions; adverse drug reactions; drug precautions; drug dosage; and duration of drug therapy. This application permits the developer or user to use their discretion to customize, filter, deactivate, or suppress some or all alerts that are believed by Licensee or the user to be unnecessary ("User Control"). Before using this application, each user should determine whether, and to what extent, User Control has been implemented or used."

2.17. Information Analysis. If the Licensed Content has the capability, WKCDI may collect information regarding queries submitted through the Licensed Content, content reviewed, and other uses of the

Licensed Content by Licensee and Authorized Users; provided, however, the information will be de-identified and collected in the aggregate so as not to identify individual customers. Licensee agrees that WKCDI owns such de-identified, collected information. WKCDI will not receive or collect personally identifiable health information.

2.18. Content Modification and Development by WKCDI. Licensee acknowledges that in the regular course of its business, WKCDI may determine that modifications to the Content, format, layout, scope or functionalities of the Licensed Content, beyond those associated with ordinary Content updates, are necessary. WKCDI will not be required to provide notice of such modifications unless reasonably determined to adversely impact licensees generally. In such event, WKCDI will give Licensee reasonable written notice before any such material modifications are implemented.

### 3. TERM AND TERMINATION.

3.1. Term. This Agreement is effective throughout the Term unless earlier terminated in accordance with the provisions herein. The Initial Term is as set forth in Exhibit 1, Section C. Thereafter, unless otherwise set forth in Exhibit 1, Section C, this Agreement automatically renews for successive Renewal Terms until terminated according to the terms herein. Either party may provide written notice to the other party at least sixty (60) days prior to the end of the Initial Term or any Renewal Term stating its intent to terminate this Agreement and such termination is effective as of the end of the Initial Term or Renewal Term as may be applicable. If no such notice is given, this Agreement automatically renews and continues in full force.

3.2. Termination. Either party may terminate this Agreement: (a) upon material breach by the other party of any term of this Agreement unless the breach is cured, if capable of cure, within thirty (30) days of receipt of written notice from the non-breaching party setting forth the alleged breach in reasonable detail, except the cure period is fourteen (14) days for breach of Section 4 or Section 5 of this Agreement, or (b) at any time thereafter if the other party: (i) becomes unable to pay its debts as they become due, (ii) ceases to do business as a going concern, (iii) makes an assignment for the benefit of creditors, (iv) files a petition in bankruptcy or proceedings in bankruptcy are instituted against it and are not dismissed in thirty days, or (v) has a receiver, trustee, administrator or similar person appointed over its assets.

3.3. Effect of Termination. Upon expiration or termination of this Agreement for any reason, the right to use the Licensed Content granted hereunder terminates. Licensee shall: (a) immediately cease all use of the Licensed Content, (b) take such steps as are necessary to prohibit further use of the Licensed Content, including by Authorized Users, and (c) if requested by WKCDI, furnish a written description of the steps taken. Within thirty days of expiration or termination of this Agreement, Licensee shall remove the Licensed Content from Licensee's computer system, if so installed, and, at WKCDI's option, either return to WKCDI or destroy all copies of the Licensed Content, in whole and in part, in Licensee's possession or under its control and, if so requested by WKCDI, deliver to WKCDI a certificate executed by an officer of Licensee attesting to the return or destruction. If required by law or a regulatory agency, Licensee may retain data from the Licensed Content for archival purposes only if the data was derived in accordance with the Permitted Use.

3.4. Survival. The provisions of this Agreement that by their nature are intended to survive expiration, non-renewal, rescission, or termination of this Agreement shall do so, including: (a) Licensee's obligation to pay all License Fees, and (b) Section 1; Section 2.5; Section 2.7; Section 2.8; Section 2.9; Section 2.11; Section 2.12; Section 2.16; Section 3.3; Section 3.4; Section 4.1; Section 4.2; Section 4.3; Section 4.4; Section 4.6; Section 4.7; and Section 5 through Section 9.

### 4. LICENSE FEES AND PAYMENT TERMS.

4.1. Payment Terms; Enforcement Expenses. Licensee shall pay the License Fees to WKCDI. WKCDI will send invoices to Licensee reflecting the License Fees due to WKCDI, except that License Fees based on use as described in Section 4.3 shall be reported and paid by Licensee in the manner described in Section 4.3. Licensee shall pay invoices within thirty (30) days of the date of the receipt of invoice. Payment to WKCDI shall be made in U.S. currency via electronic funds transfer, wire transfer or check. If Licensee requests any non-standard invoicing, payment terms, or makes payments via an EDI payment system, then additional charges will be applied. All currency conversions required under this Agreement will be made at the official rate of exchange for purchase of U.S. dollars and payment will be equal to the

actual amount set forth on the WKCDI invoice. Following notice to Licensee and a cure period as set forth in Section 3.2, WKCDI may terminate this Agreement and license hereunder if a payment due is not paid in full when due. If any payment due under this Agreement is not paid in full when due, WKCDI also may immediately suspend all access to the Licensed Content (including during any cure period and including access to any Authorized User) while such payment obligation remains outstanding, in addition to (and not in limitation of) all other rights and remedies available to WKCDI. Licensee agrees to pay all costs and expenses incurred by WKCDI as a result of WKCDI's attempts to collect fees or otherwise enforce the terms of this Section 4, including reasonable attorney fees, collection agency fees, alternative dispute resolution expenses, appellate costs, reinstatement costs and settlement expenses.

4.2. Annual Fees. License Fees based on an annual fee, if any, are due to WKCDI on the Effective Date and each year thereafter on the anniversary of the Effective Date.

4.3. License Fees Based on Use.

4.3.1. If License Fees are based on usage, a count or a metric that may change (e.g., number of Authorized Users and/or Authorized Recipients, searches, views, prescriptions filled, claims processed, number of members, licensed beds, etc.), then Licensee will report such usage, count or metric to WKCDI in the manner described in an applicable exhibit to this Agreement ("Survey"). If not otherwise specified in an applicable exhibit, such License Fees based on usage are assessed and due annually and are cumulative during the Fee Term. Licensee's submission to WKCDI of the Survey shall be signed by an authorized representative of Licensee certifying the accuracy of the Survey. Should there be any discrepancy between amounts due to WKCDI pursuant to this Agreement and the payments actually made to WKCDI, Licensee shall remit the amount of such discrepancy to WKCDI promptly upon discovery of the discrepancy. If Licensee is required to submit a Survey in accordance with this Section 4.3, Licensee will accurately and fully complete and furnish the Survey substantially as set forth in an exhibit to the Agreement no later than ten (10) days after the end of the reporting period.

4.3.2. If Licensee fails to timely furnish a Survey in accordance with Section 4.3.1, at WKCDI's sole option, WKCDI may: (a) estimate the usage, count or metric for the period in question based on WKCDI's reasonable assessment of a possible change in the usage, count or metric, with Licensee responsible for any resulting License Fee amounts, (b) suspend Licensee's license and access to the Licensed Content until WKCDI's receipt of such Survey, (c) assess a late survey charge of one-and-one-half percent (1½%) per month (or such lesser amount if required by law) on the base license fee or the estimated use fees, whichever is greater, or (d) terminate this Agreement following notice and a cure period as set forth in Section 3.2. In the event this option is triggered, then WKCDI may adjust the total numbers at the end of the year if the actual usage, count or metric differs from the estimated usage, count or metric, which may result in a credit to Licensee or additional Licensee Fees owed by Licensee.

4.4. Maintenance of Records; Audit. If Licensee is required to report any data upon which License Fees are based, then during the Term and a period of three (3) years thereafter, Licensee shall maintain complete and accurate records with respect to use of the Licensed Content. During normal business hours, no more often than once per calendar quarter during the Term and once during the three (3) year period thereafter, and upon reasonable notice, WKCDI or its designated representative may review those Licensee records of Licensee reasonably necessary to confirm the accuracy of any Survey and that fees paid to WKCDI are correct and Licensee has complied with all of the terms of this Agreement. WKCDI may audit records for the current Fee Term and the preceding three (3) Fee Terms if the audit is conducted during the Term of this Agreement, or for the last three (3) Fee Terms if the audit is conducted after the expiration or termination of this Agreement. Licensee shall provide access to its facilities and provide knowledgeable personnel to accurately and timely answer WKCDI's inquiries. No charges or fees shall be assessed to WKCDI by Licensee for such access and cooperation. Any review shall be conducted so as not to unreasonably interfere with Licensee's business. Public records may also be considered as part of the review. If a review uncovers errors or variations resulting in an underpayment of amounts due of five percent or more for the period subject to the review, Licensee shall, in addition to reimbursing any underpayment, pay to WKCDI the reasonable costs of the review incurred by WKCDI.

4.5. Renewal Fees. Unless otherwise set forth in Exhibit 1, License Fees shall remain fixed until the end of the first Fee Term. Effective thereafter, unless otherwise set forth in Exhibit 1, License Fees payable by Licensee may increase over the corresponding fees for the previous Fee Term.

4.6. Interest Charges. If payments due under this Agreement are not paid when due to WKCDI, WKCDI may charge interest from the date when such payment was first due at a rate of the lesser of one-and-one-half percent (1½%) per month or the highest rate permissible under applicable law.

4.7. Taxes. Unless Licensee provides proof of tax-exempt status, Licensee shall pay all sales, use, value-added and other taxes assessed upon Licensee and for the access to or use of the Licensed Content, and other transactions hereunder, but not including taxes based on WKCDI's income. If, under applicable law, Licensee is required to withhold any tax on such payments, then the amount of the payment due will be automatically increased to totally offset such tax, so that the amount actually remitted to WKCDI, net of all taxes, equals the amount invoiced or otherwise due.

## 5. WKCDI INTELLECTUAL PROPERTY.

5.1. Proprietary Property. Licensee agrees that: (a) the Licensed Content and the applicable processes, formulas, algorithms, system architecture, database schemas and production methodology used in producing the Licensed Content and the Content are the proprietary property of WKCDI and/or its affiliates and/or WKCDI's licensors, and (b) the Licensed Content, including the Content, is protected by copyright, trade secret and other intellectual property laws.

5.2. Disclosure. Licensee shall treat the Licensed Content as confidential. Licensee shall not share or disclose the Licensed Content to any individual or entity other than as expressly set forth in the Permitted Use, including any applicable conditions described in Section 2.15 and the description of Authorized Users in Exhibit 1, Section G. Subject to Section 2.9, if Licensee receives a request to disclose the Licensed Content to a third party not subject to this Agreement, Licensee shall promptly communicate such request to WKCDI for review and approval/disapproval. Any approval must be in the form of a written agreement or amendment to this Agreement executed by WKCDI and such new licensee.

5.3. Title. Licensee agrees that, as between WKCDI and Licensee, all right, title and interest in and to the Licensed Content and all information and Content therein, including all copyrights and other intellectual property inherent therein or appurtenant thereto, are, and at all times shall remain, the sole and exclusive property of WKCDI, its affiliates or licensors. To the extent that Licensee acquires any rights to the Licensed Content or any portion thereof in a manner not set forth herein, Licensee agrees to execute, and to cause its representatives to execute, any assignment agreements or other instruments assigning, transferring and conveying to WKCDI all right, title, and interest in and to the Licensed Content, including copyrights and other intellectual property, or to the extent such assignments are invalid, granting to WKCDI and its licensors the exclusive and perpetual license to such rights without any duty of attribution or accounting.

5.4. No Other Rights. Rights not expressly granted to Licensee are reserved to WKCDI. Neither Licensee nor Authorized Users have any implied rights in, or to use of, the Licensed Content; rather, all rights applicable to Licensee and Authorized Users are expressly set forth herein. Except for the limited license granted to Licensee herein, nothing in this Agreement confers any right, title or interest in the Licensed Content, the Content or any information therein and no other right or license is granted to Licensee or Authorized Users hereunder, whether by estoppel or otherwise.

5.5. Equitable Relief. Licensee agrees that money damages would not be a sufficient remedy for any actual or threatened breach of the provisions of this Section 5 by Licensee or Authorized Users and that, in addition to all other remedies, WKCDI is entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach, and Licensee further agrees to waive, and to cause its directors, officers, employees, and agents to waive, any requirement for the proving of actual money damages or securing or posting of any bond or security in connection with such remedy.

## 6. DISCLAIMER OF WARRANTIES.

6.1. THE LICENSED CONTENT PROVIDED UNDER THIS AGREEMENT IS FURNISHED BY WKCDI AND ACCEPTED BY LICENSEE "AS IS" AND WITHOUT ANY WARRANTY OR CONDITION WHATSOEVER. WKCDI DISCLAIMS ANY WARRANTY THAT THE LICENSED CONTENT OR THE CONTENT ITSELF WILL MEET ANY AUTHORIZED USER'S

PARTICULAR REQUIREMENTS OR THAT ACCESS TO THE LICENSED CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE. WKCDI, ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS WITH RESPECT TO THE LICENSED CONTENT HEREUNDER, AND WKCDI, ITS AFFILIATES AND LICENSORS DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSED CONTENT OR RESULTS DERIVED THEREFROM, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS REGARDING ACCURACY, QUALITY, CORRECTNESS, COMPLETENESS, COMPREHENSIVENESS, SUITABILITY, SYSTEM AVAILABILITY, COMPATIBILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OR OTHERWISE (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE). LICENSEE ACKNOWLEDGES THAT WKCDI DOES NOT HAVE CONTROL OVER CONTENT THAT HAS BEEN MODIFIED BY LICENSEE OR AN AUTHORIZED USER AS SET FORTH IN SECTION 2.11 OR CONTENT THAT IS SUBJECT TO USER CONTROL AS SET FORTH IN SECTION 2.16, AND AS SUCH, WKCDI, ITS AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS WITH RESPECT TO SUCH CONTENT.

6.2. LICENSEE ACKNOWLEDGES THAT THE LICENSED CONTENT MAY BE SUBJECT TO LIMITATIONS, DELAYS, LATENCY ISSUES AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND THAT WKCDI IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. WKCDI DISCLAIMS RESPONSIBILITY FOR ANY ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS INTRODUCED TO THE LICENSED CONTENT AFTER THEY LEAVE WKCDI'S CONTROL. WKCDI RECEIVES DATA AND INFORMATION FROM MANY INDEPENDENT SOURCES, INCLUDING DRUG MANUFACTURERS, RESEARCH INSTITUTIONS, AND GOVERNMENT AGENCIES. WKCDI CANNOT, AND DOES NOT, INDEPENDENTLY REVIEW, VERIFY, TEST, INVESTIGATE OR SUBSTANTIATE ANY OF THE CONTENT FOR CORRECTNESS, ACCURACY, TIMELINESS OR COMPLETENESS, INCLUDING WITH RESPECT TO ANY CONTENT DESCRIPTIONS, PRICES OR INFORMATION CONCERNING MEDICAL DEVICES, AND DISCLAIMS ALL RESPONSIBILITY FOR ANY ERRORS THEREIN AND FOR ANY ADVERSE CONSEQUENCES RESULTING THEREFROM. IN ADDITION, THE LICENSED CONTENT MAY NOT NECESSARILY COVER ALL POSSIBLE USES, DIAGNOSES, TREATMENT OPTIONS, DIRECTIONS, PRECAUTIONS, DRUG INTERACTIONS, DOSAGE LIMITATIONS, LOCAL PRACTICES OR ADVERSE EFFECTS APPLICABLE TO A PARTICULAR DRUG OR TREATMENT OR A PARTICULAR PATIENT. ALTHOUGH THE CONTENT COVERS A WIDE RANGE OF PRESCRIPTION AND NON-PRESCRIPTION DRUGS, IT DOES NOT INCLUDE ALL DRUGS, VACCINES, DEVICES AND DIAGNOSTIC AGENTS. ACCORDINGLY, AND WITHOUT LIMITING THE FOREGOING, THE ABSENCE OF A WARNING FOR A GIVEN DRUG OR DRUG COMBINATION IS NOT AN INDICATION THAT THE DRUG, DOSAGE OR DRUG COMBINATION IS SAFE, APPROPRIATE OR EFFECTIVE FOR ANY PARTICULAR PATIENT.

6.3. THE LICENSED CONTENT THAT MAY BE PROVIDED TO LICENSEE OR ITS AUTHORIZED USERS MAY PROVIDE INFORMATION ABOUT MEDICATIONS, BUT THE LICENSED CONTENT IS LIMITED, INTENDED TO BE JUST ONE OF MANY SOURCES OF REFERENTIAL MATERIAL USED BY A LICENSED PROFESSIONAL, AND MAY BE CONFUSING TO CERTAIN PATIENTS WHEN NOT INTERPRETED BY A HEALTHCARE PROFESSIONAL. THE LICENSED CONTENT IS NOT INTENDED, AND LICENSEE AGREES NOT TO RELY ON, AND AGREES TO INSTRUCT AUTHORIZED USERS AND AUTHORIZED RECIPIENTS NOT TO RELY ON THE LICENSED CONTENT AS A SUBSTITUTE FOR THE KNOWLEDGE, EXPERTISE, SKILL, VERBAL COUNSELING, PHYSICAL DEMONSTRATION OF AN ADMINISTRATION TECHNIQUE, OR JUDGMENT OF PHARMACISTS, PHYSICIANS, OR OTHER HEALTHCARE PROFESSIONALS.

6.4. NO WKCDI EMPLOYEE OR AGENT IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS THE WARRANTIES, CONDITIONS OR LIMITATIONS CONTAINED IN THIS AGREEMENT.

#### 7. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL WKCDI, ITS AFFILIATES, OR LICENSORS, OR ANY OF ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, BE LIABLE TO LICENSEE, ITS AUTHORIZED USERS OR ANY THIRD PARTY WHOSE CLAIM IS RELATED TO THIS AGREEMENT, UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (A) FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES OR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SIMILAR DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE APPLICABLE ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) FOR ANY CLAIMS, DAMAGES OR COSTS OF ANY NATURE IN EXCESS OF THE LICENSE FEES PAID BY LICENSEE TO WKCDI DURING THE TWELVE (12) MONTHS PRECEDING THE EARLIEST EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY AND THE DISCLAIMERS SET FORTH IN SECTION 6 ARE INDEPENDENT OF ANY REMEDIES SET FORTH HEREIN AND WILL SURVIVE AND APPLY EVEN IF

SUCH REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY IS A MATERIAL PART OF THE CONSIDERATION PROVIDED BY THE OTHER PARTY IN EXCHANGE FOR THE RIGHTS GRANTED UNDER THIS AGREEMENT.

## 8. INDEMNIFICATION.

8.1. Intellectual Property Infringement. WKCDI shall defend, indemnify and hold harmless Licensee, and its officers, directors, employees, contractors, and agents, from and against any final judgment of liability from a third party claim against Licensee that the Licensed Content (excluding Third Party Materials) as provided to Licensee hereunder (but not to the extent of any modifications thereto or implementation of User Control by Licensee or its Authorized Users) infringes any valid copyright, unless such claim arises from and to the extent of: (a) the combination or use of the Licensed Content, the information contained therein, or results derived therefrom with any software, data, information or materials not furnished by WKCDI, (b) the use of the Licensed Content, the information contained therein, or results derived therefrom other than as permitted hereunder, or (c) any modifications to the Licensed Content, the information contained therein (including the Content), or results derived therefrom by any individual or entity other than WKCDI. Regarding all claims that Third Party Material infringes a third party's intellectual property rights, WKCDI's sole obligation hereunder shall be to use commercially reasonable efforts to procure for any indemnified party hereunder the benefits of the indemnity, if any, that WKCDI may have received from the provider of such material. If the Licensed Content becomes or, in WKCDI's opinion, may become, the subject of any claim of infringement, then WKCDI may, in its sole discretion and at its expense: (i) procure the right for Licensee to continue using such Licensed Content, (ii) modify the Licensed Content to render it non-infringing, or (iii) replace the Licensed Content with reasonably equivalent non-infringing content. If none of the foregoing is commercially practicable, either party may terminate this Agreement. THIS SECTION SETS FORTH WKCDI'S ENTIRE LIABILITY, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT CLAIMS RELATING TO THE LICENSED CONTENT.

8.2. Other Third Party Claims. Except with respect to third party claims for which Licensee is entitled to indemnification pursuant to Section 8.1, Licensee shall defend, indemnify, and hold harmless WKCDI and its affiliates, and their respective officers, directors, employees, contractors and agents, from and against all claims, damages, liabilities, and expenses (including reasonable attorneys' fees and court costs) arising out of, connected with, or resulting in any way from any third party action, claim, or any other assertion of legal right (including by a government entity) even if the Claim is groundless, fraudulent, or false, in connection with, resulting from, arising out of, or relating to, Licensee's or Authorized Users': (a) use of the Licensed Content, (b) provision of any Content to Authorized Recipients or others, (c) modification of the Content, and (d) implementation or use of any User Control. WKCDI acknowledges that if Licensee is a public entity, Licensee's obligations under this Section may be limited by law, and nothing in this Section shall be deemed to require Licensee to act in contravention of such applicable law, but Licensee will otherwise provide the indemnifications to the full extent permitted by any statutory limitations.

8.3. Indemnification Procedures. In the event of an action subject to indemnification hereunder (a "Claim"), the party entitled to indemnification (the "Indemnified Party") shall provide written notice to the party obligated to provide indemnification hereunder (the "Indemnifying Party") in a timely manner after the Indemnified Party receives actual notice of the existence of a Claim. The Indemnifying Party shall have the right, at its expense, to employ counsel reasonably acceptable to the Indemnified Party to defend the Claim, and to compromise, settle or otherwise dispose of the Claim; provided, however, that no compromise or settlement of any Claim admitting liability of or imposing duties or restrictions upon the Indemnified Party may be effected without the prior written consent of the Indemnified Party, which will not be unreasonably withheld, conditioned or delayed. The Indemnified Party will cooperate in such action by making available to the Indemnifying Party, at the Indemnifying Party's expense, records reasonably necessary for the defense of the Claim. If the Indemnifying Party does not avail itself of the opportunity to defend or otherwise dispose of the Claim within thirty days after receipt of notice thereof (or such shorter time as may be specified in the notice if the circumstances so dictate), the Indemnified Party may investigate, defend, settle or otherwise dispose of the Claim.

## 9. GENERAL PROVISIONS.

9.1. Exhibits. Any addendum or exhibit attached to this Agreement is hereby incorporated into and made a part of the Agreement. In the event of ambiguity or conflict as to terms set forth herein, explicit terms set forth in an addendum or exhibit control

9.2. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties and supersedes prior letters of intent, trial licenses, quotes, proposals, negotiations, representations, or understandings, whether written or oral, with respect to the subject matter hereof. The terms of a purchase order or similar instrument issued by Licensee will not amend, supersede, or otherwise affect the terms of this Agreement. This Agreement may not be amended unless such amendment is in writing, states it is an amendment to this Agreement, and is signed by authorized representatives of all parties to this Agreement.

9.3. Waivers; Remedies. Failure of a party to enforce a provision of this Agreement is not a waiver of such provision or of the right of the party thereafter to enforce the provision. Remedies provided for in this Agreement or available at law are cumulative. Election of one or more remedies is not a waiver of other available remedies.

9.4. Assignment; No Third-Party Beneficiary. Neither this Agreement nor the rights granted hereunder may be assigned, in whole or in part, voluntarily or by action of law, by Licensee without the prior written consent of WKCDI. Licensee's duties may not be delegated by Licensee, voluntarily or by action of law, in whole or in part, without the prior written consent of WKCDI. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any person or entity other than the express parties to this Agreement.

9.5. Independent Contractor. The parties are independent contractors, and this Agreement does not make either party the employee, agent, partner, or representative of the other for any purpose. Neither party is granted any authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party.

9.6. Governing Law. This Agreement will be governed in all respects by the laws of the state of New York, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Any suit hereunder will be brought solely in New York County, New York. Each party agrees to subject itself to the exclusive personal jurisdiction of such courts and shall not contest such jurisdiction or the venue of such courts or the convenience of the forum. If the Uniform Computer Information Transaction Act ("UCITA") is enacted as part of the law of the State of New York, this Agreement will be governed by the law as it exists without reference to or application of the UCITA. The application of the United Nations Convention for Contracts for the International Sales of Goods is expressly stated to be inapplicable.

9.7. Notice. Except as otherwise set forth herein, notices, demands and approvals given under this Agreement shall be in writing and delivered in person, via certified mail, or recognized same-day or overnight courier, addressed as set forth on the signature page below. If no address for Licensee is set forth on the signature page, the address for notice to Licensee shall be the address set forth in Exhibit 1, Section A. Either party may change its address for notices and authorizations by giving written notice of the new address to the other party as provided herein. Such notice or authorization is deemed received upon the earlier of: (a) actual receipt by the other party, or (b) on (i) the date of transmission if sent by same-day courier, or (ii) on the business day after the date of transmission. Such notice or authorization is deemed received upon the earlier of (1) actual receipt by the other party; or (2) on (i) the date of transmission if sent by same-day courier; or (ii) on the business day after the date of transmission if sent by recognized overnight courier.

9.8. Interpretation; Counterparts. Section headings are given for convenience only and do not limit the applicability or affect the meaning of any provision. The use of "including" means "including but not limited to." The word "and" includes "or" and vice versa. References to days are to calendar days, not business days. The parties contributed equally to the drafting of this Agreement and this Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such document to be drafted. If any provision of this Agreement or its application to particular circumstances is found by a court to be invalid or unenforceable, that provision (or its application to those circumstances) shall be deemed stricken and the remainder of this Agreement (and the application

of that provision to other circumstances) shall continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the parties. The severed provision will be replaced with a provision that will come closest to reflecting the intention of the parties underlying the severed provision but that will be valid, legal, and enforceable; provided, a finding by a court that Licensee's obligation to pay fees under Section 4 is to be severed from this Agreement terminates this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

9.9. Force Majeure. Neither party to this Agreement shall be liable nor deemed in default for any delay or failure in performance under this Agreement during such period of delay or failure resulting from acts of nature or God, civil or military authority, acts of the public enemy, terrorism, war, fires, explosions, earthquakes, hurricanes, floods, vandalism, labor strikes, epidemics, embargo, wide-spread Internet service outages, failure of a World Wide Web hosting service, telecommunications disruptions, or any cause beyond the reasonable control of the party affected thereby. Each party shall utilize good faith efforts to perform its obligations under this Agreement in the event of any such occurrence. Force Majeure does not include the financial difficulties of a party.

9.10. Export Controls. If applicable, Licensee acknowledges that the Licensed Content and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Licensee will (a) comply strictly with all legal requirements established under these controls, (b) cooperate fully with WKCDI in any official or unofficial audit or inspection that relates to these controls, and (c) not export, re-export, divert or transfer, directly or indirectly, any such item or direct content thereof to Cuba, Iran, North Korea, Syria, Sudan, or any additional country that is embargoed by Executive Order or any economic sanctions program, unless Licensee has obtained prior written authorization of WKCDI, the U.S. Commerce Department and the Office of Foreign Assets Control, U.S. Department of the Treasury. Upon notice to Licensee, WKCDI may modify this list to conform to changes in the foregoing regulations.

9.11. Government End-Users. The Licensed Content, all its components, and the information contained therein qualify as "commercial computer software" and "commercial computer software documentation" under Federal Acquisition Regulation ("FAR") 2.101 and 12.212, paragraph (a)(1) of the Department of Defense FAR Supplement ("DFARS") clause 252.227-7014, "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation," and DFARS 227.7202. Consistent with FAR 12.212 and DFARS 227.7202, all U.S. Government Licensees/Authorized Users acquire the Licensed Content, Content and/or Technical Documentation with only those license rights set forth in this Agreement.

9.12. Authorization. Each party represents that it has taken all requisite action to approve execution and performance of this Agreement.

[SIGNATURE PAGE FOLLOWS]

**DRAFT COPY- DO NOT SIGN THIS DOCUMENT**  
**A PDF DOCUMENT FOR SIGNATURE WILL BE SENT TO YOU UPON YOUR APPROVAL OF THIS DRAFT**

IN WITNESS WHEREOF, WKCDI and Licensee have caused this Agreement to be executed by their duly authorized representatives identified below.

Wolters Kluwer Clinical Drug Information, Inc.

INSERT FULL LEGAL NAME OF LICENSEE

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address for Notice

Wolters Kluwer Clinical Drug Information, Inc.  
8425 Woodfield Crossing Blvd., Ste. 490  
Indianapolis, IN 46240-2495  
Attention: Contracts Management

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address for Notice

INSERT NOTICE ADDRESS  
INSERT NOTICE ADDRESS  
INSERT NOTICE ADDRESS  
Attention: INSERT CONTACT

