

# EXECUTION COPY

30877

## INTEGRATED PRESCRIPTION DRUG PROGRAM AGREEMENT

**THIS AGREEMENT** is entered into as of the 1<sup>st</sup> day of December, 2007 (the "Effective Date") between Medco Health Solutions, Inc. ("Medco"), located at 100 Parsons Pond Drive, Franklin Lakes, New Jersey 07417, through Systemed, a Medco business, and City of Long Beach ("LONG BEACH"), located at 333 West Ocean Boulevard, Long Beach, California 90802.

**WHEREAS**, LONG BEACH provides for the payment of prescription drugs and related services for persons eligible to receive such benefits through affiliation with a group that has a contract or other arrangement in effect with LONG BEACH; and

**WHEREAS**, Medco, provides prescription drug benefits programs and, in connection therewith, has established networks of participating retail pharmacies and operates a system for the processing, fulfillment and payment of claims for prescription drugs furnished by such pharmacies; and

**WHEREAS**, Medco's Medco By Mail mail order pharmacy affiliates are licensed pharmacies which provide prescription drugs via a mail order service; and

**WHEREAS**, LONG BEACH desires to retain the services of Medco and its subsidiaries and affiliates, including Medco Health, L.L.C., which holds TPA licenses in certain states, as applicable, to provide a prescription drug benefit program (the "Program") including, but not limited to, retail pharmacy and mail order pharmacy and specialty drug pharmacy services for eligible persons, point-of-care, physician office communications and cost containment initiatives developed and implemented by Medco, which may include communications with prescribers, patients and/or participating pharmacies, and financial incentives to participating pharmacies for their participation in such initiatives (collectively, "PBM Services").

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

### **1. DEFINITIONS**

- 1.1. **"AWP"** means the average wholesale price of the Covered Drug, as set forth in the current price list in recognized sources such as First DataBank's National Drug Data File if available, or other nationally recognized source determined by Medco. Under the Retail Pharmacy Program, AWP is based on the package size submitted, and for Compound Prescriptions is 1.25 times the AWP of the submitted Covered Drug. Under the Mail Order Pharmacy Program, AWP is based on package sizes of 100 units for capsules and tablets, 16 oz. quantities for liquids, and the manufacturer's smallest available package size for injectable Covered Drugs (or the next closest package size if such quantities or sizes are not available), and all other Covered Drugs will be priced as individual units or smallest package size available (e.g., per vial, per suppository, etc.). If First DataBank or other applicable source changes the methodology for calculating AWP or pricing for Covered Drugs in a way that materially changes the economics of the Program, the parties agree to modify the Program Pricing Terms to preserve the parties' relative economics before such changed methodology.
- 1.2. **"Brand Name Drugs"** means all single-sourced drugs and multisource brand drugs as set forth in First Databank's National Drug Data File (or such other nationally recognized source, as reasonably determined by Medco).

- 1.3. **“Business Days” or “business days”** means all days except Saturdays, Sundays, and federal holidays. All references to “day(s)” are to calendar days unless “business day” is specified.
- 1.4. **“Compound Prescription”** means a prescription that meets the following criteria: two or more solid, semi-solid or liquid ingredients, at least one of which is a Covered Drug, that are weighed or measured then prepared according to the prescriber’s order and the pharmacist’s art.
- 1.5. **“Contract Quarter”** means the full three (3) month period commencing on the Effective Date, and each full consecutive three (3) month period thereafter that this Agreement remains in effect.
- 1.6. **“Contract Year”** means the full thirteen (13) month period commencing on the Effective Date, and each full consecutive twelve (12) month period thereafter that this Agreement remains in effect.
- 1.7. **“Copayment” and/or “Coinsurance”** means the amount to be paid by an Eligible Person for each prescription or authorized refill as determined in accordance with the Plan Design(s).
- 1.8. **“Covered Drugs”** means drugs which, under state or federal law, require a prescription, including Compound prescriptions. Excluded from Covered Drugs are (i) cosmetic drugs, (ii) appliances, devices, bandages, heat lamps, braces, splints, and artificial appliances, (iii) health and beauty aids, cosmetics and dietary supplements and (iv) OTC products (“Exclusions”). Additional Covered Drugs and/or Exclusions applicable to any individual Group will be designated by LONG BEACH in the applicable Plan Design.
- 1.9. **“Dispensing Fee”** means the amount payable by LONG BEACH pursuant to Sections 1, 2, or 3 of Schedule A of this Agreement for a Participating Pharmacy or Medco to dispense a prescription or authorized refill to an Eligible Person.
- 1.10. **“Eligible Person”** means each person who, through affiliation with a Group, is eligible for prescription drug benefits pursuant to this Agreement, and such person’s qualified dependents.
- 1.11. **“Generic Drug”** means a multisource generic drug set forth in First Databank’s National Drug Data File, or such other nationally recognized source, as reasonably determined by Medco that is available in sufficient supply from multiple manufacturers.
- 1.12. **“Group”** means a group of Eligible Persons that have the same Plan Design as designated by LONG BEACH.
- 1.13. **“Integrated Program”** means a program in which Eligible Persons enrolled in such program may have prescriptions dispensed either (i) by a Participating Pharmacy under the Retail Pharmacy Program or (ii) by Medco under the Mail Order Pharmacy Program. Reference to the Retail Pharmacy Program and/or Mail Order Pharmacy Program herein will include services performed by Medco for Eligible Persons enrolled in the Integrated Program.
- 1.14. **“MAC” or the “Maximum Allowable Cost”** consists of a list of off-patent drugs subject to maximum allowable cost payment schedules developed or selected by Medco. The payment schedules specify the maximum unit ingredient cost payable by LONG BEACH for drugs on the MAC list. The MAC list and payment schedules are frequently updated.
- 1.15. **“Mail Order Pharmacy Program”** means the program described in Section 4 in which Eligible Persons may submit a prescription along with the applicable Copayment/Coinsurance to Medco for dispensing via mail order.

- 1.16. **“Minimum Enrollment”** means an enrollment of not less than 4,600 Primary Eligible Participants under the Program.
- 1.17. **“Participating Pharmacy”** means a retail pharmacy that has entered into an arrangement with Medco that specifies the terms and conditions of the pharmacy’s participation, including the rates that Medco will pay the pharmacy to participate in Medco’s National Network(s) servicing LONG BEACH’s Program including the rates that Medco will pay the pharmacy.
- 1.18. **“Plan Design”** means Program drug coverage, days supply limitation, Copayment/Coinsurance, Formulary (including Formulary drug selection and relative cost indication) and other Program specifications applicable to the Program designated by LONG BEACH as set forth in this Agreement or otherwise documented between the parties.
- 1.19. **“Primary Eligible Participant”** means each Eligible Person, excluding Eligible Persons who are qualified dependents.
- 1.20. **“Program Pricing Terms”** means the (i) financial or pricing terms, allowances and guarantees set forth in this Agreement, (ii) performance standards and penalties set forth in Section 5 of this Agreement, and (iii) Formulary management fee and the Guaranteed Rebates set forth in Section 6 of this Agreement.
- 1.21. **“Retail Pharmacy Program”** means the program described in Section 3 in which Eligible Persons may purchase Covered Drugs from a Participating Pharmacy upon verification of Program eligibility and payment of the applicable Copayment/Coinsurance, and the claim is submitted by the Participating Pharmacy to Medco for payment in accordance with this Agreement and the applicable Medco Participating Pharmacy agreement.
- 1.22. **“Specialty Drugs”** means pharmaceutical products that are generally biotechnological in nature, with many requiring injection or non-oral methods of administration, and that may have special shipping or handling requirements. Some of the disease categories currently in Medco’s specialty pharmacy programs include cancer, multiple sclerosis, Hepatitis C, rheumatoid arthritis, cystic fibrosis, infertility, RSV prophylaxis, Gaucher disease, growth hormone deficiency, hemophilia and immune deficiency.
- 1.23. **“TelePAID® System” or “TelePAID®”** means Medco’s real time, on-line system for adjudicating prescription drug claims submitted by retail pharmacies.

## **2. LONG BEACH FURNISHED INFORMATION**

LONG BEACH will promptly furnish, in a format acceptable to Medco, all information necessary for Medco to render the services set forth herein. Such information will include, but is not limited to:

- 2.1. A file of Eligible Persons, and subsequent timely additions and deletions to such file as changes occur. LONG BEACH will pay for any Covered Drug dispensed to a person reported by LONG BEACH as no longer an Eligible Person, if such notification is not received by Medco at least two (2) full business days prior to the dispensing date of such prescription.
- 2.2. Designation, in writing, of those Plan Design features to be determined by LONG BEACH.
- 2.3. The reimbursement terms applicable to direct reimbursement claims submitted by Eligible Persons under the Retail Pharmacy Program.

- 2.4. The type, number, and description of Medco identification cards (“Identification Cards”) required under the Retail Pharmacy Program.

### **3. RETAIL PHARMACY PROGRAM**

The specific features of the Retail Pharmacy Program are as follows:

- 3.1. **Program Coverage** - The Program coverage (Covered Drugs/Exclusions) and days supply limitation covered under the Retail Pharmacy Program will be as designated by LONG BEACH. Up to a thirty (30) day supply of Covered Drugs per prescription or refill may be dispensed under the Retail Pharmacy Program.
- 3.2. **Participating Pharmacy Networks** - Medco will maintain a Participating Pharmacy Network reasonably necessary to provide services under the Retail Pharmacy Program. Medco will have the responsibility to contract with Participating Pharmacies. Medco will be responsible for any amounts that it owes to Participating Pharmacies that exceeds the reimbursement it receives from LONG BEACH as specified in Section 1 of Schedule A. Medco will retain any reimbursement that it receives from LONG BEACH as specified in Section 1 of Schedule A that is in excess of the amounts it is obligated to pay to Participating Pharmacies.
- 3.3. **Identification Cards** - Medco will (i) produce Identification Cards for those Eligible Persons designated by LONG BEACH, with an accompanying explanatory brochure, and (ii) make direct reimbursement claim forms available through the [www.medco.com](http://www.medco.com) internet site for use by Eligible Persons who have not received their Identification Cards, or have had them lost or stolen. Medco will distribute Identification Cards and claim forms to the designated Eligible Persons unless otherwise designated by the LONG BEACH. All costs associated with distributing and/or mailing such materials are the responsibility of LONG BEACH.
- 3.4. **Claim Adjudication** - Medco will adjudicate claims for prescription drug benefits in accordance with Medco’s TelePAID System and the applicable Plan Design. Disapproved claims will be transmitted via TelePAID to the submitting pharmacy with a brief explanation of the cause or causes for disapproval. Should LONG BEACH determine that a previously disapproved claim should be approved, and so direct Medco, adjudication of the claim will be accomplished promptly by Medco. Medco is obligated to pay Participating Pharmacies for all claims adjudicated through the TelePAID System. LONG BEACH will pay Medco for these claims pursuant to Schedule A, Section 1. Medco will promptly refer to LONG BEACH all non-routine inquiries by insurance departments, attorneys, claimants, or other persons following the denial of any claims.
- 3.5. **Administrative Services** – Medco will provide, as applicable, the Base Administrative Services and the Additional Administrative Services set forth in Schedule A.
- 3.6. **Pricing** - The Program Pricing Terms applicable to the Retail Pharmacy Program are set forth in Schedule A, in addition to the performance standards and penalties set forth in Section 5, and the Formulary Program as set forth in Section 6.

### **4. MAIL ORDER PHARMACY PROGRAM**

#### **4.1. Program Coverage**

- 4.1.1. The Program coverage (Covered Drugs/Exclusions) and days supply limitation under the Mail Order Pharmacy Program will be as designated by LONG BEACH in the applicable Plan Design.

4.1.2. Medco's mail order pharmacies will not be required to dispense prescriptions for greater than a ninety (90) day supply of Covered Drugs per prescription or refill, subject to the professional judgment of the dispensing pharmacist, limitations imposed on controlled substances and manufacturer's recommendations. Prescriptions may be refilled providing the prescription so states. Prescriptions will not be filled (i) more than twelve (12) months after issuance, (ii) more than six (6) months after issuance for controlled drug substances, or (iii) if prohibited by applicable law or regulation.

4.2. **Dispensing Procedures**

4.2.1. Medco's mail order pharmacies will dispense Covered Drugs to Eligible Persons, and dispense generic drugs when authorized, in accordance with (i) applicable law and regulations in the state in which Medco's mail order pharmacy is located, and (ii) the terms of this Agreement and Plan Design(s). Any prescriptions that are not dispensed will be returned to the applicable Eligible Person with an explanation as to why it could not be dispensed in accordance with Medco's standard operating procedures.

4.2.2. All matters pertaining to the dispensing of Covered Drugs or the practice of pharmacy in general are subject to the professional judgment of the dispensing pharmacist.

4.2.3. Any drug which cannot be dispensed in accordance with Medco's mail order pharmacy dispensing protocols, or which requires special record-keeping procedures, may be excluded from coverage by Medco.

4.3. **Claim Adjudication** - Medco will adjudicate and pay approved claims for prescription drug benefits in accordance with Medco's TelePAID System and the applicable Plan Design. Should LONG BEACH determine that a previously disapproved claim should be approved, and so direct Medco, adjudication of the claim will be accomplished promptly by Medco. LONG BEACH will pay Medco for claims adjudicated through the TelePAID System, pursuant to Schedule A, Section 2. Medco will promptly refer to LONG BEACH all non-routine inquiries by insurance departments, attorneys, claimants, or other persons following the denial of any claims.

4.4. **Pricing** - The Program Pricing Terms applicable to the Mail Order Pharmacy Program are set forth in Schedule A, in addition to the performance standards and penalties set forth in Section 5 and the Formulary Program set forth in Section 6. Medco will have the responsibility to contract with drug wholesalers and manufacturers regarding Medco's purchase of drugs that are dispensed by it under the Mail Order Pharmacy Program. Medco will be responsible for any amounts that it owes drug wholesalers or manufacturers that exceeds the amounts it charges and receives from LONG BEACH or Eligible Persons, as specified in Section 2 of Schedule A. Medco will retain any payment that it receives from LONG BEACH or Eligible Persons as specified in Section 2 of Schedule A that is in excess of the amounts it is obligated to pay to drug wholesalers or manufacturers for the purchase of such drugs that are dispensed under the Mail Order Pharmacy Program.

## **5. PERFORMANCE STANDARDS AND PENALTIES**

- 5.1.** Medco and LONG BEACH agree that Medco's maximum liability under this Section 5 for the Initial Term of this Agreement will not exceed \$30 per Primary Eligible Participant as measured by taking the average number of households enrolled during the Contract Year (the "Maximum Liability"). LONG BEACH can choose to distribute the penalties across any of the categories named in Sections 5.1.1 through 5.1.14 with no more than 20% of the Maximum Liability for any individual performance guarantee allocated to one performance standard. The following performance standards will apply during the Initial Term of this Agreement:
- 5.1.1.** The TelePAID System Availability Rate for each Contract Year will be 99.5% or greater. LONG BEACH may assess a penalty against Medco in the amount of 5% of the total amount of the Maximum Liability for each Contract Year that the TelePAID System Availability Rate averages less than 99.5% for a Contract Year. "TelePAID System Availability Rate" means the percentage of normal operating hours that the TelePAID System is operational, excluding scheduled maintenance time, measured on an annual basis.
- 5.1.2.** The Dispensing Accuracy Rate for each Contract Year will be 99.99% or greater. LONG BEACH may assess a penalty against Medco in the amount of 5% of the total amount of the Maximum Liability for each Contract Year that the Dispensing Accuracy Rate is less than 99.99% for a Contract Year. "Dispensing Accuracy Rate" means (i) the number of all mail order pharmacy prescriptions dispensed by Medco in a Contract Year less the number of those prescriptions dispensed by Medco in such Contract Year which are reported to Medco and verified by Medco as having been dispensed with the incorrect drug or strength, divided by (ii) the number of all mail order pharmacy prescriptions dispensed by Medco in such Contract Year.
- 5.1.3.** Medco will dispense all Non-Protocol Prescriptions received each Contract Year under the Mail Order Pharmacy Program within an average of two (2) business days following receipt. All other Mail Order Pharmacy Program prescriptions received each Contract Year will be dispensed within an average of four (4) business days following receipt by Medco. LONG BEACH may assess a penalty against Medco in the amount of 5% of the total amount of the Maximum Liability for each Contract Year that Medco fails to meet both of these dispensing time period standards. "Non-Protocol Prescriptions" means Mail Order Pharmacy Program prescriptions for Covered Drugs received by Medco that are in stock and which do not require physician or patient contact or other non-standard procedures prior to dispensing by Medco.
- 5.1.4.** Prescription Drug Plan reporting package will be made available online to LONG BEACH within fifteen (15) business days of the end of the billing cycle that includes the last calendar day of the reporting month for monthly reports, and thirty (30) business days of the end of the billing cycle that includes the last calendar day of the reporting quarter for quarterly reports. LONG BEACH may assess a penalty against Medco in the amount of \$100 for each report series which is not made available within the applicable time periods, subject to a maximum penalty of 5% of the total amount of the Maximum Liability per Contract Year.
- 5.1.5.** At least 98% of all Maintenance Identification Cards issued by Medco each Contract Year will be mailed within an average of four (4) business days following Medco's receipt and update of a processable eligibility tape or transmission identifying the applicable Eligible Person(s). LONG BEACH may assess a penalty against Medco in the amount of 5% of the total amount of the Maximum Liability for each Contract Year that

this standard is not met measured on a Contract Year basis. "Maintenance Identification Cards" means new Identification Cards issued to individuals who first become Eligible Persons after the Effective Date (exclusive of new Groups or Group re-enrollments) and replacement Identification Cards for Eligible Persons who have lost or had their Identification Cards stolen.

- 5.1.6.** Processable maintenance eligibility transactions received by Medco via host to host, tape or floppy disc before 12:00 p.m. E.T. on any business day will be processed by Medco within an average of two (2) business days of receipt each Contract Year. LONG BEACH may assess a penalty against Medco in the amount of \$100 for each processable host to host, tape or floppy disc not processed by Medco within this time period, subject to a maximum penalty of 5% of the total amount of the Maximum Liability per Contract Year.
- 5.1.7.** Medco will respond to at least 95% of written inquiries received each Contract Year from an Eligible Person which requires a response (excluding appeals under Section 14.8) within an average of five (5) business days following receipt. LONG BEACH may assess a penalty against Medco in the amount of 10% of the total amount of the Maximum Liability for each Contract Year that this standard is not met measured on a Contract Year basis.
- 5.1.8.** Medco will make available a toll-free member service telephone line for use by Eligible Persons. The target Average Speed of Answer ("ASA") of the member service telephone line each Contract Year will be thirty (30) seconds or less from the time the Eligible Person selects either the IVRU (Interactive Voice Response Unit) option or Member Service Representative option. This ASA standard excludes calls to the toll-free telephone line separately established for Specialty Drugs. LONG BEACH may assess a penalty against Medco for failure to meet this standard in the amount of 5% of the total amount of the Maximum Liability for each Contract Year that this standard is not met measured on a Contract Year basis.
- 5.1.9.** The Telephone Abandonment Rate of the member service telephone line will be 5% or less of all incoming calls received during each Contract Year. This standard excludes calls to the toll-free telephone line separately established for Specialty Drugs. LONG BEACH may assess a penalty against Medco in the amount of 5% of the total amount of the Maximum Liability for each Contract Year that this standard is not met measured on a Contract Year basis. "Telephone Abandonment Rate" means (i) the number of incoming telephone calls received by the customer service telephone line during a Contract Year which are abandoned by the caller after a selection is made either to the IVRU (Interactive Voice Response Unit) system or a Member Services Representative, divided by (ii) the total number of incoming telephone calls received by the customer service telephone line during such Contract Year.
- 5.1.10.** Medco will respond (process a check or reject notice) to at least 97% of direct reimbursement paper claims received each Contract Year from Eligible Persons within an average of five (5) business days following receipt, and all claims will be responded to within ten (10) business days (response means either a check or reject notice has been mailed). LONG BEACH may assess a penalty against Medco in the amount of 5% of the total amount of the Maximum Liability for each Contract Year that this rate is not met measured on a Contract Year basis.
- 5.1.11.** The Claims Adjudication Accuracy Rate for each Contract Year will be 98.5% or greater. LONG BEACH may assess a penalty against Medco in the amount of 10% of the total amount of the Maximum Liability for each Contract Year that this standard is not met

measured on a Contract Year basis. "Claims Adjudication Accuracy Rate" means (i) the number of retail claims, mail order claims and directly submitted paper claims, adjudicated by Medco in a Contract Year that do not contain a material adjudication error, divided by (ii) the number of all such claims adjudicated by Medco in such Contract Year.

**5.1.12.** The Member Satisfaction Rate for each Contract Year will be 90% or greater. A penalty of 15% of the total amount of the Maximum Liability per Contract Year may be assessed against Medco for failure to meet this standard. "Member Satisfaction Rate" means (i) the number of Eligible Persons responding to Medco's annual standard Patient Satisfaction Survey as being satisfied with the overall performance under the Integrated Program divided by (ii) the number of Eligible Persons responding to such annual Patient Satisfaction Survey; LONG BEACH must provide timely approvals and responses, and a minimum of 20% of surveys must be returned for the performance standard in this Section 5.1.12 to be applicable.

**5.1.13.** LONG BEACH may assess a penalty in the amount of 5% of the total amount of the Maximum Liability if, three (3) months after the Effective Date, those LONG BEACH employees who are members of the LONG BEACH Program implementation team do not rate Medco's performance in implementing the Program an average of 3 or better on a scale of 1 to 5 (5 being the best), provided LONG BEACH and any applicable third party has fully complied with all LONG BEACH implementation requirements established pursuant to this Section 5.1.13.

**5.1.14.** LONG BEACH may assess a penalty in the amount of 15% of the total amount of the Maximum Liability per Contract Year if, after the first Contract Year and each successive Contract Year, those LONG BEACH employees who are members of the LONG BEACH benefits staff do not rate the Medco account team's performance for such Contract Year an average of 3 or better on a scale of 1 to 5 (5 being the best) based on a range of performance criteria agreed to between LONG BEACH and Medco at the beginning of such Contract Year. Additional LONG BEACH staff members may be included in the survey at the request of Medco.

**5.2.** LONG BEACH will give Medco written notice pursuant to Section 14.4 of the Agreement of any facts giving rise to LONG BEACH's right to assess a penalty against Medco pursuant to Section 5.1 above, within ten (10) business days after LONG BEACH becomes aware of such fact, and within thirty (30) days thereafter, of LONG BEACH's election to assess such penalty against Medco. Any penalties assessed against Medco pursuant to this Agreement, will be credited against future billings to LONG BEACH under the LONG BEACH Program in accordance with Medco's standard procedures.

## **6. FORMULARY**

LONG BEACH will be a participating plan sponsor in Medco's Preferred Prescriptions® Formulary as set forth below for the term of this Agreement. LONG BEACH will provide Medco with advance notice of each Group that will participate in the Preferred Prescriptions Formulary.

**6.1. Preferred Prescriptions Formulary** - The Preferred Prescriptions Formulary is a prescription drug formulary administered by Medco which lists FDA approved drugs that have been evaluated for inclusion on the Preferred Prescriptions Formulary. The drugs included on the Preferred Prescriptions Formulary will be modified by Medco from time to time as a result of factors including, but not limited to, medical appropriateness, manufacturer rebate arrangements, and patent expirations. Medco will implement Medco's formulary management programs, which may



include cost containment initiatives, therapeutic interchange programs, communications with Eligible Persons, Participating Pharmacies and/or physicians (including communications regarding generic substitution programs), and financial incentives to Participating Pharmacies for their participation. Compliance with the Preferred Prescriptions Formulary and Medco's formulary management program will result in Formulary Rebates as set forth below. Medco reserves the right to modify or replace the Preferred Prescriptions Formulary (including any modification or replacement, the "Formulary") and formulary compliance methods and cost containment initiatives consistent with good pharmacy practice. LONG BEACH agrees that Medco will be the exclusive formulary administrator for LONG BEACH's prescription drug benefit programs during the term of the Agreement. LONG BEACH is authorized to use the Formulary only for its own Eligible Persons and only as long as the Program is in effect and administered by Medco.

- 6.2. Rebates** - Medco and its subsidiaries receive formulary rebates from certain drug manufacturers as a result of the inclusion of those manufacturers' branded products on the Formulary ("Formulary Rebates"). Medco also receives additional rebates and/or fees from certain manufacturers for such products, which may take into account various factors, including the utilization of certain drugs within their respective therapeutic categories for Medco's book of business in aggregate as a result of various commitments, services, and programs including, but not limited to, formularies, but excluding payments or fees from certain manufacturers related to drug-specific dispensing, shipping, and handling and other commitments, services and programs associated with Specialty Drugs dispensed by Medco ("Additional Rebates and Fees"). Formulary Rebates and Additional Rebates and Fees are jointly referred to as "Total Rebates." Medco will provide LONG BEACH with the greater of (i) 100% of the Total Rebates received by Medco based on the dispensing of each manufacturer's formulary drugs under LONG BEACH's Program, less a Formulary management fee equal to 30% of the Total Rebates received by Medco under the Program or (ii) the Guaranteed Rebates (as defined below), less a Formulary management fee equal to 30% of the Guaranteed Rebates. This management fee will be retained by Medco under the Program. Total Rebates will be credited against future billings to LONG BEACH under the Program one hundred eighty (180) days after the end of each calendar quarter. Total Rebates due LONG BEACH under this Agreement that are received by Medco within eighteen (18) months after termination or expiration of this Agreement will be paid to LONG BEACH. Total Rebates received thereafter will be retained by Medco.
- 6.3. Guaranteed Rebates** - After each Contract Year during the Initial Term that LONG BEACH participates in the Formulary, Medco will calculate LONG BEACH's Total Rebates during such Contract Year. Provided LONG BEACH complies fully with the Formulary and with the Formulary management programs implemented by Medco, if LONG BEACH'S percentage share of Total Rebates for any Contract Year during the Initial Term are less than the sum of (i) \$7.90 times the total number of Brand Name Drug prescriptions billed and paid for under LONG BEACH's Retail Pharmacy Program as well as such prescriptions under the Mail Order Pharmacy Program for less than a forty-five (45) days' supply during such Contract Year, plus (ii) \$23.75 times the total number of Brand Name Drug prescriptions billed and paid for under LONG BEACH's Mail Order Pharmacy Program during the same Contract Year with a forty-five (45) days' supply or greater (collectively the "Guaranteed Rebates"), Medco will credit such difference against future billings to LONG BEACH under the Program one hundred eighty (180) days after the end of each Contract Year.
- 6.4.** If a government action, change in law or regulation, change in the interpretation of law or regulation or action by any drug manufacturer or by LONG BEACH has a material adverse effect on the Program Pricing Terms, Medco may modify the Program Pricing Terms.
- 6.5.** Any lines of LONG BEACH's business, or any Group of Eligible Persons, for which LONG BEACH funds less than 50% of the costs of Covered Drugs under the Plan Design will not be entitled to Formulary Rebates and Additional Rebates and Fees. Calculations and guarantees

under Sections 6.2 and 6.3 will not include prescriptions dispensed for any such lines of business or Groups.

## **7. BILLING/PAYMENT**

- 7.1. Medco will provide LONG BEACH with a bi-weekly consolidated invoice for services provided by Medco under the Program, in accordance with the Program Pricing set forth in Schedule A. All invoices will be paid in full by LONG BEACH within five (5) business days of receipt by wire transfer, electronic debit, or other method approved by Medco in writing.
- 7.2. LONG BEACH will pay Medco for administrative products and services provided by Medco under the Program in accordance with the Administrative Fee provisions set forth in Schedule A. Medco will provide LONG BEACH with an Administrative Fee invoice in accordance with Medco's four (4) week Administrative Fee cycle. LONG BEACH will pay Administrative Fee invoices in full within fifteen (15) days of the invoice date.
- 7.3. Subject to review of audited financial statements and/or whether payments due to Participating Pharmacies for Covered Drugs under this Agreement become subject to prompt payment related legislation or regulation, LONG BEACH may be required to pay a deposit in an amount to be reasonably determined by Medco, which amount may be periodically modified by Medco based on LONG BEACH's actual claims experience and enrollment. This deposit may be used by Medco to offset the failure by LONG BEACH, for any reason, to make any payments pursuant to the terms of this Agreement and/or to make payments due in accordance with prompt payment legislation or regulation prior to Medco's billing and receipt of LONG BEACH's payment due under Section 7.1, and does not, in any way, limit other remedies available to Medco. The deposit, to the extent not utilized to offset any payment default by LONG BEACH under this Agreement, will be returned, without interest, to LONG BEACH within the greater of one hundred eighty (180) days following termination of this Agreement or following any agreed upon date for extended services.
- 7.4. Failure by LONG BEACH to make any payments in accordance with the terms of this Agreement will constitute a payment default. Notwithstanding Section 10.2 of this Agreement, if LONG BEACH fails to cure any such payment default within two (2) days, in addition to other available remedies, Medco may cease performing any or all of its obligations under, or may terminate this Agreement upon notice to LONG BEACH. After the two (2) day grace period, there will be a late payment fee of 1% per month on the balance due, accruing as of the due date. LONG BEACH will reimburse Medco for all collection costs incurred by Medco as a result of any payment default by LONG BEACH under this Agreement.

## **8. RECORDS**

- 8.1. Medco will maintain all claims records relating to services performed under this Agreement as required by applicable law. Such claims records will be in their original form, on microfilm, microfiche or other form determined by Medco. LONG BEACH claims records may be audited by LONG BEACH or its representative approved by Medco, subject to execution of a confidentiality agreement, for a maximum period of twenty-four (24) months prior to the agreed upon audit date, subject to applicable confidentiality provisions and legal requirements. Any audit by LONG BEACH may be conducted once annually from January through September upon adequate prior written notice, and during regular business hours. Subject to Section 9.3, Medco may retain copies of such claims records for its own use.
- 8.2. Medco's agreements with pharmaceutical manufacturers are subject to confidentiality agreements. Any audit of Medco's agreements with pharmaceutical manufacturers will be conducted by (a) a

Big 4 public accounting firm approved by Medco whose audit department is a separate stand alone function of its business, or (b) a national CPA firm approved by Medco whose audit department is a separate stand alone function of its business. The organization that will be performing the audit must carry insurance for professional malpractice of at least \$2,000,000. The audit will include only those portions of such pharmaceutical manufacturer agreements as necessary to determine Medco's compliance with Section 6 above in respect to Formulary Rebates. The audit may be conducted once annually from January through September, during normal business hours, at Medco's offices as scheduled by agreement of the parties, but not sooner than ninety (90) days after execution of Medco's confidentiality agreement.

- 8.3. Any auditor performing an audit under Section 8.1 or 8.2 above will be required to warrant and represent that it is not providing services to any person, company, or other entity (such as plan sponsors and law firms) in connection with any lawsuit, investigation, or other proceeding that is currently pending or contemplated against Medco. Such services include, but are not limited to (a) examining pharmacy claims or any other data, documents, information or materials or (b) providing advice, analysis, assessments, and/or opinions as a disclosed or undisclosed expert or consultant (collectively "Litigation Services"), in connection with any lawsuit, investigation, or other proceeding pending or contemplated against Medco. The auditor must agree that, for a period of one (1) year after completion of the audit, it will not provide Litigation Services in any lawsuit, investigation, or other proceeding brought against Medco, except for Litigation Services to LONG BEACH in any proceeding against Medco.
- 8.4. Upon request, LONG BEACH will furnish its most recent audited financial statement to Medco.

## **9. CONFIDENTIAL INFORMATION**

- 9.1. The Confidential Information of a party (the "disclosing party") which is disclosed to the other party (the "receiving party") will be held by the receiving party in strictest confidence at all times and will not be used by the receiving party (or its affiliates, employees, officers, directors or limited liability company managers ("Representatives")) for any purpose not previously authorized by the disclosing party, except as necessary for Medco to perform the services under this Agreement. The Confidential Information of the disclosing party will not be disclosed or divulged by the receiving party to anyone, except with the prior written permission of the disclosing party and on the condition that the party to whom the Confidential Information is disclosed agrees in writing in advance to be bound by these terms and conditions. The receiving party may disclose the Confidential Information to those of its Representatives who need to review the Confidential Information for the purposes authorized by the disclosing party but only after the receiving party has informed them of the confidential nature of the Confidential Information and directs them to treat the Confidential Information in accordance with the terms of this Agreement. The disclosing party retains all right, title and interest in and to its Confidential Information.

The term "Confidential Information" includes, but is not limited to, any information of either the receiving or disclosing party (whether oral, written, visual or fixed in any tangible medium of expression), relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, cost and pricing data, trade secrets, know-how, processes, plans, reports, designs and any other information of or relating to either party's business, including its therapeutic and disease management programs, but does not include information which (a) was known to the receiving party before it was disclosed to the receiving party by the disclosing party, (b) was or becomes available to the receiving party from a source other than the disclosing party, provided such fact is evidenced in writing and the source is not bound by a confidentiality obligation to the disclosing party, or (c) is developed by the receiving party independently of the disclosing party's Confidential Information, provided that

such fact can be documented. Each party will also keep the terms of this Agreement confidential as Confidential Information, except as required by law or regulation.

If the receiving party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, any informal or formal investigation by any government or governmental agency or authority, law or regulation, or otherwise) to disclose any of the Confidential Information, the receiving party will notify the disclosing party promptly in writing so that the disclosing party may seek a protective order or other appropriate remedy or, in its sole discretion, waive compliance with the terms of this Agreement. The receiving party agrees not to oppose any action by the disclosing party to obtain a protective order or other appropriate remedy. If no such protective order or other remedy is obtained, or 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 counsel is legally required and will exercise its reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

- 9.2. LONG BEACH and Medco may not utilize the service marks, trademarks, or tradenames of any other party to this Agreement, or any service marks, trademarks, or tradenames so similar as likely to cause confusion, without express written approval of such other party. The programs implemented by Medco will remain the sole property of Medco and will only be used by LONG BEACH in connection with the Program and so long as Medco administers the Program.
- 9.3. Medco and LONG BEACH will comply with all applicable laws and regulations regarding patient confidentiality as provided in the Business Associate Agreement between the parties. Medco will not furnish any LONG BEACH identifiable data or information to any third party without the written consent of LONG BEACH, except as reasonably necessary to implement and operate the Program and fulfill its obligations pursuant to this Agreement or as required by applicable law. The restrictions set forth in this Section 9 will not apply to claims data or information which is not identifiable on a LONG BEACH basis.

## **10. TERM OF AGREEMENT**

- 10.1. This Agreement will remain in effect for an initial term of three (3) years from the Effective Date (the "Initial Term") and thereafter will automatically renew for successive one (1) year terms unless either party gives written notice, at least one hundred eighty (180) days prior to the end of any such term, to the other party of its intent to terminate this Agreement as of the end of the then current term. Notwithstanding the issuance of a termination notice, Medco agrees to continue to render services hereunder and LONG BEACH agrees to pay for services of Medco in accordance with the terms of this Agreement for any claims incurred for prescription drug benefits by Eligible Persons while this Agreement was in force.
- 10.2. In the event of a material breach of this Agreement, the party alleging such breach will give written notice thereof to the other parties. If such breach is not cured within sixty (60) days of receipt of such notice, the non-breaching party may terminate this Agreement upon written notice to the other party.

## **11. FORCE MAJEURE**

Neither Medco nor LONG BEACH will be deemed to have breached this Agreement or be held liable for any failure or delay in the performance of all or any portion of its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control. Without limiting the generality of the foregoing, such causes include acts of God or the public enemy, fires, floods, storms, earthquakes, riots, strikes, boycotts, lock-outs, acts of terrorism, acts of war, war-operations, restraints of government, power

or communications line failure or other circumstances beyond such party's control, or by reason of the judgment, ruling or order of any court or agency of competent jurisdiction, or change of law or regulation (or change in the interpretation thereof) subsequent to the execution of this Agreement.

## **12. INDEMNIFICATION/LIMITATION OF LIABILITY**

- 12.1.** Medco will indemnify and hold LONG BEACH, its officers, directors and employees (each an "Indemnified Party") harmless from claims or causes of action asserted against an Indemnified Party arising from services rendered by Medco pursuant to this Agreement to the extent the claim or cause of action arises out of Medco's negligence or willful misconduct, or breach of this Agreement, provided that (a) LONG BEACH has given reasonable notice to Medco of the claim or cause of action, and (b) no Indemnified Party has, by act or failure to act, compromised Medco's position with respect to the resolution or defense of the claim or cause of action.
- 12.2.** LONG BEACH will indemnify and hold Medco, its parent, affiliates, and their respective officers, directors and employees (each an "Indemnified Party") harmless from claims or causes of action asserted against an Indemnified Party arising from (i) breach of this Agreement by LONG BEACH, (ii) negligence or willful misconduct of LONG BEACH, including without limitation, the disclosure and/or use of Program data or information provided by Medco to LONG BEACH, (iii) the provision of patient identifiable data by Medco or its affiliates to LONG BEACH or LONG BEACH's designees, or the subsequent use or disclosure of such information by LONG BEACH or its designees, or (iv) LONG BEACH's release of patient identifiable information to Medco, provided that (a) the Indemnified Party has given reasonable notice to LONG BEACH of the claim or cause of action, and (b) no Indemnified Party has, by act or failure to act, compromised LONG BEACH's position with respect to the resolution or defense of the claim or cause of action.
- 12.3.** Medco will maintain, during the term of this Agreement, liability coverage with limits not less than \$1,000,000 per occurrence and in the aggregate per policy year, with excess liability coverage in an amount not less than \$5,000,000 per policy year. Evidence thereof will be furnished to LONG BEACH upon request. LONG BEACH shall be named as an additional insured under Medco's professional liability insurance policy.
- 12.4.** Except as provided in Section 12.1 above, Medco or any affiliated company, or their directors, officers or employees, will not be responsible for any claim, loss or damage sustained as a result of the provision of or failure to provide pharmaceutical goods or services or any other action or failure to act by any retail pharmacy, pharmaceutical manufacturer or other pharmaceutical providers pursuant to this Agreement.
- 12.5.** The liability of Medco to LONG BEACH for any negligent or willful misconduct by Medco in the performance of its obligations hereunder will be limited to the liability insurance amounts set forth in Section 12.3.
- 12.6.** Medco or LONG BEACH will not be liable to each other for incidental, consequential or exemplary damages.

## **13. EXCLUSIVITY**

Medco will be the exclusive provider and administrator of PBM Services to LONG BEACH and its subsidiaries while this Agreement is in effect. Nothing contained herein, however, will prohibit Medco or any affiliated entity from providing or administering PBM Services and related programs and services to any other entity while this Agreement is in effect.

## 14. GENERAL

- 14.1. **Independent Contractor** - The relationship between Medco and LONG BEACH will solely be that of independent contractors engaged in the operation of their own respective businesses.
- 14.2. **Assignment** - This Agreement may not be assigned by any party without the written approval of the other parties provided, however, that services to be performed by Medco hereunder may be performed by its subsidiaries, affiliates, divisions and/or designees. The duties and obligations of the parties will be binding upon, and inure to the benefit of, successors, assigns, or merged or consolidated entities of the parties.
- 14.3. **No Third-Party Beneficiary** - This Agreement has been entered into solely for the benefit of LONG BEACH and Medco, and is not intended to create any legal, equitable or beneficial interest in any third party or to vest in any third party any interest as to enforcement or performance.
- 14.4. **Notices** - All notices required under this Agreement will be in writing and sent by certified mail, return receipt requested, hand delivery or overnight delivery by a nationally recognized service addressed as follows:
- If to LONG BEACH:      City of Long Beach  
   333 West Ocean Boulevard  
   13<sup>th</sup> Floor  
   Long Beach, CA 90802  
   Attention: Director, Human Resources
- If to Medco:                      Medco Health Solutions, Inc.  
   100 Parsons Pond Drive  
   Franklin Lakes, NJ 07417  
   Attention: Anthony Palmisano Jr.  
   Vice President and Assistant General Counsel  
   Customer and Commercial Contracting
- 14.5. **Amendments** - This Agreement may be amended only in writing when signed by a duly authorized representative of each party.
- 14.6. **Financial Responsibility** - If Medco has reasonable grounds to believe that LONG BEACH may not meet its payment obligations under this Agreement as they become due, Medco may request information and/or reasonable assurances (including a deposit) from LONG BEACH as to its financial responsibility. If the information or assurances are not furnished to Medco within five (5) days, or are not satisfactory in Medco's reasonable judgment, Medco may immediately terminate this Agreement.
- 14.7. **Plan Design** - The Program Pricing Terms set forth in this Agreement are based upon the Plan Designs, Minimum Enrollment and Program specifications agreed to between the parties as reflected in this Agreement and as otherwise hereafter agreed to by the parties in writing. The Program Pricing Terms are also based upon LONG BEACH funding 50% or greater of the costs of Covered Drugs for its Eligible Persons. Any modification of the Plan Design or Program specifications, failure to maintain Minimum Enrollment, or inclusion of Eligible Persons or Groups with Covered Drugs funded less than 50% by LONG BEACH, may result in a retroactive modification by Medco of the Program Pricing Terms. LONG BEACH will provide Eligible Persons with at least thirty (30) days' prior notice of approved Plan Design changes.

**14.8. Interpretation of Plan**

LONG BEACH will not name or represent that Medco is, and Medco will not be, a Plan Administrator or a fiduciary of any prescription drug benefit plan (the "Plan"), as those terms are used in the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001 et seq., and the regulations promulgated under ERISA. LONG BEACH will have complete discretionary, binding, and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of claims or provisions of benefits, to review denied claims and to resolve complaints by Eligible Persons.

Notwithstanding the foregoing, LONG BEACH delegates to Medco the limited authority and discretion solely to undertake administrative and/or clinical initial determinations, first-level, second-level and urgent appeals of claims eligibility and benefit applications determinations filed by Eligible Persons with LONG BEACH's Program. Medco will process and determine all filed administrative and/or clinical first-level, second-level and urgent appeals under the procedures and within the time frames specified in the Department of Labor claims processing regulations, 29 C.F.R. § 2560.503-1 (the "Claims Procedure Regulations"). Accordingly, Medco's decisions will be conclusive and binding and not subject to further review by LONG BEACH. Medco will not consider the payment or adjudication of any claim for benefits on an extra-contractual basis. If, however, with respect to a claim or appeal, any of the duties, whether delegated to Medco or not, are assumed or acted upon by LONG BEACH, or by any agent or vendor of such entity ( e.g. utilization management vendor), then Medco will not have any fiduciary duties or discretionary authority with respect to such claim or appeal, and LONG BEACH will be deemed to have such fiduciary duties and discretionary authority and will be solely liable for such claim or appeal. Notwithstanding the services of Medco under this section, all decisions concerning the rendering of health care services are determined by the Eligible Person's physician, hospital or other health care provider and the Eligible Person.

- 14.9. Tax** - Any applicable sales, use, or other similarly assessed and administered tax imposed on items dispensed, or services provided hereunder, will be the sole responsibility of LONG BEACH. If Medco is legally obligated to collect and remit sales, use, or other similarly assessed and administered tax in a particular jurisdiction, the tax will be reflected on the applicable invoice or subsequently invoiced at such time as Medco becomes aware of such obligation.
- 14.10. Governing Law** - This Agreement will be construed and governed in accordance with the laws of the State of California. However, all matters relating to the Mail Order Pharmacy Program operations of Medco will be governed by the laws of the state in which Medco's mail order pharmacy is located.
- 14.11. Enforceability** - The invalidity or unenforceability of any of the terms or provisions hereof will not affect the validity or enforceability of any other term or provision.
- 14.12. Section Headings** - Section headings are inserted for convenience only and will not be used in any way to construe the terms of this Agreement.
- 14.13. Waiver** - The waiver of any breach or violation of any term or provision hereof will not constitute a waiver of any subsequent breach or violation of the same or any other term or provision. No waiver or relinquishment by a party of any right or remedy under this Agreement will occur unless the waiver or relinquishment is in a written document signed by an officer of the party.
- 14.14. Approvals** - Whenever approval of any party is required under this Agreement, such approval will not be unreasonably withheld.

- 14.15. **Organization** - Each party is duly organized, validly existing and in good standing, and has the power to own its property and to carry on its business as now being conducted by it.
- 14.16. **Authorization** - The execution and delivery of this Agreement and the consummation of the transactions contemplated herein on its part, has been duly authorized by all necessary action by each party.
- 14.17. **No Conflict of Interest or Other Restrictions** - No party has a conflict of interest which would impact its ability to perform fairly its obligations under this Agreement, and no party is subject to any restrictions, contractual or otherwise, which prevent or would prevent it from entering into this Agreement or carrying out its obligations hereunder.
- 14.18. **No Violation** - Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will be a violation or default of any term or provision of the party's governance documents (e.g., its certificate of incorporation or bylaws or operating agreement) or of any material contract, commitment, indenture, or other agreement or restriction to which it is a party or by which it is bound.
- 14.19. **Binding Effect** - This Agreement has been duly executed and delivered by each party, and is a valid and binding obligation of each party, enforceable against such party in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.
- 14.20. **Original Agreement/Counterparts** - The parties will execute two identical originals of this Agreement. Each party will retain one of the originals. This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all counterparts taken together will constitute one instrument.
- 14.21. **Public Announcement** - Except as required by law or regulation, neither party will make any public announcement nor issue any press release relating to this Agreement without the written consent of the other party. This provision does not restrict either party from submitting necessary or appropriate filings with the SEC.
- 14.22. **Dispute Resolution** - Except for those matters subject to emergent or injunctive relief, in the event that any dispute relating to this Agreement arises between LONG BEACH and Medco, either party may, by written notice, demand a meeting regarding the dispute, to be attended by executive officers of each party, who will attempt in good faith to resolve the dispute. If the dispute cannot be resolved through executive negotiations within thirty (30) business days after the date of the initial notice, each party will retain all rights to bring an action regarding such matter in accordance with law.
- 14.23. **Construction** - LONG BEACH and Medco have participated jointly in the negotiation of this Agreement and each has had the advice of legal counsel to review, comment upon and draft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.
- 14.24. **Entire Agreement** - This Agreement, together with the Schedules hereto, embodies the entire understanding of the parties in relation to the subject matter hereof, supersedes any prior agreement among the parties in relation to the subject matter hereof, and no other agreement, understanding, or representation, verbal or otherwise, relative to the subject matter hereof exists among the parties at the time of execution of this Agreement.



14.25. **Compliance with Law** – Medco and LONG BEACH shall take all actions necessary and appropriate to assure that they comply with all applicable federal, state, and local laws and regulations, including, without limitation, the Anti-Kickback Statute, the Public Contracts Anti-Kickback Act, the Stark Law, and laws and regulations relating to disclosure or notification of plan benefits or the terms of rebate administration under this Agreement to LONG BEACH's Groups. Medco's Code of Conduct and its policies and procedures relating to compliance with the above-named laws are available at [www.medco.com](http://www.medco.com).

14.26. **Survival** - The provisions of Sections 7.4, 9, 12, and the last sentence of 10.1 will survive the termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date indicated below.

**MEDCO HEALTH SOLUTIONS,  
INC.**

BY:   
(signature)

NAME: Anthony Palmisano Jr.

Vice President and Assistant General Counsel  
TITLE: Customer and Commercial Contracting

DATE: 5/23/2008

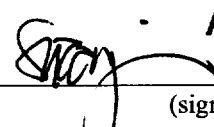
BY:   
(signature)

NAME: Elizabeth Ferguson

Vice President and Assistant General Counsel  
TITLE: Litigation

DATE: 5/22/08

**CITY OF LONG BEACH**

BY:  **Assistant City Manager**  
(signature) **EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

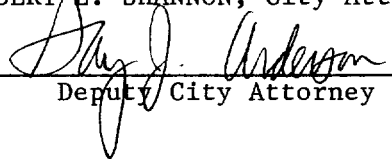
NAME: Patrick H. West  
(type or print name)

TITLE: City Manager

DATE: 9-8-08

APPROVAL AS TO FORM

August 25, 2008  
ROBERT E. SHANNON, City Attorney

BY:   
Deputy City Attorney

## **SCHEDULE A**

### **PROGRAM PRICING TERMS**

LONG BEACH will pay Medco for services provided under the Program as follows:

#### **1. RETAIL PHARMACY PROGRAM CLAIMS**

LONG BEACH will pay Medco for Covered Drugs dispensed and submitted by Participating Pharmacies under the Retail Pharmacy Program in an amount equal to the lowest of (i) the pharmacy's usual and customary price, as submitted ("U&C") plus applicable taxes, (ii) the maximum allowable cost ("MAC"), where applicable, plus the Dispensing Fee, or (iii) Discounted AWP and Dispensing Fee plus applicable taxes. The guaranteed average annual AWP discount for Brand Drugs will be AWP minus (-) 17% and the guaranteed average annual AWP discount for Generic Drugs will be AWP minus (-) 58% for each Contract Year during the Initial Term<sup>1</sup>. The guaranteed Dispensing Fee per prescription or authorized refill will be \$1.35. Medco will prepare a true up within one hundred eighty (180) days following the end of such Contract Year. Any net shortfall (i.e. shortfalls offset by surpluses across the three components) in the aggregate guaranteed savings will be matched dollar for dollar by Medco. In the event of an increase or decrease in the total number of Participating Pharmacies by greater than five (5) percent, or a change in ownership of five (5) percent or more of Participating Pharmacies in the Broad National Network, Medco may modify the guarantee for Ingredient Costs and Dispensing Fees on an equitable basis. Payment by LONG BEACH is subject to the applicable Copayment/Coinsurance amount set forth below:

- 1.1. **Copayment/Coinsurance** - The Copayment/Coinsurance amount for each prescription or refill dispensed by a Participating Pharmacy under the Retail Pharmacy Program will be as designated for each Group in the applicable Plan Design(s).
- 1.2. **Minimum Charge at Retail** - LONG BEACH agrees there may be a minimum charge at retail for a Covered Drug of the lower of (a) the U&C or (b) the applicable Copayment. For prescriptions or refills where this minimum charge applies, there will be no charge/credit to LONG BEACH under this Section 1.
- 1.3. **Direct Claims** - The reimbursement terms applicable to direct reimbursement claims submitted by Eligible Persons under the Retail Pharmacy Program will be the same as the terms set forth in this Section 1, unless otherwise provided in writing by LONG BEACH to Medco.

#### **2. MAIL ORDER PHARMACY PROGRAM CLAIMS**

LONG BEACH will pay Medco for Covered Drugs dispensed by a Medco mail order pharmacy under the Mail Order Pharmacy Program in an amount equal to an Ingredient Cost plus Dispensing Fee for each Covered Drug dispensed, less the applicable Copayment/Coinsurance amount, as such terms are defined below:

- 2.1. **Ingredient Cost** - The Ingredient Cost is AWP minus (-) 24.5% for Brand Name Drugs and the lower of MAC or AWP minus (-) 24.5% for Generic Drugs for prescriptions with a forty-five (45) days' supply or greater. For prescriptions with less than a forty-five (45) days' supply, the pricing set forth in Section 1 of this Schedule A will apply. The guaranteed overall pricing for Generic Drugs will be AWP minus (-) 61% for each Contract Year during the Initial Term<sup>1</sup>. Medco will

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<sup>1</sup> The guarantee will apply to existing generics as well as new generics that come to the market during the term of this agreement that have more than two manufacturers.

prepare a true up one hundred eighty (180) days following the end of such Contract Year. Any net shortfall (i.e. shortfalls offset by surpluses across the three components) in the aggregate guaranteed savings will be matched dollar for dollar by Medco.

- 2.2. **Dispensing Fee** - The Dispensing Fee per prescription or authorized refill is \$0.00 for prescriptions with a forty-five (45) days' supply or greater, and \$1.35 for prescriptions with less than a forty-five (45) days' supply. Dispensing Fees are inclusive of postage. If postage rates (i.e., U.S. mail and/or applicable commercial courier services) increase during the term of this Agreement, the pricing will be increased to reflect such increase(s).
- 2.3. **Copayment/Coinsurance** - The Copayment/Coinsurance amount for each prescription or refill dispensed by a Medco mail order pharmacy under the Mail Order Pharmacy Program will be as designated for each Group in the applicable Plan Design(s). The Copayment/Coinsurance amount will be the minimum charge for the prescription or refill dispensed by Medco under the Program. Eligible Persons must pay the applicable Copayment or Coinsurance amount to Medco for each prescription or authorized refill under the Mail Order Pharmacy Program. Medco may suspend Mail Order Pharmacy Program services to an Eligible Person who is in default of any Copayment or Coinsurance amount due Medco. LONG BEACH will be responsible for any unpaid Eligible Person Copayment or Coinsurance amounts, in accordance with Medco's standard credit policy, if payment has not been received from the Eligible Person within one hundred twenty (120) days of dispensing. LONG BEACH will be billed following the one hundred twenty (120) day collection period, with payment due in accordance with payment terms set forth in Section 7.2 of this Agreement.

### **3. SPECIALTY DRUG CLAIMS**

Notwithstanding anything to the contrary in Section 2 above and elsewhere in the Agreement, LONG BEACH will pay Medco for Covered Drugs designated as Specialty Drugs under the Mail Order Pharmacy Program on a separate ingredient cost basis plus applicable Dispensing Fee, subject to the Copayment/Coinsurance in the applicable Plan Design. Under the Retail Pharmacy Program, LONG BEACH will pay Medco for Specialty Drugs according to the pricing set forth in Section 1 of Schedule A. A Specialty Drug of limited or exclusive distribution through specific retail pharmacies ("Limited Distribution Specialty Drug") is not subject to terms of Schedule A, Section 1. LONG BEACH shall pay Medco for Limited Distribution Specialty Drugs in the same amount that Medco reimburses the retail pharmacy for such drug, including Ingredient Cost and Dispensing Fee. Medco will be the exclusive administrator of Specialty Drugs to LONG BEACH while this Agreement is in effect. Specialty Drugs may be provided by Medco or other third-party specialty pharmacy that has a written arrangement with Medco. Medco may add or delete products, or modify pricing terms during the term of this Agreement. Specialty Drugs are excluded from calculations, guarantees, credits and payments regarding Formulary Rebates under the Mail Order Pharmacy Program and the Retail Pharmacy Program set forth in this Agreement. The terms and pricing set forth in this section apply only to LONG BEACH's pharmacy benefit and not to LONG BEACH's medical benefit. Medco will provide a current list of Specialty Drugs and associated prices upon LONG BEACH's written request.

### **4. ADMINISTRATIVE FEES**

- 4.1. LONG BEACH will pay to Medco a Base Administrative Fee in the amount of \$0.00 per paid claim processed by Medco under the Retail Pharmacy Program/Mail Order Pharmacy Program and Specialty Pharmacy Program for the following Base Administrative Services, as applicable: Notwithstanding anything herein to the contrary, prescriptions filled under the Mail Order Pharmacy Program for less than a forty-five (45) days' supply shall be considered to be Retail Pharmacy program claims for purposes of calculating administrative fees under this Section 4.

- Administration of eligibility submitted via tape or telecommunication in a Medco standard format
- Eligibility maintenance (minimum of weekly updates)
- Dependent Eligibility Certification System (DECS)
- Medco's client support system (e-SD) for on-line access to current eligibility (equipment, installation and line charges are responsibility of LONG BEACH)
- Administration of LONG BEACH's Plan Design in Medco format
- In-network claims adjudication via TelePAID® on-line claims adjudication system
- Coordination of Benefits Level I (when flagged on eligibility records)
- Twelve (12) months on-line claims history retention (for use in claims processing)
- Processing associated with Medco by Mail Pharmacy Program prescriptions
- Designated Systemed Account Team
- Client clinical and plan consulting, analysis and cost projections
- Annual analysis of program utilization and impact of plan design and managed care interventions
- Processing of prescriptions received via Internet, fax, phone or mail
- Refill orders received by phone or Internet 24 hours a day, 7 days a week
- Handling and postage expense of mail-order prescriptions
- Braille prescription labels for visually impaired
- Communication/educational materials included in medication packages
- General communications regarding utilization of mail-order
- Medco Welcome Package and ID Cards for new members (two per family)
- Medco standard member communications
- Standard member web site capabilities including:
  - online prescription ordering and status
  - prescription pricing information
  - coverage and benefit plan information
- health news information
- Explanation of Benefits (EOB) for out-of-network claims
- Direct reimbursement claim form (also available via [www.medcohealth.com](http://www.medcohealth.com))
- Coordination of benefits (COB) claim form
- Benefit denial letters for instances where Eligible Person/drug are not covered
- TDD-TTY services for hearing impaired to access Customer Service Department
- Integrated Concurrent Drug Utilization Review (DUR) via TelePAID®
- Physician Profiling Program
- Prescription Drug Plan Report Package
- Semi-Annual Performance Summaries
- Establish, maintain, credential, and contract an adequate panel of Participating Pharmacies
- Development and distribution of communication materials to Participating Pharmacies regarding the Program
- Toll-free access to Help Desk for eligibility/claims processing assistance
- Toll-free access to Participating Pharmacies for DUR assistance

- Monitor Participating Pharmacy compliance, including submission of U&C, generic dispensing rates, formulary program conformance, DUR intervention conformance, patient utilization, and drug mix and managed through the Coordinated Rx<sup>SM</sup> Program
- Toll-free telephone access to voice response unit for location of Participating Pharmacies in zip code area
- Medco Pharmacy Audit Program<sup>2</sup>
- Toll-free telephone access to Customer Service for the program for use by Eligible Persons, LONG BEACH benefits personnel and physicians
- Gatekeeper program
- 24-hour access to a Medco pharmacist via toll-free telephone service

4.2. LONG BEACH will also pay for Additional Administrative Services requested by LONG BEACH and provided by Medco under the Program as follows:

• Extra Identification Cards	\$0.35 per card
• Direct reimbursement/out-of-network claims adjudication (including check and EOB to Eligible Person)	\$1.25 per claim
• Hard copy eligibility submission	Data entry charges
• Mailings direct to Eligible Persons or LONG BEACH location	Actual postage charges
• Medco's Coverage Management Program, consisting of: prior authorization, step therapy, quantity duration/ dose duration, quantity per dispensing event capabilities, and dose optimization (coverage option) and includes initial determinations and first level of appeals	"\$48.00 per case" if guarantee with shared savings <sup>3</sup>
• Reviews and Appeals Management	
– Includes all initial determinations and first level appeals and, if selected by LONG BEACH, all second level and urgent appeals	\$55.00 per case <sup>4</sup>
• Second level and urgent appeals (Final and Binding Appeals) Reviews and Management for Medco's Coverage Authorization Programs	\$5.00 per case (incremental to Coverage Authorization Program charge)
• Coordination of Benefits Level II	\$2.50 per claim
• Retail Refill Allowance Program Member Communications Materials	Quoted upon request
• Pharmacy-submitted electronic claim	\$1.00 per claim
• Adjudication of government subrogation claims (unless responsibility is otherwise assigned by LONG BEACH)	\$3.00 per paid claim

<sup>2</sup> Medco will retain 15% of any audit recoveries to offset expenses of this program.

<sup>3</sup> Pricing contingent upon participation in the associated Medco Program Guarantee. This pricing and Program Guarantee are based on acceptance of Medco's recommendations within drug categories and are subject to change based upon any applicable government legislation licensing requirements.

<sup>4</sup> Additional charges may be incurred for non-standard LONG BEACH specific requirements, processing, and/or communications.

<ul style="list-style-type: none"> <li>On-line claims history retention (for use in claims processing) in excess of twelve (12) months</li> </ul>	\$0.05 per claim
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Note: Charge for additional services not listed above will be determined by Medco and quoted upon request.

**5. PROGRAM MANAGEMENT FEE PAYMENT AND DISCLOSURE OF FEES TO LONG BEACH**

Medco will pay to Alliant Specialty Insurance Services (“Alliant”) a program management fee (“Program Management Fee”) that is based on the number of retail and mail order prescription claims. LONG BEACH acknowledges and consents to Medco paying such Program Management Fees. Alliant has acknowledged that such fees are the only fees paid by Medco in association with LONG BEACH’s pharmacy benefit plan.

**6. IMPLEMENTATION ALLOWANCE**

After ninety (90) days following full implementation of LONG BEACH’s Integrated Program and for the Initial Term of this Agreement, Medco will credit up to \$10 per Primary Eligible Participant against future billings under LONG BEACH’s Program for documented expenses incurred and submitted by LONG BEACH to Medco for the preparation and/or implementation of LONG BEACH’s Integrated Program (e.g., consulting fees, RFP preparation, or special communications associated with the Integrated Program roll-out). This credit will not be offset by any expenses incurred by Medco for the implementation of LONG BEACH’s Program.



SCHEDULE A
CLIENT LETTER OF AUTHORIZATION

February 28, 2008

Dora Hogan
City of Long Beach
333 W. Ocean Blvd.
13th Floor
Long Beach, CA 90802

Dear Dora:

City of Long Beach ("Client") has requested Medco Health Solutions, Inc. ("Medco ") and its subsidiaries to (i) release raw pharmacy claims detail to Alliant Insurance Services ("Consultant/Third Party Vendor") which Client has retained to develop a health information database and analytic tools to assist Client with the analyzing and reporting on integrated prescription drugs and medical claims trends and utilization ("Project"); and/or (ii) provide Consultant/Third Party Vendor with electronic access to the Medco Client Website (the "Site") to enable Consultant/Third Party Vendor to provide certain services on behalf of Client and only as permitted by the pharmacy benefit services agreement between Client and Medco.

Client agrees to indemnify, defend and hold Medco and its subsidiaries and affiliates, and each of their officers, directors, agents employees, and limited liability company managers harmless against any suit, claim losses, lawsuits, settlements, judgments, costs , damages, penalties or expenses arising, in whole or in part, in connection with the access provided to Consultant/Third Party Vendor hereunder.

As a condition to Medco providing the above data and access, Client represents that it has the authority to authorize and does authorize Medco to (1) release data to Consultant/Third Party Vendor, and (2) provide Consultant/Third Party Vendor with access to the Site in a time and manner as agreed to between the parties.

Very truly yours,

MEDCO HEALTH SOLUTIONS, INC.

By: [Signature]

Print Name: Anthony Palmisano Jr.
VP & Assistant General Counsel,
Customer & Commercial Contracting

Date: 7/15/2008

APPROVED AS TO FORM

August 25, 2008
Robert E. Shannon, City Attorney

By: [Signature]
Deputy City Attorney

MEDCO HEALTH SOLUTIONS, INC.

By: [Signature]

Print Name: Kevin Buron

Title: GM Western Region

Date: 7/22/08

AGREED TO AND ACCEPTED BY: [Signature] PURSUANT TO SECTION 301 OF THE CITY CHARTER.

Assistant City Manager

By: [Signature]
Print Name: Patrick H. West

Title: City Manager

Date: 9-4-08

**City of Long Beach****Utilization Management Fee**

Medco Health's utilization management offering to City of Long Beach is comprised of three highly integrated and flexible components - Coverage Authorization, Preferred Drug Education, and Drug Utilization Review. These components are tailored to meet City of Long Beach's individual needs. Together, these components of utilization management work in concert to lower City of Long Beach's drug costs while helping to ensure member health, safety and satisfaction. The proposed pricing for City of Long Beach is as follows:

**\$0.11 per claim**

The results of these programs are reported using a highly credible, claims based savings methodology that is consistent across all programs and eliminates double counting of savings. We guarantee that the results will show a return on investment of 3:1

**\$0.33 per claim**

Edits and programs included in the utilization management fee are:

Administrative Authorization edits including the following:

- Missing/Invalid group #
- Patient age exceeds minimum age
- Claim too old
- Patient is not covered
- Duplicate claim
- Filled after coverage terminated
- NDC not covered
- Filled after coverage expired
- Filled before coverage effective

Coverage Authorization programs including Initial Determination and First Level Appeals for the following:

- Prior Authorization edits for:
  - Erectile Dysfunction Agents
  - Misc. Dermatologicals (Retin-A/co & Tazorac all dose forms)
- Quantity/Dose Duration edits for:
  - Erectile Dysfunction Agents (Standard)

Preferred Drug Education programs including:

- Mail order initiated program
  - Generic substitution
- Physician-authorized interchange programs at mail order
  - Non-plan preferred brand to plan-preferred brand/generic alternatives
  - Brand to generic equivalent
- Physician-authorized interchange programs at retail
  - Non-plan preferred brand to plan-preferred brand/generic alternatives
- Member interchange programs at mail order
  - Pharmacist to member telecounseling on generic equivalent

Concurrent DUR via TelePAID® including:

- Alerts to pharmacists



- Severe drug interactions
- Drug interaction
- Drug allergy
- Drug disease
- Therapy duplication
- Excessive daily dosing
- Excessive duration of therapy
- Sub-therapeutic dosing
- Gender contraindications
- Refill-too-soon
- Refill-too-late
- Potential drug name confusion

Alerts for special populations:

- Seniors (Excessive daily dosing, Drug age contraindications, Drug disease, Drug interactions)
- Pediatrics (Drug age contraindications, Excessive daily dosing)
- Women's health (Drug pregnancy, Oral contraceptives, Fertility agents)
- Cancer patients (Lethal course of chemotherapy)

Physician Practice Summaries (Profiling) to summarize physician prescribing patterns for:

- General summary of prescribing statistics
- Generic Prescribing

High Utilization analysis

**If City of Long Beach is looking for other alternatives beyond this offering, Medco Health can provide City of Long Beach with the flexibility of additional options that include varying clinical capabilities and associated costs and savings.**

City of Long Beach agrees to the above terms.

APPROVED AS TO FORM

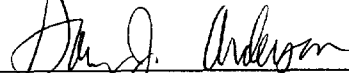
 Assistant City Manager

August 25, 2008

City of Long Beach representative's signature  
**RECORDED PURSUANT TO SECTION 301 OF THE CITY CHARTER.**

ROBERT E. SHANNON, City Attorney

City Manager  
Title

BY   
Deputy City Attorney

9-4-08  
Date

Per Alliant, Medco does not need to sign this document.



February 6, 2008

DORA HOGAN  
City of Long Beach  
333 W. Ocean Blvd., 13<sup>TH</sup> Floor  
Long Beach, CA 90802

Dear Dora:

CITY OF LONG BEACH ("CLIENT") has requested Medco Health Solutions, Inc. ("Medco") and its subsidiaries to release pharmacy claims processed for CLIENT for the period beginning [date] January 1, 2008, on an ongoing basis ("Data") to GREAT WEST ("VENDOR"). As a condition to Medco releasing the Data to VENDOR, CLIENT agrees as follows:

1. CLIENT represents that it has the authority to authorize, and does authorize, Medco to release the Data to VENDOR, as directed herein.
2. CLIENT agrees to indemnify and hold harmless Medco and its subsidiaries and affiliates, and each of their directors, officers, agents and employees, against any claims, damages, losses, lawsuits, settlements, judgments, costs, penalties and expenses (including reasonable attorneys' fees) ("Losses") arising, in whole or in part, from the release of the data by Medco to CLIENT or VENDOR, or the use or subsequent release of the data by CLIENT or VENDOR, including without limitation, Losses arising out of (i) any claim by any person or entity that the release of Data to CLIENT or VENDOR or use or subsequent release by CLIENT or VENDOR, was not authorized or violates any law, regulation or practice, and (ii) breach or violation of the terms of this Agreement by CLIENT or VENDOR.

Enclosed are two (2) originals for execution. Please have an authorized representative for CLIENT sign below and retain a copy for CLIENT's files. Please return an executed copy to Medco.

AGREED TO:

CITY OF LONG BEACH  
**EXECUTED PURSUANT  
 TO SECTION 301 OF  
 THE CITY CHARTER.**  
 Assistant City Manager

By: *PH*  
 Name: Patrick H. West  
 Title: City Manager  
 Date: 9-4-08

APPROVED AS TO FORM  
August 25, 2008  
 ROBERT E. SHANNON, City Attorney  
 BY *Ray J. Anderson*  
 Deputy City Attorney

Per Alliant, Medco does not need to sign this document.