SIXTH MODIFICATION TO PHARMACY BENEFITS PURCHASING POOL MANAGEMENT AND PHARMACY BENEFITS PLAN ADMINISTRATION SERVICES CONTRACT

THIS SIXTH MODIFICATION AGREEMENT is made the 28th day of September, 2009 by and between Catalyst Rx, Inc. and the State of Maryland, acting through the Department of Budget and Management.

WHEREAS, the Contract requires, pursuant to §2 (incorporating the RFP, Attachment K-1, as amended, Instruction B-10) and §4 (incorporating the Financial Proposal), that drug ingredient cost pricing guarantees be measured as a discount from Average Wholesale Price, as published in a nationally recognized source such as First DataBank or Medi-Span;

WHEREAS, AWP is calculated by applying a numerical factor to the Wholesale Acquisition Cost or Direct Price of a drug;

WHEREAS, the Contract between Catalyst Rx, Inc. and the State of Maryland acting through the Department of Budget and Management provides, pursuant to §2 (incorporating the RFP, Attachment K-1, as amended, Instruction B-11):

> In the event there are changes in the marketplace to the baseline measure used to guarantee the ingredient costs of drugs (e.g. AWP), the discounts will be adjusted accordingly to provide an equivalent price. The contractor has to provide notice to the State and provide a means for us to evaluate whether the effective equivalent to the quoted AWP discount rate has been achieved;

WHEREAS First DataBank, Inc. and Medi-Span, and their respective corporate owners, were sued, in *New England Carpenters Health Benefits Fund, et. al. v. First DataBank, Inc. and McKesson Corp.*, Civil Action No. 05-11148-PBS and *District Council 37 Health and Security Plan, et al. v. Medi-Span, a division of Wolters Kluwer Health, Inc.*, Civil Action No. 07-10988-PBS, both in the United States District Court for the District of Massachusetts, based on allegations that their published AWP prices were fraudulently or negligently inflated for over four hundred branded drugs in violation of federal and state law (collectively, "the Litigations");

WHEREAS both First DataBank, Inc. and MediSpan entered into Settlement Agreements that require, *inter alia*, the calculation and publication of AWP prices for approximately 1400 drugs identified in the complaints filed in the Litigations based on a mark-up factor of 1.20 applied to the WAC or DP of the drug ("the Roll-Back");

WHEREAS the United States District Court for the District of Massachusetts approved the Settlement Agreements and provided for an implementation date of September 26, 2009 for the Roll-Back;

WHEREAS First DataBank, Inc. and Medi-Span have each indicated its intent to apply the same methodology as the Roll-Back to the AWP published for certain other drugs to be identified by it, and which had a mark-up factor "in excess of 1.20," on the same time frame as its actions under the Settlement Agreement;

WHEREAS both First DataBank, Inc. and Medi-Span have each also indicated its intent to discontinue the publication of AWP within two (2) years of the date that the Roll-Back is implemented; and

WHEREAS the parties agree that this change in the calculation of AWP for many drugs is a change in the marketplace to the baseline measure used to guarantee ingredient costs under the Contract.

IN CONSIDERATION of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

A. In this Modification, the following words have the meaning indicated:

1.1 "Adjusted AWP Drugs" means (1) all prescription drugs (by National Drug Code number) expressly subject to the Settlement Agreements for adjustement by First DataBank, Inc and/or Medi-Span, and (2) all prescription drugs (by National Drug Code number) identified by First DataBank, Inc. and/or Medi-Span as drugs for which First DataBank, Inc. and/or Medi-Span will voluntarily adjust the Factor in conjunction with, although not mandated by, the Settlement.

1.2 "Adjustment Date" means September 26, 2009 or such other date as First DataBank, Inc. and/or Medi-Span may give effect to the Settlement Agreements by adjusting the Factor for Adjusted AWP Drugs.

1.3 "Average Wholesale Price" or "AWP" means the average wholesale price, as published in the current edition of the Medi-Span Master Drug Data Base, including supplements thereto, or other nationally recognized source.

1.4 "Contract" means the Contract for Pharmacy Benefits Purchasing Pool Management and Pharmacy Benefits Plan Administration Services, dated April 7, 2007, as amended by a First Modification dated July 1, 2008, a Second Modification dated July 1, 2008, a Third Modification dated July 18, 2008, a Fourth Modification dated November 25, 2008, and a Fifth Modification dated August 27, 2009, all between the Contractor and the State of Maryland acting through the Department of Budget and Management.

1.5 "Contractor" means Catalyst Rx, Inc., a Nevada corporation with a principal business address of 800 King Farm Boulevard, Rockville, MD 20850.

1.6 "Direct Price" means the direct price of a prescription drug, as determined by the current edition of the Medi-Span Master Drug Data Base, including supplements thereto, or any other nationally recognized reliable publication.

1.7 "Factor" means the number which when multiplied by the Identified Cost Source will result in the AWP for a prescription drug.

1.8 "Financial Proposal" means the Contractor's Best and Final Offer Financial Proposal dated February 2, 2006.

1.9 "Identified Cost Source" means the underlying cost source such as but not limited to WAC or Direct Price identified by First DataBank, Inc., Medi-Span, or any other nationally recognized publication from which AWP is derived for a prescription drug.

1.10 "Modification" means this Sixth Modification Agreement.

1.11 "Pre-Settlement Factor" means the Factor applied to Identified Cost Source for an Adjusted AWP Drug before the applicable Adjustment Date.

1.12 "RFP" means the Request for Proposals for Pharmacy Benefits Purchasing Pool Management and Pharmacy Benefits Plan Administration Services, No. PH0R6200071, dated October 4, 2005, incorporated into the Contract at Article 2.

1.13 "Settlement Agreement" means the settlement approved by the United States District Court for the District of Massachusetts in the Litigations.

1.14 "Wholesale Acquisition Cost" or "WAC" means the wholesale acquisition cost of a prescription drug, as determined by the current edition of the Medi-Span Master Drug Data Base, including supplements thereto or other national recognized reliable source for such information.

B. Any capitalized term that is not defined herein shall have the meaning provided in the Contract or RFP.

2. Scope of Modification

2.1 This Modification amends the Contract specifically as described herein. Except as specifically revised by the terms of this Modification, all of the terms of the Contract (including the documents incorporated therein) shall remain in full force and effect and shall apply to this Modification.

2.2 The changes in calculating the drug ingredient cost guarantees under the Contract pursuant to this Modification shall be effective as of the Adjustment Date.

2.3 The "Whereas" clauses above are a substantive part of this Agreement.

3. AWP Adjustment

3.1 In calculating the drug ingredient price guarantee required by the Contract, the Contractor shall use the following benchmarks against which the discounts identified in the Financial Proposal will apply for the identified categories of drugs:

(i) For non-Adjusted AWP Drugs, the benchmark shall be the AWP for the drug;
(ii) For Adjusted AWP Drugs, the benchmark shall be the product of the Identified Cost Source of the drug multiplied by the Pre-Settlement Factor; and
(iii) For drugs for which AWP is first determined or published after the Adjustment Date, the benchmark shall be the AWP for the drug.

3.3 The Contractor shall provide to the Department, upon request not to occur more frequently than once a quarter, a list of the Adjusted AWP Drugs. Such identification shall be by National Drug Code number, brand name, generic name if available, dosage, package size, and strength.

3.4 The Contractor shall provide, by January 30, 2010, an analysis of the following: (a) the AWP and drug ingredient costs charged to the State before the Adjustment Date; (b) the AWP and drug ingredient cost charged to the State as of December 31, 2009; and (c) whether the methodology described in section 3.1 has cost-neutral results for the State. The analysis shall include the top 100 brand drugs by cost and the top 100 brand drugs by volume covered in the State prescription benefits plan for those periods.

3.5 In the event that the Contractor uses a nationally recognized source other than First DataBank, Inc. or Medi-Span to identify AWP, DP, WAC, or Identified Cost Source, the Contractor shall notify the Department in advance.

4. Representations and Warranties

4.1 The Contractor represents and warrants that the methodology authorized herein for calculating the benchmark for guaranteeing the drug ingredient pricing of brand drugs under the Contract, is cost-neutral and does not result in either: (a) increased costs to the State or (b) increased profits, fees or payments to the Contactor than would have been realized under the terms of the Contract but for the Roll-Back by Medi-Span and First DataBank.

4.2 The Contractor represents and warrants that the drug ingredient costs (in dollar amounts) charged to the State using the methodology authorized herein shall be equivalent to the drug ingredient costs (in dollar amounts) that would have been charged to the State pursuant to the Contract but for the Settlement Agreements and the decision by First DataBank, Inc. and Medi-Span to adjust the Factor used to calculate and determine the AWP for drugs.

5. Audits

5.1 The Contractor shall retain, at its own cost, an independent auditor or consultant, to audit its (a) identification of Adjusted AWP Drugs, (b) application of the Pre-Settlement Factor to the Identified Cost Source for such drugs, and (c) payments and reimbursements in connection with drug ingredient costs for Adjusted AWP Drugs. Such independent audit and reconciliation shall occur at regular intervals during the remaining term of the Contract.

5.2 The Contractor shall provide to the State copies of any internal or external audit or analysis that it conducts of the application of the methodology authorized herein to its book of business in general or the State plan specifically. Any information identifying any covered individual or any client of the Contractor shall be redacted from such audit reports. Such reports shall be provided within two (2) weeks of date they are final.

5.3 The State may, as part of its annual audit of the Contractor and its performance, audit application of the methodology authorized herein. This audit may also include an audit or other review of Contractor's internal and external audits and reconciliations noted in sections 5.1 and 5.2 above.

IN WITNESS THEREOF, the parties have executed this Modification:

CONTRACTOR
CATALYST RX, INC.

By: [redacted]

Sept 25 2009
Date

[redacted]
Witness

STATE OF MARYLAND
DEPARTMENT OF BUDGET AND
MANAGEMENT

By: [redacted] T. Eloise Foster, Secretary

September 28, 2009
Date

[redacted]
Witness

Approved for form and legal sufficiency this 28 day September, 2009.

[redacted]
Assistant Attorney General