


COUNTY OF SAN MATEO  
Departmental Correspondence

DATE: **DEC 28 2001**  
HEARING DATE: **JAN 8 2002**

TO: Honorable Board of Supervisors  
FROM: Gale Bataille, Director of Mental Health   
SUBJECT: Ratification of agreements for access rebates on Mental Health pharmaceuticals.

RECOMMENDATION

Adopt a resolution ratifying execution of agreements with Eli Lilly Company and Ivax Pharmaceuticals, Inc.

Background

Most pharmaceutical business in Mental Health is handled through MedImpact, the Pharmacy Benefits Management (PBM) contractor. MedImpact establishes relationships with a network of community pharmacies to provide cost effective and accessible pharmaceutical services to the contracting service providers. The combined efforts of the Mental Health PBM Coordinator and MedImpact, the present PBM contractor, have produced significant cost savings in San Mateo's costs for psychoactive medication compared to these costs on a statewide basis (an average reduction of 34%).

The MedImpact contract includes a provision for managing rebates from pharmaceutical companies. Rebates are a common industry practice for public agencies in California. For example Medi-Cal requires a rebate in order to include products on its formulary, and other regulations require rebates for some AIDS drugs. The Mental Health division shields providers from the rebate provisions in order to avoid any appearance of inappropriateness.

Discussion

Eli Lilly and IVAX will only contract directly with the County, rather than work with the PBM. Eli Lilly Co. manufactures Zyprexa which is an antipsychotic therapeutic drug used in the treatment of psychotic disorders. The agreement with Eli Lilly and company will provide a 4% access rebate that will be calculated based on the total purchases of Zyprexa by San Mateo County Mental Health.

In order to participate in the rebate program Eli Lilly Co. required that the contract be signed by December 31, 2001. There was insufficient time to complete the research to have this item heard by the Board in advance of that date. On advice of County Counsel, the Health Services Interim Director signed the contract in order to preserve the County's position and option to participate.

The contract has a provision for cancellation if direct participation in rebates is not acceptable to the Board.

IVAX Pharmaceuticals manufactures IPI Clozapine, which is also a psychoactive therapeutic drug used in the treatment of major psychotic disorders. The agreement with IVAX Pharmaceuticals will provide a per-tablet dispensed rebate which will be calculated based on the record of dispensed pharmaceuticals.

In order to participate in the rebate program with IVAX Pharmaceuticals a signed agreement was required before December 26, 2001. The contract was signed in order to preserve the County's position and option to participate. The contract has a provision for cancellation if direct participation in rebates is not acceptable to the Board.

There may be other opportunities to reduce the operating costs of Mental Health through the use of pharmaceutical company rebates, and as those are made available, staff will recommend their approval to your Board.

#### Term and Fiscal Impact

The term of the agreement with Eli Lilly Co. is October 1, 2001 – September 30, 2002; there is a thirty-day notice cancellation provision. The term of the agreement with IVAX Pharmaceuticals is December 26, 2001 – December 25, 2002; there is a sixty-day notice cancellation provision.

Rebates from these agreements will save the County an anticipated \$180,000 annually. About \$115,000 of that amount is included in the 2001-02 Mental Health Services budget, and the balance will be in the recommended budget for 2002-03. There is no increase to the net County cost as the result of approving this contract.

RECOMMENDED

  
HEALTH SERVICES DEPARTMENT

RESOLUTION NO. \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

\* \* \* \* \*

RESOLUTION RATIFYING EXECUTION OF AGREEMENTS WITH ELI LILLY  
COMPANY AND IVAX PHARMACEUTICALS, INC.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of  
California, that

WHEREAS, there has been presented to this Board of Supervisors for its consid-  
eration and acceptance an Agreement, reference to which is hereby made for further par-  
ticulars, whereby Eli Lilly and Company shall provide a 4% access rebate on the  
purchase of Zyprexa; and

WHEREAS, there has been presented to this Board of Supervisors for its consid-  
eration and acceptance an Agreement, reference to which is hereby made for further par-  
ticulars, whereby IVAX Pharmaceuticals Inc. will provide a rebate based on dispensing  
IPI Clozapine; and

WHEREAS, it was in the best interest of the County that the Health Services  
Agency enter into agreements with Eli Lilly Co. and with IVAX Pharmaceuticals, Inc.  
before the deadline for program participation, and

WHEREAS, this Board has been presented with the Agreements and has  
examined and approved them as to both form and content and desires to ratify the  
Agreements:

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the actions to execute the agreements with Eli Lilly Co. and with IVAX Pharmaceuticals are hereby authorized and ratified.

**SAN MATEO COUNTY  
AND ELI LILLY AND COMPANY  
BUSINESS AGREEMENT  
Lilly Reference #162791**

I. Preamble

This agreement ("Agreement"), dated as of November 16, 2001 is entered into by and between **San Mateo County** ("INSTITUTION"), having its principal place of business at 225 West 37<sup>th</sup> Avenue, 3<sup>rd</sup> Floor, San Mateo, CA 94403 and Eli Lilly and Company ("LILLY"), an Indiana corporation, having its principal place of business at Lilly Corporate Center, Indianapolis, Indiana 46285.

The effective dates of this Agreement are October 1, 2001 through Sept. 30, 2002. To be valid, this Agreement must be executed by INSTITUTION and returned to LILLY not later than Dec. 31, 2001.

INSTITUTION is a county entity that provides pharmaceuticals to its patients, subject to INSTITUTION'S restrictive pharmaceutical formulary.

LILLY manufactures and sells pharmaceutical products which may be prescribed for and dispensed to patients of INSTITUTION.

In consideration of the mutual promises set forth below, INSTITUTION and LILLY agree as follows:

II. Definitions

- A. Participating Facility shall mean an individual entity/organization listed in Exhibit A, as amended from time to time, which provides pharmacy consulting for and dispenses to the patients of INSTITUTION, subject to a restrictive formulary administered by INSTITUTION.
- B. Product(s) means the pharmaceutical products covered by this Agreement. See Exhibit B.
- C. Equal Status and Unrestricted Access means available on INSTITUTION's restrictive pharmaceutical formulary for all prescribers in a manner such that (i) the Product is not more restricted in its availability than any competitor's product in the same Therapeutic Class, and (ii) no competing product is given preference in dispensing decisions.
- D. Therapeutic Class – means a specified group of products manufactured by Lilly and others. Exhibit C sets forth the Therapeutic Class. Such definitions are not intended to reflect all products which could be used in all situations in which the listed products are used. Any new formulation, strength or package size of a product in a Therapeutic Class introduced during the term of this Agreement shall be automatically added to the Therapeutic Class.

III. LILLY Obligations

A. Rebate

- 1. This Agreement is for a period of twelve (12) months, LILLY agrees to pay INSTITUTION listed in Exhibit A, a 4% access rebate which will be calculated based on the total purchases of Zyprexa by the INSTITUTION. The 4% access rebate is for equal status and unrestricted access as set forth in Exhibits



B. Notification:

1. INSTITUTION agrees to notify, within thirty (30) days of the effective date of this Agreement, all Participating Facilities' and all healthcare providers affiliated with INSTITUTION, of the formulary status obligations described in the immediately preceding paragraph A listed above.
2. Within ninety (90) days of the effective date of this Agreement, INSTITUTION agrees to provide documented verification to LILLY of INSTITUTION'S compliance with its obligations under IV.B.1.

C. Access:

Commencing no later than the effective date of this Agreement, LILLY representatives shall have access to discuss the Products with all physicians and healthcare providers affiliated with INSTITUTION. Such access granted to Lilly shall be no more restricted than the access of other pharmaceutical manufacturers.

D. Reporting:

INSTITUTION agrees to provide to LILLY quarterly, an excel formatted disk showing utilization data for Lilly Product listed in Exhibit B. This information shall include the following fields:

1. 11-Digit Product NDC
2. Rebate Period (Start Date and End Date)
3. Product Name and Strength
4. Number of Dosage Units (provided at lowest unit of measure, i.e. 1 TA)

This information must be provided by the INSTITUTION in order to be eligible for the access rebate program.

V. Participating Facilities Eligibility

- A. Participating Facilities: INSTITUTION represents and warrants that Exhibit A is a complete and accurate listing of the Participating Facilities for which INSTITUTION provides and administers an open pharmaceutical formulary, and that the Participating Facility information provided is accurate as of the effective date of this Agreement. INSTITUTION must provide Lilly with written notice prior to any additional Facilities being added to this Agreement. Additional Participating Facilities may not be added without Lilly's prior approval.

VI. Audits:

- A. During the term of this Agreement, and for a period of two (2) years after its completion, INSTITUTION shall maintain records in sufficient detail to document the use of, or reimbursement for, Products covered by this Agreement by INSTITUTION.
- B. Until the expiration of this two-year period, LILLY shall have the right to audit those records, either by its own personnel or through outside personnel employed by LILLY, at any time, following reasonable notice to INSTITUTION from LILLY, during the normal business hours of INSTITUTION.

If LILLY discovers that payments have been made in error, LILLY may, at its option, deduct the payments made from future payments to INSTITUTION or invoice INSTITUTION to collect the balance. INSTITUTION shall pay any such invoices within 30 days of receipt of the invoices.

- C. LILLY agrees to maintain the confidentiality of Confidential Information obtained during an audit. Confidential Information is defined as:

1. Financial information which is not in the public domain.
2. Internal information relating to drug benefit design.
3. Pharmacy claims data and related information.
4. Other information which INSTITUTION reasonably identifies as confidential and proprietary and which is not otherwise known or readily obtainable by LILLY.

Such Confidential Information shall not be disclosed by LILLY to any third party except as may be required by law, requested by a government agency, in avoiding duplication of discounts, or with INSTITUTION's express written consent.

## VII. General Provisions

- A. Amendment; Waiver: This Agreement may not be amended or modified except by a written instrument signed by both parties. The failure of any party to enforce at any time any provision of this Agreement shall not be a waiver of such provision, or affect the right of such party thereafter to enforce such provision. No waiver shall be effective unless it is in writing and signed by the party against whom the enforcement of such waiver is sought. No such waiver shall be deemed a waiver of any other or subsequent breach, whether of the same or another provision.
- B. Assignment: Neither party shall have the right to assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and be binding upon each party, its successors and permitted assigns.
- C. Compliance With Law: INSTITUTION agrees that it and each Participating Facility will comply with applicable provisions of 42 U.S.C. 1320a-7b, regulations promulgated thereunder and comparable state laws or regulations, prohibiting illegal remuneration (including any kickback, bribe, or rebate) by properly disclosing and appropriately reflecting all discounts described in this program in the costs claimed or the charges made under the Medicaid or Medicare programs or applicable state or private programs.
- D. Confidentiality: The parties agree that the existence and content of this Agreement shall be maintained in confidence and not disclosed to any third party except as may be required by law, in avoiding duplication of discounts, or with the other party's express written consent. Notwithstanding the foregoing, San Mateo County may disclose the agreement to the extent that any law, regulation or administrative procedure requires the agreement to be part of the public record.
- E. Entire Agreement: This Agreement, including the Exhibits attached hereto, contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and shall supersede all prior oral or written negotiations, agreements or understandings between the parties with respect to the subject matter of this Agreement.
- F. Force Majeure: Noncompliance with the obligations of this Agreement for reasons of force majeure including, without limitation, acts of God; acts, regulations or laws of any government; war or civil commotion; destruction of production facilities and materials; fire, earthquake or storm; labor disturbances; failure of public utilities or common carrier; or any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.
- G. Modifications: Any handwritten changes or modifications made to this Agreement are not binding on either party and are null and void.
- H. New Products: If LILLY introduces any new products during the term of this Agreement, the parties will discuss adding such products to this Agreement pursuant to mutually acceptable terms agreed upon by INSTITUTION and LILLY.
- I. Non-Duplication of Discounts: LILLY will not pay discounts or rebates based on the same unit utilization for a Product to more than one entity. If, during the effective term of this Agreement, it is discovered that LILLY is under contract to pay duplicate discounts or rebates for Products to another organization,



including but not limited to a long-term care provider, a pharmacy benefit manager, a health maintenance organization, or any managed care organization, then LILLY will honor the agreement with the party with whom LILLY first had an obligation to pay discounts or rebates with respect to such units.

- J. Notices: All notices hereunder by either party to the other shall be in writing, addressed to the appropriate address set forth above or such other address as may be specified by a party by notice to the other party. All notices, demands, or requests shall be deemed given when mailed, postage prepaid, registered or certified mail, return receipt requested, when hand delivered, when sent by express mail or other reasonable overnight delivery service, or when sent by telecopy, telex, or telegram.
- K. Product Removal: LILLY may remove any Product from this Agreement effective upon written notice to INSTITUTION. If LILLY discontinues sales of a compound or elects to remove a Product from this Agreement, discounts or rebates for that Product prior to discontinuance or removal shall be subject to the terms and conditions of this Agreement.
- L. Product Unavailability: LILLY shall have no obligation to pay INSTITUTION any amount by reason of an item being unavailable including, but not limited to, extra costs or additional expenses incurred in purchasing from alternate sources.
- M. Product Use: INSTITUTION certifies that they will be purchasing under this Agreement "FOR OWN USE" all Products purchased pursuant to this Agreement. Furthermore, INSTITUTION agrees that all Products purchased pursuant to this Agreement will be used for INSTITUTION'S inpatient and outpatient services only.
- N. Regulated Price Reduction: The special pricing terms of this Agreement shall not obligate LILLY to reduce its prices to others or pay discounts or rebates to others. If LILLY is required by any state or federal law or regulation to reduce its prices to others (or pay discounts or rebates to others) because of the discounts or rebates to INSTITUTION, LILLY shall make all necessary adjustments in the discounts or rebates to INSTITUTION to relieve LILLY of any obligation to pay such other reduced prices, discounts, or rebates.
- O. Right of First Refusal: If INSTITUTION receives an offer to buy product of a competitor of LILLY, and results in a more restrictive formulary, it shall first offer LILLY an opportunity to respond to the competitive offer before accepting that competitive offer, INSTITUTION must show LILLY that the source of the competing product is able to supply quantities and quality of material sufficient for INSTITUTION'S needs in order to consider responding to the competitive offer.
- P. Severability: If any provision of this Agreement is found to be illegal or unenforceable, both parties shall be relieved of all obligations arising under such provision, but the remainder of this Agreement shall not be affected by such declaration or finding.
- Q. Termination: Either party may terminate this Agreement with thirty (30) days prior written notice. Upon termination of this Agreement, LILLY shall pay INSTITUTION the portion of the semi-annual rebate earned prior to the effective date of the termination.
- R. Third Parties: Except as otherwise provided herein, nothing expressed or implied in this Agreement is intended to or shall confer any benefits or rights on any person or entity other than the parties to this Agreement.

SAN MATEO COUNTY  
By: Charlene A. Silva  
(Signature)

Title: Interim Director of Health  
(Print)  
December 27, 2001  
(Date)

ELI LILLY AND COMPANY  
By: Ray Fisher  
(Signature)

Title: Business Analyst  
(Print)  
11/28/01  
(Date)

**SAN MATEO COUNTY  
AND ELI LILLY AND COMPANY  
BUSINESS AGREEMENT**

JS 12/27/01  
Customer Initials and Date

DLF 11/28/01  
Lilly Initials and Date

**EXHIBIT A - PARTICIPATING FACILITIES**

**INSTITUTION NAME /ADDRESS**

San Mateo County  
225-37<sup>th</sup> Avenue  
San Mateo, CA 94403

Please list all facilities that will be used to track purchases and include an attachment that has their DEA# and wholesaler acct. #, if available.

**SAN MATEO COUNTY  
AND ELI LILLY AND COMPANY  
BUSINESS AGREEMENT**

UHS 12/27/01  
Customer Initials and Date

DLP 11/28/01  
Lilly Initials and Date

**EXHIBIT B**

**UNRESTRICTED FORMULARY STATUS**

PRODUCT OR PRODUCT CLASS	REBATE%
ZYPREXA	4% *

The products eligible for the 4% access rebate are as follows:

Item Description	NDC #	Unit Size/Strength	Quantity	
Zyprexa	00002-4112-60	OLANZAPINE 2.5MG	60	
	00002-4112-33	OLANZAPINE 2.5MG	ID100	
	00002-4112-04	OLANZAPINE 2.5MG	1000	
	00002-4115-60	OLANZAPINE 5MG	60	
	00002-4115-33	OLANZAPINE 5MG	ID100	
	00002-4115-04	OLANZAPINE 5MG	1000	
	00002-4116-60	OLANZAPINE 7.5MG	60	
	00002-4116-33	OLANZAPINE 7.5MG	ID100	
	00002-4117-60	OLANZAPINE 10MG	60	
	00002-4117-33	OLANZAPINE 10MG	ID100	
	00002-4117-04	OLANZAPINE 10MG	1000	
	00002-4415-30	OLANZAPINE 15MG	30	
	00002-4415-60	OLANZAPINE 15MG	60	
	00002-4415-33	OLANZAPINE 15MG	ID100	
	00002-4415-04	OLANZAPINE 15MG	1000	
	00002-4420-60	OLANZAPINE 20MG	60	
	00002-4220-33	OLANZAPINE 20MG	ID100	
	00002-4220-04	OLANZAPINE 20MG	1000	
	Zyprexa Zydis	00002-4453-85	OLANZAPINE 5MG	Dose Pack 30
		00002-4454-85	OLANZAPINE 10MG	Dose Pack 30

**\*NOTE 1:** 4% rebate will be calculated based on the county's total purchases at current NWP prices. The rebate payment due shall be equal to the semi-annual total sales purchased, multiplied by the rebate amount of 4% set forth above.

SAN MATEO COUNTY  
AND ELI LILLY AND COMPANY

ZYPREXA® EQUAL ACCESS REBATE PROGRAM

EXHIBIT C – Antipsychotic Therapeutic Group

		PACKAGE	UNIT	
PRODUCT	STRENGTH	SIZE	(PU,ML)	DOSE
ZYPREXA	2.5mg	ALL	1 tab	Q.D.
	5mg	ALL	1 tab	Q.D.
	7.5mg	ALL	1 tab	Q.D.
	10mg	ALL	1 tab	Q.D.
	15mg	ALL	1 tab	Q.D.
	20mg	ALL	1 tab	Q.D.
ZYPREXA ZYDIS	5mg	ALL	1 tab	Q.D.
	10mg	ALL	1 tab	Q.D.
CLOZARIL	25 mg	ALL	1 tab	B.I.D.
	100 mg	ALL	1 tab	B.I.D.
SEROQUEL	25 mg	ALL	1 tab	B.I.D.
	100 mg	ALL	1 tab	B.I.D.
	200 mg	ALL	1 tab	B.I.D.
RISPERDAL	0.25mg	ALL	1 tab	B.I.D.
	0.5mg	ALL	1 tab	B.I.D.
	1mg	ALL	1 tab	B.I.D.
	2mg	ALL	1 tab	B.I.D.
	3mg	ALL	1 tab	B.I.D.
	4mg	ALL	1 tab	B.I.D.
SYRUP	1mg/ml	ALL	1ml	B.I.D.
THORAZINE TABS	10mg	ALL	1 tabs	Q.D.
	25mg	ALL	1 tabs	Q.D.
	50mg	ALL	1 tabs	Q.D.

	100mg	ALL	1 tabs	Q.D.
	200mg	ALL	1 tabs	Q.D.
<b>SYRUP</b>	10mg/5ml	ALL	1ml	Q.D.
<b>SUPPOSITORY</b>	25mg	ALL	1 supp	Q.D.
	100mg	ALL	1 supp	Q.D.
<b>CHLORPROMAZINE</b>	10mg	ALL	1 tabs	Q.D.
	25mg	ALL	1 tabs	Q.D.
	50mg	ALL	1 tabs	Q.D.
	100mg	ALL	1 tabs	Q.D.
	200mg	ALL	1 tabs	Q.D.
<b>PROLIXIN</b>	1mg	ALL	1 tabs	Q.D.
	2.5mg	ALL	1 tabs	Q.D.
	5mg	ALL	1 tabs	Q.D.
	10mg	ALL	1 tabs	Q.D.
<b>LIQUID</b>	2.5mg/5ml	ALL	1ml	Q.D.
<b>FLUPHENAZINE</b>	1mg	ALL	1 tabs	Q.D.
	2.5mg	ALL	1 tabs	Q.D.
	5mg	ALL	1 tabs	Q.D.
	10mg	ALL	1 tabs	Q.D.
<b>LIQUID</b>	2.5mg/5ml	ALL	1ml	Q.D.
<b>MELLARIL</b>	10mg	ALL	1 tabs	B.I.D.
	15mg	ALL	1 tabs	B.I.D.
	25mg	ALL	1 tabs	B.I.D.
	50mg	ALL	1 tabs	B.I.D.
	100mg	ALL	1 tabs	B.I.D.
	150mg	ALL	1 tabs	B.I.D.
	200mg	ALL	1 tabs	B.I.D.
<b>LIQUID</b>	25mg/5ml	ALL	1ml	B.I.D.
	100mg/5ml	ALL	1ml	B.I.D.
<b>THIORIDAZINE</b>	10mg	ALL	1 tabs	B.I.D.
	15mg	ALL	1 tabs	B.I.D.
	25mg	ALL	1 tabs	B.I.D.
	50mg	ALL	1 tabs	B.I.D.
	100mg	ALL	1 tabs	B.I.D.
	150mg	ALL	1 tabs	B.I.D.
	200mg	ALL	1 tabs	B.I.D.

LIQUID	30mg/ml	ALL	1 ml	B.I.D.
HALOPERIDOL	.5mg	ALL	1 tabs	B.I.D.
	1mg	ALL	1 tabs	B.I.D.
	2mg	ALL	1 tabs	B.I.D.
	5mg	ALL	1 tabs	B.I.D.
	10mg	ALL	1 tabs	B.I.D.
	20mg	ALL	1 tabs	B.I.D.
LIQUID	2mg/ml	ALL	1 ml	B.I.D.
LOXAPINE SUCCINATE	5mg	ALL	1 tabs	B.I.D.
	10mg	ALL	1 tabs	B.I.D.
	25mg	ALL	1 tabs	B.I.D.
	50mg	ALL	1 tabs	B.I.D.
PERPHENAZINE	2mg	ALL	1 tabs	T.I.D.
	4mg	ALL	1 tabs	T.I.D.
	8mg	ALL	1 tabs	T.I.D.
	16mg	ALL	1 tabs	T.I.D.
THIOTHIXENE	1mg	ALL	1 tabs	T.I.D.
	2mg	ALL	1 tabs	T.I.D.
	5mg	ALL	1 tabs	T.I.D.
	10mg	ALL	1 tabs	T.I.D.
LIQUID	5mg/ml	ALL	1 ml	T.I.D.
ESKALITH	300mg	ALL	1 cap	T.I.D.
ESKALITH CR	450mg	ALL	1 tab	T.I.D.
LITHOBID	300mg	ALL	1 tab	T.I.D.
LITHOTAB	300mg	ALL	1 tab	T.I.D.
LITHONATE	300mg	ALL	1 cap	T.I.D.
LITH. CARBONATE	150mg	ALL	1 cap	T.I.D.
	300 mg	ALL	1 cap	T.I.D.
LITHIUM CITRATE	300mg/5ml	ALL	1 ml	T.I.D.
DEPAKOTE	125 mg	ALL	1 tab	T.I.D.

	250 mg	ALL	1 tab	T.I.D.
	500 mg	ALL	1 tab	T.I.D.
<b>SPRINKLES</b>	125 mg	ALL	1 cap	T.I.D.
<b>DEPAKENE</b>	250 mg	ALL	1 cap	T.I.D.
	250mg/5ml	ALL	1 ml	T.I.D.
<b>VALPROIC ACID</b>	250 mg	ALL	1 cap	T.I.D.
	250mg/5 ml	ALL	1 cap	T.I.D.

**IVAX Pharmaceuticals, Inc.**  
**Letter of Agreement**

RE: Letter of Agreement ("Agreement") between San Mateo County Mental Health and IVAX Pharmaceuticals, Inc. ("IPI") for IPI's Clozapine to reimburse **San Mateo County Mental Health** for funding expenses associated with providing all indigent patients with IPI Clozapine.

This offer will remain open until the close of business on December 26, 2001 and may be accepted by **San Mateo County Mental Health** by giving IPI written notice of acceptance, and executing and delivering to IPI an original counterpart of this Agreement, by such date. Such acceptance and this Agreement will be effective upon the date of IPI's receipt and acceptance of such notification and executed Agreement signed by **San Mateo County Mental Health**, on or before December 26, 2001, at IPI's offices located at 4400 Biscayne Boulevard, Miami, Florida 33137, Attn: Trisha L. Sarfas (the "Effective Date"). The term of this Agreement will commence on the Effective Date and continue for one year unless terminated earlier pursuant to the provisions of this Agreement ("Term").

**Rebate Program**

While this Agreement is in effect, **San Mateo County Mental Health** will be eligible for a quarterly rebate, based on the schedule set forth below, for each tablet of IPI Clozapine dispensed by a **San Mateo County Mental Health** program provider to a **San Mateo County Mental Health** program beneficiary for which **San Mateo County Mental Health** has reimbursed the program provider during the Term of this Agreement. As soon as possible following the end of each calendar quarter during the Term, **San Mateo County Mental Health** will provide IPI with supporting documentation satisfactory to IPI evidencing the foregoing, including the number of such tablets and reimbursement therefor. The quarterly rebate will be payable in the form of a check and shall be paid within forty-five (45) days after IPI's receipt of satisfactory supporting documentation.

Strength	Rebate Per Tablet Dispensed
100mg	\$.30 per tablet
25mg	\$.12 per tablet

Notwithstanding the foregoing, if competitive forces cause price to be subsequently lowered, IPI shall have the right to lower the rebate per tablet or to terminate this Agreement, effective upon notice to **San Mateo County Mental Health**.

**Additional IPI Terms**

- A. IPI makes no representation or warranty or Agreement regarding the supply of IPI's Clozapine. In the event any IPI product becomes unavailable, or if IPI cannot perform the obligations of this Agreement due to force majeure, such as: an act of God, laws or regulations of any government, war, civil disturbance, destruction of or damage to production facilities or materials, labor disputes, shortage of materials, fire, earthquake or storm, failure of public utilities or common carriers, or any other causes beyond reasonable control, IPI shall not be in breach of this Agreement and shall be exempt from any liability. IPI shall have no liability or obligation under this Agreement to any person or entity for or in connection with the supply or failure to supply any clozapine product. The provisions of this Agreement are for the exclusive benefit of the parties to this Agreement, and no other person or entity shall have any right or claim against any party to this Agreement by reason of those provisions or be entitled to enforce any of those provisions against any party to this Agreement.

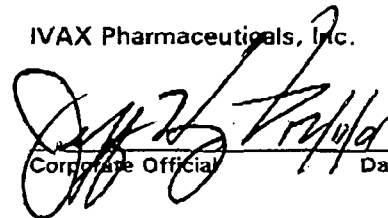


- B. During the Term of this Agreement and surviving its expiration or termination, each party will regard and preserve as confidential all information relating to the business of the other party and its respective suppliers and customers which is used or disclosed by such party in connection with this Agreement, including but not limited to the contract prices. Unless disclosure is required by law, and except as necessary in connection with the performance of this Agreement, neither party will use or disclose such information of the other party, without the other party's prior written consent, to any third party. The foregoing obligations do not apply to: (a) information that is in the public domain prior to the disclosure, or becomes part of the public domain through no wrongful act of the receiving party, (b) information that was in the lawful possession of the receiving party prior to disclosure and (c) information that was independently developed by the receiving party outside the scope of this Agreement. Neither party shall use the name of the other in any advertising or publicity releases without securing the prior written approval of the other.
- C. Prices and any discounts or the like under this Agreement are reductions in price attributable to IPI Clozapine purchased by San Mateo County Mental Health. **San Mateo County Mental Health** shall be responsible for reporting all prices, discounts and rebates to reimbursing agencies (including Medicare and Medicaid) and other entities, maintaining records thereof, and providing information to reimbursing agencies upon request, in accordance with all applicable laws.
- D. In no event shall IPI or any of its affiliates have any liability for lost profits or any special, incidental or consequential damages.
- E. **San Mateo County Mental Health** represents and warrants that it is a risk contractor that is paid on a capitated basis and that the arrangements contemplated hereby are permissible under the Health Insurance Portability and Accountability Act of 1996, as amended.
- F. This Agreement may be terminated by either party with sixty (60) days written notice to the other party.

Executed and dated by:  
San Mateo County Mental Health

 12/6/01  
 \_\_\_\_\_  
 Corporate Official                      Date

IVAX Pharmaceuticals, Inc.

  
 \_\_\_\_\_  
 Corporate Official                      Date