

**San Mateo County  
and Eli Lilly and Company  
Business Agreement  
Lilly Reference # 163750**

**I. Preamble**

This agreement 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, California 94403, and Eli Lilly and Company ("Lilly"), an Indiana corporation, having its principal place of business at Lilly Corporate Center, Indianapolis, Indiana 46285 (the "Agreement").

The effective dates of this Agreement are October 1, 2002 through September 30, 2003. To be valid, this Agreement must be executed by Institution and returned to Lilly postmarked not later than November 15, 2002 (if this Agreement is received by Lilly after such date, Lilly has the sole option to enter into this Agreement and make it binding upon the parties).

Institution is a county entity that provides pharmaceuticals to its patients, subject to Institution's 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 its patients or patients of Institution, subject to a formulary administered by Institution.
- B. Product(s) means the pharmaceutical products listed on the attached Exhibit B and, unless otherwise specified, includes all formulations, strengths and package sizes of such Products.
- C. Unrestricted Access means available on Institution's pharmaceutical formulary in a manner such that the Product shall not be restricted in its availability in any manner, including, but not limited to, Prior Authorizations, NDC Locks, atypical waiting lists, or financial incentives or reimbursement(s) to physicians and/or patients.
- D. Equal Status means available on Institution's pharmaceutical formulary in a manner such that for all prescribers (i) the Product is not more restricted in its availability than any competitor's product in the same Therapeutic Class, and (ii) no other product in the same Therapeutic Class is given higher preference in dispensing decisions.
- E. 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

Lilly agrees to pay a rebate to Institution and Participating Facilities listed in Exhibit A which will be calculated based on the total purchases of Product by the Institution at Net Wholesale Price. The rebate is for formulary access as set forth in Exhibit B. Payments will be made semi-annually after purchases have been tracked and verified.

#### B. Form and Timing of Payment

1. The rebate payment will be in the form of (please check one):

- Check     Lilly/Dista Products     Wholesaler Credit
- \_\_\_\_\_ Wholesaler Name  
\_\_\_\_\_ City/State  
\_\_\_\_\_ Customer Account Number\*

\* Please provide customer account number with wholesaler name to ensure proper credit is issued to each individual customer account.

2. In the event the credit owed to an individual customer account is less than One Hundred dollars (\$100.00) per six (6)-month period, the credit due will be accumulated until the credit amount is equal to or greater than One Hundred dollars (\$100.00), and will be paid in the following six (6)-month period. If a credit amount is less than One Hundred dollars (\$100.00) throughout the term of the Agreement, a single and final payment will be made to the customer account at the expiration of the contract.

3. Tax ID number must be on file prior to payment of rebate.

4. Lilly will endeavor to make payment to Institution and/or Participating Facilities within ninety (90) days after the receipt of semi-annual purchase information.

#### C. Disputes

In the case of disputed payments, Lilly shall pay the undisputed amount subject to the terms of this Section III and shall endeavor to resolve the dispute promptly.

### IV. Institution Obligations

#### A. Formulary Status

1. Institution agree(s) to place the Products listed on Exhibit B on its formulary (or any preferred drug list or similar instrument that Institution uses during the term of this Agreement). Unless otherwise specified, all formulations, strengths and package sizes of each Product are to be included on the formulary. Institution agrees to provide the Product with the Formulary Status set forth in Exhibit B.

2. If Institution and/or Participating Facility listed in Exhibit A disadvantages the Product in any manner, the corresponding rebate for the disadvantaged Product will be zero. If the Product is not given the correct status or is disadvantaged only at certain Participating

Facilities, Lilly has the sole option to continue the rebate for Institution and the other Participating Facilities.

3. Criteria for disadvantaging a Product include, but are not limited to: (i) negative educational counter detailing; (ii) negative D.U.R. correspondence to physicians or consultant pharmacists; (iii) negative on-line adjudication messages; (iv) disadvantaging Product via pharmacy withhold pools or AWP incentives, or other physician or pharmacy incentives; (v) negative pharmaceutical manufacturer aligned promotions; (vi) printed documentation in formulary book or other communication, including average cost of therapy, which disadvantages and/or limits the use of a Product (i.e., prior authorization or second line usage to any competitive product); and (vii) atypical waiting lists.

**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 Section IV.A. Institution represents that its medical and pharmacy staffs have reviewed the Products and determined that they are appropriate for inclusion on the formulary.
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 Section 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. Lilly's discussions of its Products shall be in compliance with applicable laws and regulations.

**D. Compliance**

Institution warrants and represents that it has the authority to bind itself and all the Participating Facilities set forth in Exhibit A to all of the terms and conditions of this Agreement.

**E. Reporting**

Institution agrees to provide the following data as the required quarterly reimbursement data submission:

1. Quarterly utilization at summary level for each Product listed in Exhibit B (including additional products added). This information shall include the following fields:
  - a. Units Dispensed (smallest unit of measure as defined by 'Data Units' in Exhibit B)
  - b. Product Description
  - c. 11-Digit NDC

2. Prescription level utilization by Participating Facility for each Product listed in Exhibit B (including additional products added). This prescription level utilization shall include the following fields:
  - a. Rebate Start Date
  - b. Rebate End Date
  - c. 11-Digit Product NDC
  - d. Product Description
  - e. Units Dispensed (smallest unit of measure as defined by "Data Units" in Exhibit B)
  - f. Days Supply
  - g. Prescription Number
  - h. Fill Date
  - i. Refill Indicator
3. Institution must send data in an electronic medium (cartridge, diskette, CD, etc.) based upon National Council for Prescription Drug Programs (NCPDP), Manufacturers Rebate Standard 1.01 - Utilization Flat File industry standard. Institution agrees to cooperate with Lilly in the implementation of electronic data interchange (EDI) transmission for the purpose of reimbursement submissions. This includes the submission of Reimbursement Data in an EDI transmission manner consistent with industry standards.
4. All Reimbursement Data should be sent to:

Customer Business Solutions  
Department IC255, D.C. 4045  
Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis, IN 46285  
ATTN: Contract Administration

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

V. Participating Facilities' Eligibility

- A. Institution represents and warrants that Exhibit A is a complete and accurate listing of the Participating Facilities for which Institution provides and administers a pharmaceutical formulary, and that the Participating Facility information provided is accurate as of the effective date of this Agreement.
- B. Lilly reserves the right to delete any Participating Facility that does not perform its obligations under the terms of this Agreement, upon thirty (30) days notice to Institution.

VI. Audits

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.

During the term of the Agreement and until the expiration of the two (2)-year period set forth above in this Section VI, 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 thirty (30) days of receipt of the invoices.

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

1. Information which is not in the public domain;
2. Pharmacy claim data and related information;
3. Patient identifiable information; and
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 and 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. The parties shall comply with all applicable state and federal laws and regulations in the performance of their obligations under or connected with this Agreement. Institution agrees that it and each Participating Facility will comply with the applicable provisions of 42 U.S.C. 1320a-7b, regulations promulgated thereunder (including without limitation 42 C.F.R. §1001.952(h)) and comparable state laws or regulations, pertaining to illegal remuneration (including any kickback, bribe, or rebate) by properly disclosing and appropriately reflecting all rebates described in this program in the costs claimed or the charges made under federal health care programs (including the Medicaid and Medicare programs) and applicable state or private programs.
- D. Confidentiality. The parties agree that the existence and content of this Agreement and any communication between the parties relating to this Agreement (including any negotiations relating to the Agreement which occur prior to the execution of the 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.

- 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. On the date this Agreement comes into force, any Products covered under this Agreement shall automatically be removed from any other agreements between the parties dealing with pricing discounts or rebates.
- F. Final Approval. This Agreement is not valid until it is signed by a member of Lilly's executive management team with the proper level of disbursement authority and Exhibit B is initialed by an authorized agent of Institution and the Lilly account executive.
- G. 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.
- H. Independent Contractor. Both parties agree to perform under this Agreement solely as independent contractors and are not and shall not hold themselves out as employees or agents of the other.
- I. Modifications. Any handwritten changes or modifications made to this Agreement are not binding on either party and are null and void.
- J. New Products: If Lilly introduces any new products during the term of this Agreement, the parties will discuss adding such product to this Agreement pursuant to mutually acceptable terms agreed upon by Institution and Lilly.
- K. 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.
- L. 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.
- M. Own Use. Institution certifies it or each Participating Facility, as the case may be, dispenses all Lilly Products purchased under the terms of this Agreement "FOR OWN USE" as set forth in Abbot Laboratories, et al. v. Portland Retail Druggists, Assn., Inc. 425 U.S.1(1976).

- N. 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.
- O. Product Unavailability. Lilly shall have no obligation to pay Institution or a Participating Facility 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.
- P. 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.
- Q. Right of First Refusal. If Institution receives a pricing offer for a product that completes with a Product covered under this Agreement, 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 require a response from Lilly.
- R. 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.
- S. Termination. Either party may terminate this Agreement, in whole or in part, with thirty (30) days prior written notice.
- T. 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

ELI LILLY AND COMPANY

\_\_\_\_\_  
(Signature)

*Re J. Heid*  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print)

*Lisa T. Heid*  
\_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Title)

*Manager, CBS*  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

*9-30-02*  
\_\_\_\_\_  
(Date)

**San Mateo County  
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**Exhibit A – Participating Facilities**

NAME/ADDRESS

DEA#

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



**San Mateo County  
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Institution Initials and Date

*EJH 9/30/02*  
Lilly Initials and Date

**Exhibit B - Formulary Status**

**Equal Status and Unrestricted Access**

Product or Product Class	Status	Price
ZYPREXA	Equal Status and Unrestricted Access	8% rebate*

**The products covered by this Agreement 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
	00002-4415-33	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
00002-4454-85		OLANZAPINE 10MG	Dose Pack 30
00002-4455-85		OLANZAPINE 15MG	Dose Pack 30
00002-4456-85		OLANZAPINE 20MG	Dose Pack 30

\*NOTE 1: Rebate will be calculated based on Institution's total purchases at Net Wholesale Price. Net Wholesale Price is subject to change solely at Lilly's discretion. The rebate payment due shall be equal to the quarterly total sales calculated at NWP, multiplied by the eligible rebate amount set forth above.

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**Exhibit C – Antipsychotic Therapeutic Class**

<b>Product</b>	<b>Strength</b>	<b>Package Size</b>	<b>Unit (PU, ML)</b>	<b>Dose</b>
Zyprexa	2.5 mg	All	1 tab	Q.D.
	5 mg	All	1 tab	Q.D.
	7.5 mg	All	1 tab	Q.D.
	10 mg	All	1 tab	Q.D.
	15 mg	All	1 tab	Q.D.
	20 mg	All	1 tab	Q.D.
Zyprexa Zydis	5 mg	All	1 tab	Q.D.
	10 mg	All	1 tab	Q.D.
	15 mg	All	1 tab	Q.D.
	20 mg	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	0.25 mg	All	1 tab	B.I.D.
	0.5 mg	All	1 tab	B.I.D.
	1 mg	All	1 tab	B.I.D.
	2 mg	All	1 tab	B.I.D.
	3 mg	All	1 tab	B.I.D.
	4 mg	All	1 tab	B.I.D.
Syrup	1 mg/ml	All	1 ml	B.I.D.
Geodon	20 mg	All	1 tab	B.I.D.
	40 mg	All	1 tab	B.I.D.
	60 mg	All	1 tab	B.I.D.
	80 mg	All	1 tab	B.I.D.
Thorazine Tabs	10 mg	All	1 tab	Q.D.
	25 mg	All	1 tab	Q.D.
	50 mg	All	1 tab	Q.D.
	100 mg	All	1 tab	Q.D.
	200 mg	All	1 tab	Q.D.
Spansules	30 mg	All	1 cap	Q.D.
	75 mg	All	1 cap	Q.D.
	150 mg	All	1 cap	Q.D.
Syrup	10 mg/5 ml	All	1 ml	Q.D.
Suppository	25 mg	All	1 supp	Q.D.
	100 mg	All	1 supp	Q.D.
Chlorpromazine	10 mg	All	1 tab	Q.D.
	25 mg	All	1 tab	Q.D.
	50 mg	All	1 tab	Q.D.
	100 mg	All	1 tab	Q.D.
	200 mg	All	1 tab	Q.D.

Product	Strength	Package Size	Unit (PU, ML)	Dose
Prolixin	1 mg	All	1 tab	Q.D.
	2.5 mg	All	1 tab	Q.D.
	5 mg	All	1 tab	Q.D.
	10 mg	All	1 tab	Q.D.
	Liquid	2.5 mg/5 ml	All	1 ml
Fluphenazine	1 mg	All	1 tab	Q.D.
	2.5 mg	All	1 tab	Q.D.
	5 mg	All	1 tab	Q.D.
	10 mg	All	1 tab	Q.D.
	Liquid	2.5 mg/5 ml	All	1 ml
Mellaril	10 mg	All	1 tab	B.I.D.
	15 mg	All	1 tab	B.I.D.
	25 mg	All	1 tab	B.I.D.
	50 mg	All	1 tab	B.I.D.
	100 mg	All	1 tab	B.I.D.
	150 mg	All	1 tab	B.I.D.
	200 mg	All	1 tab	B.I.D.
	Liquid	25 mg/ 5 ml	All	1 ml
Thioridazine	10 mg	All	1 tab	B.I.D.
	15 mg	All	1 tab	B.I.D.
	25 mg	All	1 tab	B.I.D.
	50 mg	All	1 tab	B.I.D.
	100 mg	All	1 tab	B.I.D.
	150 mg	All	1 tab	B.I.D.
	200 mg	All	1 tab	B.I.D.
	Liquid	30 mg/ml	All	1 ml
Haloperidol	.5 mg	All	1 tab	B.I.D.
	1 mg	All	1 tab	B.I.D.
	2 mg	All	1 tab	B.I.D.
	5 mg	All	1 tab	B.I.D.
	10 mg	All	1 tab	B.I.D.
	20 mg	All	1 tab	B.I.D.
	Liquid	2 mg/ml	All	1 ml
Loxapine Succinate	5 mg	All	1 tab	B.I.D.
	10 mg	All	1 tab	B.I.D.
	25 mg	All	1 tab	B.I.D.
	50 mg	All	1 tab	B.I.D.
Perphenazine	2 mg	All	1 tab	T.I.D.
	4 mg	All	1 tab	T.I.D.
	8 mg	All	1 tab	T.I.D.
	16 mg	All	1 tab	T.I.D.
Thiothixene	1 mg	All	1 tab	T.I.D.
	2 mg	All	1 tab	T.I.D.
	5 mg	All	1 tab	T.I.D.
	10 mg	All	1 tab	T.I.D.
	Liquid	5 mg/ml	All	1 ml
Eskalith	300 mg	All	1 cap	T.I.D.
Eskalith CR	450 mg	All	1 tab	T.I.D.

<b>Product</b>	<b>Strength</b>	<b>Package Size</b>	<b>Unit (PU, ML)</b>	<b>Dose</b>
Lith. Carbonate	150 mg	All	1 cap	T.I.D.
	300 mg	All	1 cap	T.I.D.
Lithium Citrate	8 mg/5 ml	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.
Sprinkles	125 mg	All	1 cap	T.I.D.
Depakene	250 mg	All	1 cap	T.I.D.
	250 mg/5 ml	All	1 ml	T.I.D.
Lithobid	300 mg	All	1 tab	T.I.D.
Valproic Acid	250 mg	All	1 cap	T.I.D.
	250 mg/5 ml	All	1 cap	T.I.D.

EXHIBIT C WILL BE UPDATED TO INCLUDE ANY NEW FDA APPROVED COMPETITIVE PRODUCT.