



**STATE OF MICHIGAN**  
**ENTERPRISE PROCUREMENT**  
**Department of Technology, Management, and Budget**  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **2**  
 to  
 Contract Number **071B1300355**

|                   |                               |
|-------------------|-------------------------------|
| <b>CONTRACTOR</b> | First DataBank, Inc.          |
|                   | 701 Gateway Blvd., STE600     |
|                   | South San Francisco, CA 94080 |
|                   | Tina Moon                     |
|                   | 800-428-4495                  |
|                   | Tina_Moon@firstdatabank.com   |
|                   | *****8695                     |

|              |                               |                       |         |
|--------------|-------------------------------|-----------------------|---------|
| <b>STATE</b> | <b>Program Manager</b>        | Andrew Mason          | DTMB-IT |
|              |                               | (517) 898-6815        |         |
|              |                               | MasonA5@michigan.gov  |         |
|              | <b>Contract Administrator</b> | Simon Baldwin         | DTMB    |
|              |                               | (517) 284-7000        |         |
|              |                               | BaldwinS@michigan.gov |         |

**CONTRACT SUMMARY**

| Maintenance and Support   |                         |                           |   |
|---|-------------------------|---------------------------|---|
| INITIAL EFFECTIVE DATE  | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE  |
| October 1, 2010   | September 30, 2015      | 5 - 1 Year                | September 30, 2016  |
| PAYMENT TERMS   |                         | DELIVERY TIMEFRAME        |   |
|   |                         | N/A                       |   |
| ALTERNATE PAYMENT OPTIONS   |                         |                           | EXTENDED PURCHASING   |
| <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other |                         |                           | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| MINIMUM DELIVERY REQUIREMENTS   |                         |                           |   |
| N/A   |                         |                           |   |

**DESCRIPTION OF CHANGE NOTICE**

| OPTION                              | LENGTH OF OPTION       | EXTENSION                          | LENGTH OF EXTENSION | REVISED EXP. DATE  |
|-------------------------------------|------------------------|------------------------------------|---------------------|--------------------|
| <input checked="" type="checkbox"/> | 1-Year                 | <input type="checkbox"/>           | N/A                 | September 30, 2017 |
| CURRENT VALUE                       | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE |                     |                    |
| \$552,845.00                        | \$96,170.00            | \$649,015.00                       |                     |                    |

**DESCRIPTION**

Effective 10/1/2016, this Contract is exercising the second option year and is increased by \$96,170.00. The revised Contract expiration date is September 30, 2017. Please note, the Contract Administrator has been changed to Simon Baldwin and the Program Manager has been changed to Andrew Mason. All other terms, conditions, specifications, and pricing remain the same per Contractor and Agency agreement, DTMB Procurement approval and State Administrative Board approval on September 13, 2016.

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 525 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B1300355**  
 between  
**THE STATE OF MICHIGAN**  
 and

| NAME & ADDRESS OF CONTRACTOR   | PRIMARY CONTACT | EMAIL                                      |
|--|-----------------|--|
| First DataBank, Inc.<br>701 Gateway Blvd., Ste. 600<br>South San Francisco, CA 94080 | Tina Moon       | Tina_moon@firstdatabank.com                |
|  | PHONE           | VENDOR TAX ID #<br>(LAST FOUR DIGITS ONLY) |
|  | (800) 428-4495  | -8695                                      |

| STATE CONTACTS         | AGENCY | NAME          | PHONE          | EMAIL                 |
|------------------------|--------|---------------|----------------|-----------------------|
| PROGRAM MANAGER / CCI  |        |               |                |                       |
| CONTRACT ADMINISTRATOR | DTMB   | Jarrod Barron | (517) 284-7045 | Barronj1@michigan.gov |

| CONTRACT SUMMARY  |                         |                           |   |
|---|-------------------------|---------------------------|---|
| <b>DESCRIPTION:</b> Maintenance and Support   |                         |                           |   |
| INITIAL EFFECTIVE DATE  | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW                        |
| October 1, 2010   | September 30, 2015      | 5, one year               | September 30, 2015  |
| PAYMENT TERMS   | F.O.B.                  | SHIPPED TO                |   |
| N/A   | N/A                     | N/A                       |   |
| ALTERNATE PAYMENT OPTIONS   |                         |                           | EXTENDED PURCHASING   |
| <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other |                         |                           | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| MINIMUM DELIVERY REQUIREMENTS   |                         |                           |   |
| N/A   |                         |                           |   |

| DESCRIPTION OF CHANGE NOTICE  |                                     |  |  |                              |
|---|-------------------------------------|--|--|------------------------------|
| EXTEND CONTRACT EXPIRATION DATE                                     | EXERCISE CONTRACT OPTION YEAR(S)    | EXTENSION BEYOND CONTRACT OPTION YEARS | LENGTH OF EXTENSION/OPTION                 | EXPIRATION DATE AFTER CHANGE |
| <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes | <input checked="" type="checkbox"/> | <input type="checkbox"/>               | 1 year                                     | September 30, 2016           |
| CURRENT VALUE   |                                     | VALUE/COST OF CHANGE NOTICE            | ESTIMATED REVISED AGGREGATE CONTRACT VALUE |                              |
| \$456,675.00  |                                     | \$96,170.00                            | \$552,845.00                               |                              |

**DESCRIPTION:**  
 Effective June 9, 2015, the State exercises the first option year and adds \$96,170.00 for continuing maintenance per the attached vendor quote. The attached vendor quote also locks in pricing for option years two through five, should the State opt to exercise those option years in the future. New contract expiration date is September 30, 2016. The parties also incorporate by reference the attached Amendment No. 1 dated June 27, 2013, which was negotiated pursuant to Stipulation of Voluntary Dismissal entered October 15, 2013 in Case No 11-629-CZ in the 30<sup>th</sup> Judicial Circuit Court for the State of Michigan. All other pricing, terms and conditions remain the same. Per contractor and agency agreement, and DTMB Procurement approval.



REVISED

June 15, 2015

Ms. Tricia O'Keefe  
 Department of Community Health  
 Bureau of Medicaid Care Management  
 Pharmacy Management Division  
 400 South Pine Street  
 Lansing, MI 48906

Re: Renewal of License Agreement for Account 257809

Dear Ms. O'Keefe:

Our License Agreement to provide First Databank (FDB) drug knowledge will soon be entering the next five-year Term of our Agreement. This letter will serve as notification of your fee structure for the five-year fee term stated below:

Term: 10/01/2015 – 9/30/2020

Application: Medicaid Claims Processing for the State of Michigan

| *Annual License Fee          | 10/01/2015 to 09/30/2016  | 10/01/2016 to 09/30/2017  | 10/01/2017 to 09/30/2018  | 10/01/2018 to 09/30/2019  | 10/01/2019 to 09/30/2020  |
|------------------------------|---|---|---|---|---|
| Up to 200,000 claims         | \$56,316  | \$56,316  | \$62,102  | \$63,580  | \$65,246  |
| 200,001-2 million claims     | \$88,150  | \$88,150  | \$91,979  | \$94,278  | \$96,634  |
| 200,001-4 million claims     | \$112,810   | \$112,810   | \$126,027   | \$129,181   | \$132,411   |
| 4,000,001-8 million claims   | \$135,480   | \$135,480   | \$142,339   | \$145,901   | \$149,549   |
| 8,000,001-12 million claims  | \$167,875   | \$167,875   | \$176,377   | \$180,785   | \$185,307   |
| 12,000,001-18 million claims | \$217,085   | \$217,085   | \$228,076   | \$233,776   | \$239,619   |
| 18,000,001 + million claims  | \$217,085+<br>\$10,397 per each additional 1 million claims per month over 18 million | \$217,085+<br>\$10,397 per each additional 1 million claims per month over 18 million | \$228,076+<br>\$10,923 per each additional 1 million claims per month over 18 million | \$233,776+<br>\$11,197 per each additional 1 million claims per month over 18 million | \$239,619+<br>\$11,476 per each additional 1 million claims per month over 18 million |

\*Annual License Fee is based upon on the total number of claims processed per month

|  | 10/01/2015 to 09/30/2016 | 10/01/2016 to 09/30/2017 | 10/01/2017 to 09/30/2018 | 10/01/2018 to 09/30/2019 | 10/01/2019 to 09/30/2020 |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>Annual License Fee for MEDICAID MODULE:</b> | \$ 8,020                 | \$ 8,020                 | \$8,336                  | \$8,545                  | \$8,760                  |



June 15, 2015  
Page 2

Per the First Amendment with an effective date of June 27, 2013, FDB will issue the following discounts:

|                      | 10/01/2015 to 09/30/2016 | 10/01/2016 to 09/30/2017 | 10/01/2017 to 09/30/2018 |
|----------------------|--------------------------|--------------------------|--------------------------|
| License Fee Discount | \$24,250                 | \$36,375                 | \$36,375                 |
| Credit:              |                          |                          |                          |

Please let me know if you have any questions. I can be reached at 1-800-633-3453 x 43249 or via e-mail at [tholmes@fdbhealth.com](mailto:tholmes@fdbhealth.com). Thank you for choosing FDB as your source of integrated drug knowledge. We appreciate your business.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tina M. Holmes', written over a horizontal line.

Tina M. Holmes  
Contract Administrator

AMENDMENT NO. 1  
TO  
CONTRACT NO. 071B1300355  
BETWEEN THE STATE OF MICHIGAN  
AND  
FIRST DATABANK, INC.

AMENDMENT NO. 1, dated as of June 27, 2013 (the "Amendment Effective Date"), to Contract No. 071B1300355 between the State of Michigan ("Michigan") and First DataBank, Inc. ("First DataBank"), effective as of October 1, 2010 (the "Agreement").

WHEREAS, First DataBank and Michigan are parties to the Agreement;

WHEREAS, First DataBank and Michigan desire to amend the Agreement to provide certain discounts to the License Fees; and

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and other agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby agree as follows:

1. Definitions. All defined terms used and not otherwise defined in this Amendment shall have the respective meanings set forth in the Agreement.
2. License Fee Discount. Subject to the provisions set forth below, Michigan shall be entitled to an aggregate discount to the License Fees in the amount of \$121,250.00 (the "Discount"). The Discount will be applied as follows: (a) \$12,125.00 in 2013; (b) \$12,125.00 in 2014, (c) \$24,250.00 in 2015, (d) \$36,375.00 in 2016, if the Agreement is renewed, and (e) \$36,375.00 in 2017, if the Agreement is renewed. First DataBank shall only apply the Discount against License Fees invoiced after the Amendment Effective Date. In the event that the Agreement is terminated for any reason, Michigan's right to the Discount shall terminate.
3. Waiver of Termination for Convenience. Reference is made to the right of Michigan and First DataBank to terminate the Agreement for convenience set forth in Section 1.403 of the Agreement. First DataBank hereby waives its right under Section 1.403 to terminate the Agreement for convenience until such time as the Discount referenced above has been fully applied.
4. Waiver of Non-Renewal Notice. Reference is made to the right of First DataBank to give notice of non-renewal set forth in Section 3(b) of Attachment 1 of the Agreement. First DataBank hereby waives its right under Section 3(b) of Attachment 1 of the Agreement to give notice of non-renewal of the Agreement until such time as the Discount referenced above has been fully applied.

5. License Fees During 2016/2017 Renewal Periods. Reference is made to the obligation of First DataBank to give notice of applicable renewal rates set forth in Section 3(b) of Attachment 1 of the Agreement. First DataBank hereby agrees that the Annual License Fees for the fifth Fee Term of the Agreement (i.e., the Fee Term commencing 10/01/2014 and ending 9/30/2015) shall remain in effect for the first two annual renewal terms (i.e., 10/01/2015 – 9/30/2016 and 10/01/2016 – 9/30/2017), if the Agreement is renewed. For purposes of clarification, the effect of the foregoing is that there shall be no increase in Annual License Fees for the first two annual renewal terms.
6. References. All references to this "Agreement" in the Agreement shall mean the Agreement as amended hereby.
7. Governing Law. This Amendment shall be governed by, and construed in accordance with, the substantive laws of the State of Michigan.
8. Counterparts. This Amendment may be executed in counterparts, which together shall constitute one and the same Amendment. The parties may execute more than one copy of this Amendment, each of which shall constitute an original.
9. No Other Amendments. Except as expressly amended hereby, the terms and conditions of the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, duly authorized representatives of both parties hereto have executed this Amendment as of the date first written above.

First DataBank, Inc.

  
\_\_\_\_\_

By: JAMES M. SCHULTZ  
Title: VICE PRESIDENT, FINANCE

Date: 10/7/2013

The State of Michigan

  
\_\_\_\_\_

By: Jeffrey Brawlee  
Title: Chief Procurement officer, DTMB

Date: 10/15/13

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>th</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

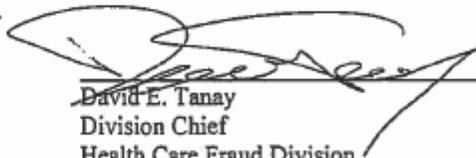
|   |                                 |
|---|---------------------------------|
| BILL SCHUETTE, ATTORNEY GENERAL )         | Case No. 11-629CZ               |
| OF THE STATE OF MICHIGAN, <i>ex rel</i> ) |                                 |
| THE STATE OF MICHIGAN )                   | Honorable Rosemarie E. Aquilina |
| Plaintiff, )                              |                                 |
| vs. )                                     |                                 |
| MCKESSON CORPORATION, HEARST )            |                                 |
| CORPORATION, HEARST BUSINESS )            |                                 |
| MEDIA, and FIRST DATABANK, INC., )        |                                 |
| Defendants. )                             |                                 |

---

STIPULATION OF VOLUNTARY DISMISSAL  
OF FIRST DATABANK, INC. AND THE HEARST CORPORATION

IT IS HEREBY STIPULATED AND AGREED to between Plaintiff State of Michigan and the remaining Defendants The Hearst Corporation and First DataBank, Inc. ("Hearst/FDB")<sup>1</sup> that all claims asserted in this action against Hearst/FDB should be dismissed with prejudice and without taxation of costs.

SO AGREED this day 4th of October, 2013.



David E. Tanay  
Division Chief  
Health Care Fraud Division  
Michigan Department of Attorney General  
P.O. Box 30218  
Lansing, MI 48909  
(517) 241-6500

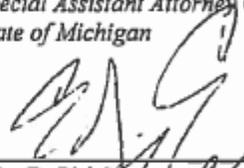
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<sup>1</sup> McKesson was dismissed from this action on August 28, 2012. [Dkt. 78]. Defendant Hearst Business Media was voluntarily dismissed from this action by stipulation and order dated August 23, 2011. [Dkt. 22].

Peter S. Linden by EJE w/permission

Peter S. Linden  
KIRBY McINERNEY LLP  
825 Third Avenue, 16th Floor  
New York, New York 10022  
(212) 371-6600

*Special Assistant Attorney General for the  
State of Michigan*



John D. Pirich  
Eric Eggan  
Honigman Miller Schwartz and Cohn LLP  
222 North Washington Square, Suite 400  
Lansing, Michigan 48933-1800  
(517) 484-8282

*Counsel for First DataBank, Inc.  
and The Hearst Corporation*

SO ORDERED: ROSEMARIE E. AQUILINA  
Honorable Rosemarie E. Aquilina P 37670  
CIRCUIT JUDGE

Dated: 15 Oct 13

**STATE OF MICHIGAN**  
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET**    July 27, 2011  
**PURCHASING OPERATIONS**  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**NOTICE**  
**OF**  
**CONTRACT NO. 071B1300355**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

|   |  |
|---|--|
| <b>NAME &amp; ADDRESS OF CONTRACTOR</b><br><br><b>First DataBank, Inc.</b><br><b>701 Gateway Blvd, Ste. 600</b><br><b>South San Francisco, CA 94080</b><br><b>Email: <a href="mailto:Tina_moon@firstdatabank.com">Tina_moon@firstdatabank.com</a></b> | <b>TELEPHONE 800-428-4495</b><br><b>Tina Moon</b><br><hr/> <b>CONTRACTOR NUMBER/MAIL CODE</b><br><hr/> <b>BUYER/CA (517) 373-3993</b><br><b>Greg Faremouth</b> |
| <b>Contract Compliance Inspector:</b><br><p style="text-align: center;"><b>Maintenance and Support</b></p>  |  |
| <b>CONTRACT PERIOD: 5 yrs. + 5 one-year options</b> <b>From: October 1, 2010</b> <b>To: September 30, 2015</b>  |  |
| <b>TERMS</b><br><br><p style="text-align: center;">N/A</p>  | <b>SHIPMENT</b><br><br><p style="text-align: center;">N/A</p>  |
| <b>F.O.B.</b><br><br><p style="text-align: center;">N/A</p>   | <b>SHIPPED FROM</b><br><br><p style="text-align: center;">N/A</p>  |
| <b>MINIMUM DELIVERY REQUIREMENTS</b><br><p style="text-align: center;">N/A</p>  |  |
| <b>MISCELLANEOUS INFORMATION:</b>   |  |

**TOTAL ESTIMATED CONTRACT VALUE:    \$ 456,675.00**

**STATE OF MICHIGAN**  
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
**P.O. BOX 30026, LANSING, MI 48909**  
 OR  
**530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B1300355**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

|  |   |
|--|---|
| <b>NAME &amp; ADDRESS OF CONTRACTOR</b><br><br><b>First DataBank, Inc.</b><br><b>701 Gateway Blvd, Ste. 600</b><br><b>South San Francisco, CA 94080</b><br><b>Email: <a href="mailto:Tina_moon@firstdatabank.com">Tina_moon@firstdatabank.com</a></b>  | <b>TELEPHONE 800-428-4495</b><br><b>Tina Moon</b><br>CONTRACTOR NUMBER/MAIL CODE<br><br><b>BUYER/CA (517) 373-3993</b><br><b>Greg Faremouth</b> |
| Contract Compliance Inspector:<br><p style="text-align: center;"><b>Maintenance and Support</b></p>  |   |
| <b>CONTRACT PERIOD: 5 yrs. + 5 one-year options</b> From: <b>October 1, 2010</b> To: <b>September 30, 2015</b>   |   |
| <b>TERMS</b><br><br><p style="text-align: center;">N/A</p>   | <b>SHIPMENT</b><br><br><p style="text-align: center;">N/A</p>   |
| <b>F.O.B.</b><br><br><p style="text-align: center;">N/A</p>  | <b>SHIPPED FROM</b><br><br><p style="text-align: center;">N/A</p>   |
| <b>MINIMUM DELIVERY REQUIREMENTS</b><br><p style="text-align: center;">N/A</p>   |   |
| <b>MISCELLANEOUS INFORMATION:</b><br><b>The terms and conditions of this Contract are those of this Agreement. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</b> |   |
| <b>Estimated Contract Value:    \$ 456,675.00</b>  |   |

**THIS IS NOT AN ORDER:** This Contract is awarded on the basis of our inquiry bearing the number RFP-DR-084R0200110. Orders for delivery will be issued directly by the Department of Community Health through the issuance of a Purchase Order Form.

**All terms and conditions of the invitation to bid are made a part hereof.**

|  |   |
|--|---|
| <b>FOR THE CONTRACTOR:</b><br><br><hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p> | <b>FOR THE STATE:</b><br><br><hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;">Greg Faremouth, Director</p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;">IT Division, Purchasing Operations</p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p> |
|--|---|



**STATE OF MICHIGAN  
Department of Technology, Management and Budget  
Purchasing Operations**

Contract Number: [071B1300355](#)  
**First Databank Knowledge Bases,  
Maintenance and Support  
Michigan Department of Community Health**

Buyer Name: Greg Faremouth  
Telephone Number: (517) 373-3993  
e-mail: Address: [reifd@michigan.gov](mailto:reifd@michigan.gov)



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ATTACHMENT 1 - LICENSE AGREEMENT 17



## **Article 1 – Contract**

### **1.000 Project Identification/Scope**

The purpose of this Contract is to provide data updates and support for the Products defined in Section 1.100. This Contract, including the License Agreement, attached hereto as Attachment 1, which is incorporated herein for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter. In the event of any inconsistency between the terms of the Contract and the License Agreement, the terms of the Contract shall take precedence. The Contract may be modified or amended only by a writing mutually agreed to by the State and Contractor.

### **1.100 Scope of Work**

#### **Licensed Products**

As provided under the License Agreement, Contractor will provide data, updates, and ongoing support for the following First Databank Knowledge Bases (FDB Knowledge Bases):

- National Drug Data File (NDDF)
  - Drug-Disease Contraindication Module
  - Indications Module
  - Min/Max Dose Modules
- Medicaid Module – Michigan Only

Contractor must provide data updates, and support services defined in this Section to the State for the Licensed Products while the annual License Fee for the Licensed Products is in effect and paid in full.

The State reserves the right to purchase additional licenses, maintenance, and implementation support, training and proprietary services. Proprietary services to be drawn from this contract will be dependent upon individual and mutually agreed upon licenses between Contractor and the State of Michigan. Once agreed to, Contractor shall not be obliged or authorized to commence any work to implement additional licenses until authorized via a purchase order issued against this contract.

#### **Licensed Products Data Updates**

As provided under the License Agreement, Contractor will provide weekly data updates to the Licensed Products.

Contractor shall provide weekly data updates to the Licensed Products at no additional cost to the State. Data Updates shall mean updated or revised data sets of the Licensed Products which may include error corrections and other enhancements that Contractor makes available to its customers at no additional charge. Updates to the Licensed Products shall not include any new releases which contain substantially new or different functionality.

#### **Licensed Products Support Services**

As provided under the License Agreement, Contractor will provide support services for the Licensed Products as described in this Section, including the following:

Standard customer support services will be available to the State for the term of the Agreement via First DataBank's customer support toll-free number (1-800-633-3453) during normal business hours (8:00 A.M. to 8:00 P.M. EST Monday through Friday, excluding State holidays), via e-mail at [cs@firstdatabank.com](mailto:cs@firstdatabank.com), or via the Support Link at First DataBank's website at [www.firstdatabank.com](http://www.firstdatabank.com).

Implementation support services, onsite, or outside of the standard business hours, may be separately contracted between the State and First DataBank. For the purposes of this Agreement, implementation support services include technical contact regarding the integration of the Licensed Products into the State's application.



**1.200 State Roles and Responsibilities**

**1.201 Contract Compliance Inspector**

The Contract Compliance Inspector is responsible to monitor Contract activities on a daily basis.

| Name          | Agency/Division               | Title          |
|---------------|-------------------------------|----------------|
| Whitney Zuker | DTMB, Agency Services for DCH | Contract Admin |

**1.202 Project Manager**

The Project Manager will oversee the project:

| Name         | Agency/Division               | Title           |
|--------------|-------------------------------|-----------------|
| Brian Gallup | DTMB, Agency Services for DCH | Project Manager |

**1.300 Compensation and Payment**

**1.301 Compensation And Payment**

The annual License Fee will be invoiced as indicated in the License Agreement – **see Attachment 1**. Contractor will submit properly itemized invoices to “Bill To” Address on the Purchase Order. Incorrect or incomplete invoices will be returned to Contractor.

**Exception:** The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. and travel time. Contractor must obtain advanced written approval for reimbursement of any such expenses.

**1.302 Tax Excluded from Price**

**Sales Tax:** The State is exempt from sales tax for direct purchases. Contractor's prices must not include sales tax. Purchasing Operations will furnish exemption certificates for sales tax upon request.

**Federal Excise Tax:** The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

**1.400 Termination/Cancellation**

**1.401 Notice and Right to Cure**

If the Contractor breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State shall provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

**1.402 Termination for Cause**

- (a) Either the State or Contractor may terminate this contract, for cause, by notifying the other party in writing, if the other party (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
- (b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise



included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

- (c) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

#### **1.403 Termination for Convenience**

Either the State or Contractor may terminate this Contract for its convenience, in whole or part, if either party determines that a termination is in its best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. Either the State or Contractor may terminate this Contract for its convenience, in whole or in part, by giving the appropriate party written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for convenience must cease on the effective date of the termination.

#### **1.404 Termination for Non-Appropriation**

- (a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability of funds (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
- (b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be Licensed Products provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor and with the Contractor's prior approval, not to be unreasonably withheld or delayed, reduce the duration the Fee Term commensurate to the reduction in available funding
- (c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section shall not preclude Contractor from controlling the State's access to or use of the Licensed Products or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for the Licensed Products before the effective date of termination.

#### **1.405 Termination for Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

#### **1.406 Termination for Approvals Rescinded**

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State shall pay the Contractor for the use of the Licensed Products through to the time of termination. Termination may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.



#### **1.407 Rights and Obligations upon Termination**

- (a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

#### **1.404 Reservation of Rights**

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.



**ATTACHMENT 1**  
**LICENSE AGREEMENT**

**FIRST DATABANK AND STATE OF MICHIGAN**

This **LICENSE AGREEMENT** made and entered into at San Bruno, California as of the Effective Date noted on Exhibit 1 (attached and made a part hereof) between **FIRST DATABANK, INC.**, with offices at 701 Gateway Boulevard, Suite 600, South San Francisco, California 94080 ("First DataBank"), and **LICENSEE** identified in Exhibit 1.

**WHEREAS:**

1. First DataBank owns or is a Licensee of, and licenses or sublicenses various copyrighted databases of medical, pharmaceutical and nutritional information, and periodic updates thereto ("Databases"), related access software products ("Toolkits") and user manuals ("Manuals") referred to collectively, as the "FDB Knowledge Bases";
2. Licensee desires to obtain the use of one or more of the FDB Knowledge Bases with the Licensee's electronic information system or other computer system (the "System") as described in the Declaration of Use (Exhibit 1);
3. Subject to the terms and conditions of this Agreement, First DataBank is willing to grant to Licensee a nonexclusive license or sublicense to use the FDB Knowledge Bases indicated in Exhibit 1.

**NOW, THEREFORE**, in consideration of the premises and of the covenants and Agreements hereinafter set forth, it is agreed as follows:

1. **DEFINITIONS OF CERTAIN TERMS.** As used in this Agreement:

- a) "Licensed Products" means those FDB Knowledge Bases indicated in Exhibit 1 as being licensed to Licensee;
- b) "Effective Date" is the date stated in Exhibit 1 and is the Effective Date of this Agreement;
- c) "Fee Term" means the twelve-month period beginning on the Effective Date and each successive twelve-month period;
- d) "Territory" means the United States of America and its territories and possessions.

2. **LICENSE.** Subject to the terms and conditions of this Agreement, First DataBank grants and Licensee accepts the following limited, non-transferable and non-exclusive license or sublicense:

- a) To use the Licensed Products solely for its business operations in the Territory, as defined in Exhibit 1 during the term of this Agreement;
- b) To the extent Exhibit 1 permits bundling of any or all of the Licensed Products, Licensee agrees to add substantial value to the Licensed Products contained in the bundle;
- c) Licensee shall have no right to use the Licensed Products on behalf of any third party, on a service bureau basis or otherwise unless (i) such services are specifically permitted in Exhibit 1, and (ii) such third party has entered into a license Agreement with Licensee or First DataBank and First DataBank has been paid the required license fee;



- d) Under no circumstances shall Licensee use the Licensed Products, or any portion thereof, to develop a competitive product, regardless of what is set forth in Exhibit 1;
- e) Licensee shall obtain no implied license rights to the Licensed Products. Any rights not expressly granted to Licensee in this Agreement shall be retained by First DataBank;
- f) Although some tangible objects may be delivered to Licensee pursuant to this Agreement, title to such objects shall not pass to Licensee, and this Agreement is not for the sale of goods. The Licensed Products shall be delivered to Licensee within twenty (20) working days from whichever is later, the date this License Agreement is executed or the Effective Date on the Exhibit 1. Updates thereto shall be delivered with the frequency and in the format indicated in Exhibit 1;
- g) Licensee will not alter, amend, modify, or change in any respect, any of the Licensed Products unless authorized to do so by First DataBank. Without limiting the foregoing, Licensee shall have no right to use, modify, reproduce or distribute the Licensed Products, nor the right to license third parties to exercise any rights with regard to the Licensed Products other than as permitted in Exhibit 1.

### 3. TERM AND TERMINATION.

- a) This Agreement and license shall continue for a term of five (5) years from the Effective Date and thereafter may renew for up to five (5) successive one-year periods at each renewal date at the then effective renewal rate in accordance with 3.b, below;
- b) At least sixty (60) days before the end of any term, First DataBank shall send to Licensee written notice of the applicable renewal rate. At least thirty (30) days prior to the end of the term, First DataBank must receive from Licensee written notice of acceptance of renewal for the next term. If Licensee fails to give such written notice of acceptance, then the delivery and use of the Licensed Products will be discontinued as of the end of the current term that is in effect. First DataBank may also give notice of non-renewal in its sole and absolute discretion, without cause and without stating any reason therefore, by sending Licensee written notice of non-renewal at least thirty (30) days prior to the end of the term then in effect.
- c) Upon termination of this Agreement, Licensee shall immediately cease use of the Licensed Products, and shall take such steps as are necessary to prohibit further use of the Licensed Products within Licensee's System and shall furnish First DataBank a written description of the steps so taken. Termination of this Agreement shall automatically terminate all sublicenses of the Licensed Products granted by Licensee. Within thirty (30) days of termination, Licensee shall return to First DataBank all copies or duplicates thereof of the Licensed Products.

### 4. PAYMENT OF LICENSE FEES. In consideration of the grant of the license, Licensee agrees to pay the Fees ("License Fees") listed in Exhibit 1. Licensee's obligation to pay License Fees for periods preceding termination will survive termination of this Agreement.

### 5. IMPLEMENTATION. Licensee assumes all responsibility to program or obtain compatible software for use of the Databases. All programming shall be done in accordance with specifications included in Database Manuals and supplements and other documentation provided by First DataBank. Licensee agrees that when programmed, the System shall display Copyright Notices, Disclaimers, and Expiration Dates as specified in individual Database and Licensed Product Manuals.

### 6. COVENANTS OF LICENSEE. Licensee hereby agrees with First DataBank as follows:

- a) In the event that First DataBank grants Licensee permission to modify any of the Licensed Products, then Licensee assumes all liability for such modified Licensed Products. Licensee hereby acknowledges and agrees that First DataBank disclaims all warranties, express and implied, regarding any Licensee-modified Licensed Products.



- b) Licensee will not use the name of First DataBank, Inc. or "First DataBank", the names of any of the First DataBank Knowledge Bases, or any trademark owned by or licensed to First DataBank, except as authorized in writing;
- c) Should Licensee receive the Licensed Products from First DataBank via CD-Rom, Licensee shall reimburse First DataBank at First DataBank's direct cost for all shipping and delivery of the Licensed Products. Receipt of the Licensed Products via First DataBank's Standard FTP delivery will be at no additional charge to Licensee.
- d) Licensee will pay all taxes, however designated, including sales and use taxes and state and local privilege or excise taxes arising out of this Agreement and the transaction contemplated hereby. Licensee shall timely provide Licensee's applicable tax exemption identification number or certificate, if any, as a condition to not being responsible for a tax hereunder.
- e) That as long as this Agreement is in effect, and for a one (1) year period thereafter, Licensee shall maintain complete records with respect to the use of the Licensed Products, and the number of Medicaid drug claims being processed per the Declaration of Use as outlined on Exhibit 1, Section C to this Agreement. During normal business hours, at reasonable intervals but no more often than annually, and upon reasonable notice, First DataBank or its designated representative may audit and review those records necessary to confirm that the fees paid to First DataBank are correct and that Licensee has complied with all of the terms of this Agreement, including but not limited to, the Declaration of Use and Fee and Payment Schedule set forth in Exhibit 1;
- f) USAGE. Licensee shall use the Licensed Products solely for Licensee's business purposes in the Territory as described in Exhibit 1, "Declaration of Use". Licensee may not, without the prior written consent of First DataBank, transmit the Licensed Products to other data processing systems or units that are "on-line" with Licensee's data processing unit, or use the Licensed Products, or any data derived from the Licensed Products in a computer service business, network, time-sharing, multiple CPU, or multiple user arrangements including the Internet and Intranets, except as, if applicable, explicitly identified in Exhibit 1. Licensee shall not copy, reproduce, store in a retrieval system, sell, assign, pledge, sublicense, convey, transfer, redistribute, transmit, grant other rights in, or permit any unauthorized use of the Licensed Products, or any of them, in any form or by any media (electronic, mechanical, photocopy, recording, or otherwise), on either a permanent or temporary basis to any third party except as authorized in Exhibit 1. Licensee may use an outside Data Recovery Center in the Territory provided First DataBank is notified in writing within thirty (30) days of such location. In such case, the terms of this Agreement shall be fully applicable.
- g) INTENTIONALLY OMITTED
- h) Licensee acknowledges and agrees that the covenants and Agreements made in this Paragraph 6 are made for the benefit of First DataBank and shall survive the termination of this Agreement. In the event of any breach by Licensee of the terms of this Agreement, in addition to other relief to which First DataBank shall be entitled, First DataBank shall be entitled to terminate this License.

## 7. CONFIDENTIALITY:

- a) In connection with their obligations under and pursuant to this Agreement, each of the parties hereto may disclose to the other Confidential Information (as defined herein);
- b) Disclosing Party means a party that discloses Confidential Information pursuant hereto and "Receiving Party" means a party that receives Confidential Information pursuant hereto;
- c) The term "Confidential Information" shall mean information or data, including without limitation, computer programs, software, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), trade secrets, schematics and other technical business and customer information, financial and product development



plans, forecasts and strategies, furnished by the Disclosing Party to the Receiving Party (whether before or after the date hereof) and all analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party which contain or reflect any such information. Without limiting the foregoing, the term "Confidential Information" shall include the Licensed Products and the terms of this Agreement. "Confidential Information" may include information disclosed orally and information saved in digital or analog form, in electronic or magnetic mediums and on film or tape. The term "Confidential Information" will not, however, include information which:

- (i) is or becomes available to the Receiving Party on a non-confidential basis from a source (other than the Disclosing Party) which, to the knowledge of the Receiving Party, is not prohibited from disclosing such information to the Receiving Party by a legal, contractual or fiduciary obligation;
- (ii) was known by the Receiving Party, as evidenced by its written records, prior to receipt from the Disclosing Party; or,
- (iii) is independently developed by the Receiving Party without use of any Confidential Information;

d) Each Party:

- (i) will keep the Confidential Information confidential and will not (except as permitted by this Agreement or required by legal process, and only after compliance with the paragraph below) without the prior written consent of the other Party, disclose any Confidential Information in any manner whatsoever; and,
- (ii) will not use any Confidential Information other than in connection with this Agreement, provided, however, that the Receiving Party may reveal the Confidential Information to its affiliates, controlling persons, employees, representatives and agents that have a need to know such Confidential Information to further the permitted use thereof, as long as said affiliates, controlling persons, employees, representatives and agents are informed by the Receiving Party of the confidential nature of the Confidential Information and agree to act in accordance with the terms of this Agreement. Each Party will cause its affiliates, controlling persons, employees, representatives and agents to observe the terms of this Agreement, and will be liable for any breach of this Agreement by any of its affiliates, controlling persons, employees, representatives and agents;

- e) In the event that the Receiving Party is requested pursuant to, or required by, applicable law, regulation or legal process to disclose any of the Confidential Information, the Receiving Party will notify the Disclosing Party promptly (and in any event in advance of providing Confidential Information) so that the Disclosing Party may seek a protective order or other appropriate remedy (and the Receiving Party will consult with the Disclosing Party with respect to taking steps to resist or narrow the scope of any such request or legal process) or, in the sole discretion of the Disclosing Party, waive compliance with the terms of this Agreement. In the event that no such protective order or other remedy is obtained, or that the Disclosing Party waives compliance with the terms of this Agreement, the Receiving Party will furnish only that portion of the Confidential Information which it is advised by the Receiving Party's counsel is legally required and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

8. PROPRIETARY RIGHTS INDEMNIFICATION. First DataBank shall hold harmless and defend Licensee against suits based solely on a claim by a third party that the use of Licensed Products by Licensee under this Agreement infringes on any patent, copyright, trademark, or other property right in the Territory, provided that Licensee gives First DataBank prompt written notice of such suits and permits First DataBank to control the defense thereof. Should any of the Licensed Products become, or in First DataBank's reasonable opinion be likely to become, subject of a claim of infringement for which Licensee is entitled to be indemnified against as set forth herein, First DataBank, may at its option and in addition to any other remedies available to it:

- (i) obtain a license at no cost to Licensee, or its customers, permitting their continued use of such Licensed Products;
- (ii) modify such Licensed Products (such modification must maintain comparable functionality and performance) in a manner so that such Licensed Products are no longer infringing;



- (iii) substitute other products of comparable functionality and performance that does not infringe any copyright, patent, trademark or other intellectual property law in the Territory; or,
- (iv) terminate Licensee's license to such Licensed Products upon 180 day prior written notice to Licensee whereupon Licensee and its customers shall immediately terminate all further use of the affected Licensed Products and First DataBank will refund any prepaid License Fees associated with such Licensed Products, prorated based upon the number of months (and days) remaining in the current Fee Term.

#### 9. DISCLAIMERS.

- a) Licensee shall inspect and test Licensed Products upon receipt thereof. The Licensed Products are deemed proper and correct unless, within ten (10) working days after receipt thereof, Licensee provides First DataBank with written notice and documentation of any error in the Licensed Products;
- b) First DataBank has utilized reasonable care in collecting and reporting the information contained in the Licensed Products and has obtained such information from sources believed to be reliable. First DataBank, however, does not warrant the accuracy of codes, prices or other data contained in the Licensed Products. Information reflecting prices is not a quotation or offer to sell or purchase. The clinical information contained in the Licensed Products is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other healthcare professionals in patient care. The absence of a warning for a given drug or drug combination should not be construed to indicate that the drug or drug combination is safe, appropriate or effective in any given patient.
- c) **FIRST DATABANK MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OTHER THAN THOSE IN THIS LICENSE AGREEMENT, AND FURTHER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE ACCURACY OF THE DATA FROM WHICH THE LICENSED PRODUCTS ARE COMPILED, NOR THE COMPATIBILITY OF THE LICENSED PRODUCTS WITH LICENSEE'S HARDWARE AND SYSTEMS, AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- d) **IN NO EVENT SHALL FIRST DATABANK BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, RELIANCE, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF FIRST DATABANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- e) **EXCEPT FOR FIRST DATABANK'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8 OF THIS AGREEMENT, IN NO EVENT SHALL FIRST DATABANK'S LIABILITY EXCEED THE AMOUNT PAID TO IT BY LICENSEE FOR THE CURRENT FEE TERM OF THIS LICENSE AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION OR CLAIM, AND REGARDLESS OF WHETHER THE ACTION OR CLAIM IS BASED ON ANY ALLEGED ACT OR OMISSION OF FIRST DATABANK, INCLUDING BUT NOT LIMITED TO ANY ACTION BASED ON NEGLIGENCE, BREACH OF WARRANTY OR BREACH OF CONTRACT.**

10. PROFESSIONAL RESPONSIBILITY. Licensee acknowledges that the professional duty to the patient in providing healthcare services lies solely with the healthcare professional providing patient care services. Licensee takes full responsibility for the use of information provided by the Licensed Products in patient care and acknowledges that the use of the Licensed Products in no way is intended to replace or substitute for professional judgment. First DataBank does not assume any responsibility for actions of Licensee which may result in any liability or damages due to malpractice, failure to warn, negligence or any other basis. Licensee shall ensure that all healthcare professionals using the Licensed Products are aware of the limitations of the use of the Licensed Products.



11. USE OF PATIENT EDUCATION. Licensee hereby agrees not to modify the Patient Education Knowledge Databases. If Licensee distributes the Patient Education Knowledge Database information, then Licensee agrees to distribute an unmodified version of the information from the Patient Education Knowledge Database for each applicable drug. Licensee further agrees to include the following disclaimer, or subsequent disclaimer language that may be provided by First DataBank, at the top of any patient education information material provided to patients from the Patient Education Knowledge Databases:



NOTE: This is a summary and does not contain all possible information about this product. For complete information about this product or your specific health needs, ask your healthcare professional. Always seek the advice of your healthcare professional if you have any questions about this product or your medical condition. This information is not intended as individual medical advice and does not substitute for the knowledge and judgment of your healthcare professional. This information does not contain any assurances that this product is safe, effective or appropriate for you.

12. **ASSIGNMENT.** This license and Licensee's rights hereunder may not be assigned or otherwise transferred, voluntarily or by operation of law. Any purported assignment of the rights or delegation of the duties under this Agreement by Licensee shall be void unless prior written consent is secured from First DataBank. Notwithstanding the previous sentence, Licensee may assign this Agreement to another executive State of Michigan agency so long as the Use by such executive State of Michigan agency is in compliance with the Declaration of Use as outlined on Exhibit 1, Section C and adheres to the Terms of the Agreement.
13. **FORCE MAJEURE.** Failure of First DataBank to perform or delay in the performance of First DataBank's obligations under this Agreement due to any cause or event not reasonably within First DataBank's control, including but not limited to casualty, labor disputes, failure of equipment, compliance with governmental authority, war, terrorism, or Act of God, shall not constitute a breach of this Agreement, and First DataBank's performance shall be excused during such period of delay.
14. **NOTICES.** Notices hereunder shall be delivered by hand, air courier express or certified mail with return receipt requested to the address of the Licensee identified on Exhibit 1, and shall be deemed delivered three (3) days after mailing.
15. **CHOICE OF LAW.** The Contract shall in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.
16. **ENTIRETY; AMENDMENTS.** This Agreement, including all Exhibits hereto, constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all prior Agreements, proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. All amendments to this Agreement shall be in writing signed by both parties.
17. **NO WAIVER.** No term or provision hereof shall be deemed waived and no such breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of a breach by the other, whether express or implied, shall not constitute a consent for, or waiver of, or excuse for any other different subsequent breach.
18. **SEVERABILITY.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.



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**IN WITNESS HEREOF**, the parties hereto have executed this Agreement as of the Effective Date on Exhibit 1.

FIRST DATABANK

DATED: \_\_\_\_\_

By

500 East 96<sup>th</sup> Street, Suite 500  
Indianapolis, IN 46240-3767  
(800) 428-4495  
(317) 571-7200  
(317) 571-7253 (FAX)

\_\_\_\_\_

Signature

James M. Schultz

Name (Print)

Vice President, Finance

Title

**LICENSEE**

DATED: \_\_\_\_\_

By

**STATE OF MICHIGAN**  
**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH**  
400 South Pine Street  
Lansing, MI 48933-2250  
(517) 335-5265

\_\_\_\_\_

Signature

Name (Print)

\_\_\_\_\_

Title



**EXHIBIT 1  
 LICENSEE REPRESENTATIONS  
 LICENSED PRODUCTS  
 DECLARATION OF USE  
 LICENSE FEES AND PAYMENT SCHEDULE  
 ADDITIONAL TERMS AND CONDITIONS**

This Exhibit 1 is a part of the License Agreement between First DataBank and Licensee and identifies Licensee, the Licensed Products, Declaration Of Use, License Fees, and Additional Terms (if any) applicable to that Agreement.

The Effective Date of this Agreement is: October 1, 2010

**A. LICENSEE REPRESENTATIONS**

Licensee Name: State of Michigan  
 Street Address: 530 West Allegan Street, 2<sup>nd</sup> Floor  
 City/State/Zip: Lansing, MI 48909  
 Telephone: (517) 373-0305

**B. LICENSED PRODUCTS:** Unless otherwise specified, Licensed Products are updated weekly.

**NATIONAL DRUG DATA FILE™ (NDDF)  
 DRUG-DISEASE CONTRAINDICATION MODULE™  
 INDICATIONS MODULE™  
 MIN/MAX DOSE MODULES™**

Premium Module

**MEDICAID MODULE™, Michigan only**

**C. DECLARATION OF USE:**

Licensee shall use the Licensed Products solely in the administration of the State of Michigan's Medicaid drug benefit program for the purposes of processing and adjudicating prescription Medicaid drug claims, and providing prospective and retrospective drug utilization review services related to such claims. The Licensed Products will be used in a single computer system at the site identified above in Section A. Annual Fees will be assessed based on the average number of Medicaid claims processed per month for the preceding twelve (12) month period, such number to be updated annually by Licensee as the basis for fee assessment. For purposes of this Agreement, a processed claim shall be counted at the point during a transaction when a decision is made to pay or deny a claim.

Authorized use of Licensed Products expressly excludes distribution of data to any third party outside of Licensee's organization, use in pharmacy or medical practice management systems which support drug dispensing, a clinical data repository, computerized physician order entry, electronic medication administration record, e-prescribing, disease management applications, prescription pricing in a retail setting, clinical medical records management systems, litigation or regulatory investigations or inquiry (other than pursuant to a subpoena or other legal process compelling disclosure), supporting internet website(s), or any other use not stated above.



**D. LICENSE FEES AND PAYMENT SCHEDULE:**

|  | 10/01/2010 to<br>09/30/2011 | 10/01/2011 to<br>09/30/2012 | 10/01/2012 to<br>09/30/2013 | 10/01/2013 to<br>09/30/2014 | 10/01/2014 to<br>09/30/2015 |
|--|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| Annual License Fee for Use<br>as defined in Section C: |                             |                             |                             |                             |                             |
| Covers up to 200,000<br>claims processed per month     | \$ 52,839                   | \$ 54,891                   | \$ 55,366                   | \$ 55,841                   | \$ 56,316                   |
| 200,001 – 2 million claims<br>processed per month      | \$ 79,220                   | \$ 82,350                   | \$ 85,580                   | \$ 88,150                   | \$ 88,150                   |
| 2 - 4 million claims<br>processed per month            | \$ 107,160                  | \$ 111,385                  | \$ 111,860                  | \$ 112,335                  | \$ 112,810                  |
| 4 + million claims processed<br>per month              | Special<br>Quote            | Special<br>Quote            | Special<br>Quote            | Special<br>Quote            | Special<br>Quote            |

|  | 10/01/2010 to<br>09/30/2011 | 10/01/2011 to<br>09/30/2012 | 10/01/2012 to<br>09/30/2013 | 10/01/2013 to<br>09/30/2014 | 10/01/2014 to<br>09/30/2015 |
|--|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| Annual License Fee for<br><b>MEDICAID MODULE</b> for<br>Use as defined in Section C: | \$ 3,760                    | \$ 5,640                    | \$ 7,785                    | \$ 8,020                    | \$ 8,020                    |

- i) License Fees shall consist of Annual Fees as specified in Exhibit 1. Annual Fees for each annual Fee Term are due and payable on each anniversary of the Effective Date.
- ii) Licensee will remit all payments in full no later than thirty (30) days of the invoice date. Amounts not received within forty-five (45) days will be subject to late fees of three-quarters percent (.075%) per month, on a prorated basis. In addition, First DataBank may recover from Licensee all expenses incurred in connection with collecting overdue amounts, including, but not limited to, collection costs and reasonable attorney’s fees. Failure to pay amounts when due may result in discontinuation of product delivery and suspension of implementation support and customer service.
- iii) **STANDARD CUSTOMER SUPPORT SERVICES:** Standard customer support services will be available to Licensee for the term of the License Agreement via First DataBank’s customer support toll-free number (1-800-633-3453) during normal business hours (8:00 A.M. to 8:00 P.M. EST Monday through Friday), via e-mail at [cs@firstdatabank.com](mailto:cs@firstdatabank.com), or via the Support Link at First DataBank’s website at [www.firstdatabank.com](http://www.firstdatabank.com).

**E. ADDITIONAL TERMS AND CONDITIONS:**

1. This Agreement supersedes the previous Agreement between American Druggist Blue Book Data Center and Michigan Department of Social Services effective October 1, 1982.
2. The Annual License Fee for the Fee Term beginning October 1, 2010 is based upon Licensee’s processing up to two million drug claims per month. License Fees for future terms may be based upon increases or decreases in this volume.