

UNITED STATES BANKRUPTCY COURT

District of Delaware

PROOF OF CLAIM

Name of Debtor:
Graceway Pharmaceuticals, LLCCase Number:
11-13036

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Prime Therapeutics, LLC☐ Check this box to indicate that this claim amends a previously filed claim.Name and address where notices should be sent:
Prime Therapeutics, LLC, Attn: Barbara J. Wood
1305 Corporate Center Drive
Eagan, MN 55121

RECEIVED

DEC 30 2011

BMC GROUP

Court Claim Number: _____
(If known)Telephone number:
(612) 777-5532

Filed on: _____

Name and address where payment should be sent (if different from above):
See above☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.☐ Check this box if you are the debtor or trustee in this case.Telephone number:
(612) 777-5532

1. Amount of Claim as of Date Case Filed: \$ 306,985.80

If all or part of your claim is secured, complete item 4 below, however, if all of your claim is unsecured, do not complete item 4

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).☐ Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507 (a)(4).☐ Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).☐ Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).☒ Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(2)

Amount entitled to priority:

\$ 127,428.69

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

2. Basis for Claim: See attached addendum
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: \$ _____ Annual Interest Rate _____ %

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: \$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING

If the documents are not available, please explain:

Date: 12/30/11

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Barbara J. Wood, Assistant General Counsel

FOR COURT USE ONLY

Graceway Pharmaceuticals LLC



00193

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. §101 *et seq.*), and any applicable orders of the bankruptcy court.

In re Graceway Pharmaceuticals, LLC, et al.: Case No. 11-13036 (PJW)

Addendum to Proof of Claim by Prime Therapeutics, LLC

1. This proof of claim (the "Proof of Claim") is made for the claimant, Prime Therapeutics, LLC ("Prime"), and is signed by Barbara J. Wood, who is duly authorized to make this claim on behalf of Prime as its Assistant General Counsel.

2. The correct name and address of Prime is as follows:

Prime Therapeutics, LLC
Attn: Barbara J. Wood
1305 Corporate Center Drive
Eagan, MN 55121

3. Graceway Pharmaceuticals, LLC (the "Debtors") entered into a Rebate and Administrative Fee Agreement (the "Commercial Contract") with Prime on October 1, 2008. A true and correct copy of the Commercial Contract is attached as **Exhibit A**. Under the Commercial Contract, Prime was to (and did) collect, manage, and distribute rebates from the Debtors on behalf of sponsors of health care plans and other, similar entities. In exchange, Prime was to receive administration fees from the Debtors. The initial term of the Commercial Contract extended through September 30, 2010.

4. On July 1, 2009, the Debtors entered into a First Amendment to the Rebate and Administrative Fee Agreement (the "First Commercial Amendment") with Prime. A true and correct copy of the First Commercial Amendment is attached as **Exhibit B**.

5. On October 1, 2010, the Debtors entered into a Second Amendment to the Rebate and Administrative Fee Agreement (the "Second Commercial Amendment") with Prime. A true and correct copy of the Second Commercial Amendment is attached as **Exhibit C**. Among other things, the Second Commercial Amendment extended the term of the Commercial Contract through September 30, 2011.

6. On October 1, 2011, the Debtors entered into a Third Amendment to the Rebate and Administrative Fee Agreement (the "Third Commercial Amendment") with Prime. A true and correct copy of the Third Commercial Amendment is attached as **Exhibit D**. Among other things, the Third Commercial Amendment extended the term of the Commercial Contract through December 31, 2011.

7. On October 1, 2010, the Debtors entered into a second, independent contract with Prime entitled Medicare Part D Rebate and Administrative Fee Agreement (the "Part D Contract"). A true and correct copy of the Part D Contract is attached as **Exhibit E**. Under the Part D Contract, Prime was to (and did) collect, manage, and distribute rebates from the Debtors on behalf of sponsors of Part D Plans (as such term is used in the Part D Contract). In exchange, Prime was to receive administration fees from the Debtors. The initial term of the Part D Contract extended through September 30, 2012.

8. On January 1, 2012, the Debtors entered into an amendment to the Part D Contract (the "Part D Amendment"). A true and correct copy of the Part D Amendment is attached as **Exhibit F**. Among other things, the Part D Amendment extended the term of the Part D Contract through December 31, 2013.

9. The Commercial Contract, the First Commercial Amendment, the Second Commercial Amendment, the Third Commercial Amendment, the Part D Contract, and the Part D Amendment are referred to collectively herein as the "Prime Contracts."

10. On December 2, 2011, the Debtors filed a Motion for Entry of an Order Authorizing the Debtors to (i) Reject Certain Unexpired Leases of Nonresidential Real Property, (ii) Sell Certain Property Outside the Ordinary Course of Business, (iii) Abandon Certain Expendable Property and (iv) Reject Certain Executory Contracts. [Docket No. 333.] In their motion, the Debtors sought authority to reject the Prime Contracts.

11. Given the Debtors' rejection of the Prime Contracts, pursuant to 11 U.S.C. § 365(g)(1), the Prime Contracts are deemed to have been breached the day before the Debtors filed their bankruptcy petitions (*i.e.*, September 28, 2011) and Prime is entitled to contract damages for such breaches. A detailed calculation of Prime's rejection damages is attached as **Exhibit G**. As set forth on Exhibit G, Prime's unsecured claim against the Debtors for rejection damages amounts to \$188,112.16.

12. The present claim is based upon (i) the Debtors' obligation to pay for the prepetition amounts owed to Prime under the Prime Contracts; (ii) the Debtors' obligation to pay for services provided during the pendency of their bankruptcy cases pursuant to the Prime Contracts (for which Prime is entitled to administrative expense priority); and (iii) the Debtors' obligation to compensate Prime for damages owed to Prime as a result of the rejection of the Prime Contracts.

13. Based on the foregoing facts, Prime submits this Proof of Claim as a general unsecured claim for prepetition amounts owed to Prime by the Debtors in the amount of \$118,873.64, a general unsecured claim for rejection damages owed to Prime by the Debtors in the amount of \$188,112.16, and as a claim entitled to priority as an administrative expense of the Debtors' bankruptcy estates for services provided by Prime to the Debtors during the pendency of the Debtors' bankruptcy cases (but before the date of the rejection of the Prime Contracts) in the amount of \$127,428.69. The aggregate amount of Prime's claim is:

Total Amount of Claim: \$434,414.48

14. In the event that the Debtors or anyone on the Debtors' behalf asserts a claim against Prime in these bankruptcy proceedings, this claim may be secured by a right of setoff pursuant to §§ 506(a) and 553 of the Bankruptcy Code. Prime reserves all of its rights of setoff and/or recoupment.

15. All payments relating to Prime's claim have been credited and deducted for the purpose of making this Proof of Claim. No judgment has been rendered on this claim.

16. Prime reserves the right to amend this Proof of Claim pursuant to the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and applicable law for any reason, including but not limited to amending the prepetition amount or including a claim for administrative expenses or other claims.

17. The filing of this claim does not constitute a waiver by Prime of any applicable right of setoff, recoupment or similar claim or defense to which it may be entitled under applicable law.

18. This Proof of Claim does not constitute a waiver of any objection with respect to jurisdiction herein and shall not be deemed a waiver of the right: (a) to have final orders in non-core matters entered only after *de novo* review by a district judge; (b) to trial by jury in any proceedings; (c) to have the district court withdraw reference in any matter subject to mandatory or discretionary withdrawal; or (d) to request abstention or transfer of venue with respect to any proceeding.

Dated: 12/30/11

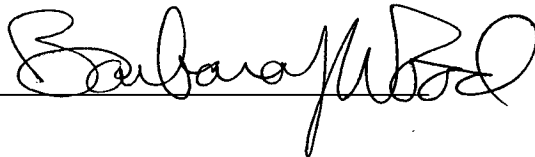
By: 

EXHIBIT A

REBATE AND ADMINISTRATIVE FEE AGREEMENT

THIS AGREEMENT (this "**Agreement**") is by and between GRACEWAY PHARMACEUTICALS, LLC, a Delaware limited liability company ("**Graceway**"), and PRIME THERAPEUTICS LLC, a Delaware limited liability company ("**Prime**"). Graceway and Prime are jointly referred to herein as the Parties and individually as a Party.

WHEREAS, Graceway is in the business of researching, developing, manufacturing, and marketing prescription pharmaceutical products in the United States;

WHEREAS, Prime is engaged in the business of managing pharmacy benefits pursuant to arrangements with Plans (as defined herein); and

WHEREAS, Prime's services include, but are not limited to, maintaining prescription drug formularies, contracting with prescription drug manufacturers for rebates and allocating the rebates to Plans in accordance with the arrangements with those Plans.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained in this Agreement, the parties agree as follows:

SECTION 1 DEFINITIONS

- 1.1. "**Administrative Fee**" means the administrative fee payments described in Section 2.3.
- 1.2. "**Affiliate**" means with respect to any person or entity, any other person or entity which directly or indirectly controls, is controlled by or is under common control with such person or entity.
- 1.3. "**Competitive Product**" means each pharmaceutical product that competes with a Product, as set forth in the applicable "Market Definition" on Exhibit B.
- 1.4. "**Confidential Information**" has the meaning set forth in Section 6.
- 1.5. "**Disadvantaging**" shall mean a Product is not treated equal to other branded Competitive Products through Formulary tier placement, copay or coinsurance level, utilization management, step therapy, prior authorization, or other access or reimbursement restrictions for the Product.
- 1.6. "**Formulary**" shall mean a listing in electronic or paper medium which includes various prescription pharmaceutical products that is provided or made available to Participating Pharmacies, physicians or other health care providers for purposes of guiding the prescribing and dispensing of pharmaceutical products, and managed by Prime or a Plan.
- 1.7. "**Formulary Management Services**" shall mean services provided by Prime to Plan on behalf of the Plans under separate contractual arrangements with such Plan. Formulary Management Services shall include services related to some or all of the following: routine communications to Participating Pharmacies or Participant to facilitate awareness of pharmaceutical product availability on Formulary; general education and/or consultation to Plans regarding the use of Formularies and Participant

copayment/coinsurance structures which encourage use of Formulary drugs; clinical and financial consultative services; Rebate administration; on-line claims processing with point-of-sale controls; drug utilization evaluation; consultation and/or implementation of drug utilization management tools such as prior authorization, step therapy, or quantity limits.

- 1.8. **"Medicare Part D"** means the Medicare Prescription Drug, Improvement and Modernization Act of 2003 as codified in Section 1860D-1 through 1860D-41 of the Social Security Act, and the Part D regulations, including without limitation 42 C.F.R. Parts 400, 403, 411, 417, 422, and 423, as they may be amended or supplemented from time to time.
- 1.9. **"Participant"** means a person who is enrolled in a Plan.
- 1.10. **"Participating Pharmacy"** means a duly licensed pharmacy that has agreed to provide services to Participants. A "Prime Pharmacy" shall mean any retail or mail order pharmacy owned and/or operated by Prime.
- 1.11. **"Plan"** shall mean any health care plan, health maintenance organization, preferred provider organization, self-insured employer and/or union health plan, group or individual plan, or similar funded health benefits program, for which Prime has contracted, directly or indirectly, to provide Formulary Management Services, which includes the right to receive from manufacturers discounts or rebates on drugs utilized by Participants.

Plan shall not include: (i) programs or entities that provide for reimbursement for the cost of prescription drugs under a contract or otherwise from Medicare (such as a Part D plan, including an MA-PD plan, a PACE Plan or a cost plan offering qualified prescription drug coverage as it is defined at 42 CFR § 423.4), Medicaid or any other federal or state pharmaceutical assistance program, unless such plan is provided pursuant to a risk contract under 1903(m) of the Social Security Act or a qualified retiree prescription drug plan that meets the requirements of 42 C.F.R. § 423.882 ("Qualified Retiree Prescription Drug Plan"); (ii) programs or entities which maintain no eligibility criteria; (iii) programs or entities for which Prime provides only claims processing services; and (iv) programs or entities for which Participants are required to pay 100% of the cost of the prescription drugs dispensed by Participating Pharmacies without subsequent reimbursement for a substantial portion of the prescription drugs and which are not associated with a health care plan, health maintenance organization, preferred provider organization, self-insured employer and/or union health plan, group or individual plan, or similar funded health benefits program.

- 1.12. **"Products"** means those Graceway products listed on Exhibit A attached hereto, as amended from time to time by Graceway.
- 1.13. **"Quarter"** means any calendar quarter during the Term of this Agreement.
- 1.14. **"Rebate"** means a retrospective reimbursement of monetary amounts to Prime on behalf of a Plan by Graceway for Products dispensed to a Participant, for which the conditions to receive a Rebate are satisfied. Rebates do not include Administrative Fees. Rebates are set forth in Exhibit A.

- 1.15. **"Term"** has the meaning set forth in Section 5.
- 1.16. **"Unit"** shall mean the smallest unit of measure (e.g. tablet, capsule, milliliter, gram).
- 1.17. **"United States"** shall mean the continental United States, the District of Columbia, Alaska, and Hawaii.
- 1.18. **"Utilization"** means the actual Product usage data by Participants, submitted to Graceway for Rebates by Prime, subject to the terms and conditions of this Agreement.
- 1.19. **"Utilization Reports"** means written and/or electronic reports that summarize unit, prescription, and requested Rebate amount for each Product, at both the aggregate Prime level and the Plan level, sold and dispensed by Participating Pharmacies to Participants during the applicable Quarter where such Product is on the Formulary applicable to such Participant, plus claims not previously billed to Graceway for the Quarter immediately preceding such Quarter.
- 1.20. **"Wholesale Acquisition Cost" or "WAC"** means the published list price on the last day of a Quarter for Product charged by Graceway to purchasing wholesalers, excluding payment terms, such as prompt payment or other payments, discounts, credits, chargebacks, or freight charges. The WAC is subject to change by Graceway at any time and from time to time without notice. WAC is obtained by Prime through Medi-Span or First DataBank.

SECTION 2

REBATES AND ADMINISTRATIVE FEES

- 2.1 **Reporting.** Within sixty (60) days of the end of each Quarter, Prime shall furnish to Graceway an accurate and complete Utilization Report that includes each Product dispensed to Participants of Plans by Participating Pharmacies. Utilization dispensed by a Prime Pharmacy shall be included in the Utilization Report and identified by its NPI number. If a Plan fails to satisfy the criteria for payment of Rebates for any Quarter, Prime will not be obligated to provide Graceway with any invoice data applicable to such Quarter for such Plan. If a Utilization Report is not received by Graceway within ninety (90) days of the end of any Quarter, then Graceway reserves the right to not pay any Rebates on Products claimable by Prime during such period. The Utilization Reports required by this Section 2.1 shall be provided in NCPDP format or as otherwise mutually agreed upon in writing by Graceway and Prime. Each Utilization Report shall also be accompanied by information specifying the current number of Participants for each Plan.

2.2 **Payments.**

Subject to the terms and conditions of this Agreement, Graceway shall pay undisputed Rebates to Prime on behalf of a Plan and undisputed Administrative Fees within thirty (30) days of Graceway's receipt of a complete Utilization Report and Administrative Fee invoice applicable to such Quarter. Product Utilization by a Participant shall be eligible for Rebates only during the period when all of the Rebate requirements for such

Product set forth in this Agreement, including Exhibit A, are met by the applicable Plan. Without limiting the foregoing, Rebates shall not be payable on claims excluded pursuant to Exhibit F.

Graceway agrees that the time period by which it is to pay Rebates and Administrative Fees for any Quarter or any subsequent Quarters will not be delayed by: (i) changes made to the invoice data by Graceway; (ii) delays by Graceway in responding to the invoice data; or (iii) a resubmission of all or any part of the invoice data by Prime at the request of Graceway due to Graceway's errors, oversights, or omissions.

Notwithstanding the foregoing, should an invoice from Prime be erroneous due to Prime's oversight or omission, Graceway may request Prime to correct and resubmit such an invoice and the time period by which Graceway is to pay Rebates and Administrative Fees may be delayed by the amount of time it takes Prime to correct and resubmit such an invoice.

- 2.3 Administrative Fee.** Subject to the terms and conditions of this Agreement, Graceway shall pay to Prime the Administrative Fee as set forth in and in accordance with Exhibit D, for each Quarter during the Term. In recognition for the services proved by Prime as set forth in Schedule D, Administrative Fees shall only be due to Prime by Graceway for Utilization by Participants of Plans on which a Rebate is due under the terms of this Agreement. Prime and Graceway acknowledge and agree that the Administrative Fee is not given in exchange for any explicit or implicit agreement to recommend or provide favorable status for the Product.
- 2.4 Late Payments.** If Graceway fails to pay an undisputed amount of any invoice within the thirty (30) day payment period or fails to respond to the invoice within the thirty (30) day payment period, Graceway will be obligated to pay interest to Prime on the full unpaid amount or, if amounts are disputed, on the unpaid undisputed amount at the rate of the lesser of (i) one percent (1.0%) per month, or (ii) the maximum amount allowed by law. Graceway will pay such interest to Prime within thirty (30) days of receiving a late payment invoice from Prime.
- 2.5 Disputed Invoices.** In the event Graceway disputes, any portion of a Rebate invoice or Administrative Fee invoice Graceway shall pay the undisputed portion of each respective invoice within the thirty (30) day payment period and include a complete statement indicating Graceway's calculation of Rebates and Administrative Fees and the basis for any disputed amounts. Disputes by Graceway regarding the data elements of a Rebate or Administrative Fee invoice shall be limited to the data elements which are defined under Exhibit E of this Agreement. The Parties will use commercially reasonable efforts to informally resolve any disputes, including disputes regarding Rebate or Administrative Fee invoices.
- 2.6 Overpayments and Underpayments.** In the event that either Party claims that Graceway has overpaid or underpaid Rebates and/or Administrative Fees, as a result of an audit or otherwise, the Party claiming to have overpaid or been underpaid shall notify the other Party in writing of the amount of such claim and the specific grounds on which that claim is based. The responding Party shall then have thirty (30) calendar days to submit a written response to the claiming Party. The Parties agree to use commercially

reasonable efforts to informally resolve any such claims. If the Parties are unable to reach a mutually acceptable informal resolution, the claiming Party may utilize the dispute resolution procedures set forth in section 9.6 of this Agreement. Except as the result of an audit properly conducted within the limitations of section 4.2, any written notice of claim for overpayment or underpayment of Rebates or Administrative Fees must be asserted in a written document dated and received by the Party against whom the claim is made no later than eighteen (18) months from the date of the respective invoice. Except as the result of an audit properly conducted within the limitations of section 4.2, unless written notice is made by the claiming Party within eighteen (18) months from the date of an invoice, the Parties expressly waive the right to contest or challenge that invoice.

- 2.7 Best Price.** Notwithstanding any other provision of this Agreement, the total Rebates and Administrative Fees due hereunder to Prime by Graceway for any Product shall not in any Quarter result in the establishment of a price for the Product that increases Graceway's statutorily-mandated rebates to Medicaid or any other governmental entity for the Product over what it would otherwise be but for this Agreement. If applicable, to avoid the establishment of any such price, Graceway reserves the right to reduce the Rebates to Prime for Products under this Agreement, retrospectively on Rebates not yet paid and prospectively, to the highest level that avoids the establishment of such price. Graceway shall notify Prime in accordance with Section 9.1 and use commercially reasonable efforts to provide the following information in writing within thirty (30) calendar days of discovering that the Rebate amount exceeded "best price": the effective date of the new Rebate percentage, the new Rebate percentage, and the amount of Rebates for each Plan that shall be refunded to Graceway along with supporting calculations.

SECTION 3

Prime OBLIGATIONS

- 3.1 Formulary.** Each Plan, or Prime on behalf of the Plan, shall maintain a Formulary applicable to each Plan respectively. If a Product is included on Formulary, it will be done so in accordance with Prime or a Plan's Formulary process. The Parties agree that in addition to the requirements in Exhibit A, only Products on a Formulary and not Disadvantaged will be eligible for Rebates. The Rebate requirements under this Agreement are conditions of eligibility and are not an obligation imposed on Prime or any particular Plan. Nothing in this Agreement shall limit the ability of Prime or an individual Plan to change the status or classification of a Product on the Formulary. Nothing in this Agreement shall be construed to require Prime to include or maintain a Product on the National Formulary in order for a Plan with such Product on its Plan Formulary to be eligible for Rebates under this Agreement. Prime agrees that any Rebate negotiations or decisions do not and have not influenced decisions on clinical safety or efficacy of Products covered under this Agreement.

Prime agrees to provide Graceway with a paper or electronic copy of each Plan's Formulary on an annual basis or a web site at which a current copy may be obtained. Updates to such Formularies shall be provided to Graceway on a Quarterly basis.

- 3.2 **Addition or Removal of Plans.** A list of Plans covered by this Agreement is set forth on Exhibit C. Prime may add Plans to Exhibit C upon thirty (30) days' written notice to Graceway prior to the effective date of such addition. Additional Plan(s) will be deemed accepted by Graceway unless Graceway provides a written rejection of any Plan(s) within thirty (30) days from receipt of notice from Prime. Any written rejection of a Plan by Graceway must be accompanied by the reason(s) that Graceway deems the Plan a non-reimbursable entity, and Graceway must notify Prime of such rejections in accordance with Section 9.1. Prime will provide Graceway with prompt notice of any deletions from Exhibit C, and any such deletions shall be automatically removed from participation under this Agreement as of the date of the deletion and without any further action.
- 3.3 **Disadvantaging.** Graceway agrees that the following shall not be considered disadvantageous to its Products: (i) any cost designations of Products by Prime or a Plan, including but not limited to, cost sensitive lists or relative dollar signs, which are based on industry standards and actual cost of therapy for cost differentiation between therapeutic agents; (ii) preference for a Competitive Product by Prime or a Plan over a Product on an individual Participant basis for reasons of medical appropriateness as determined by a physician or pharmacist; (iii) any educational or similar program conducted by Prime or a Plan under which Prime or the Plan communicate to health care providers and/or Participating Pharmacies about a new form or line of a Competitive Product on Formulary to assist Participants of a Plan already on the Competitive Product to transition to the new form or line of such product; (iv) placement of Graceway's Products on some but not all of a Plan's Formularies; (v) programs such as mandatory generic programs applicable to pharmaceutical products which are therapeutically equivalent to Graceway's Product(s); (vi) utilization management procedures, such as step therapy or quantity limits which are based on FDA approved indications, prescribing information, dosing schedules, clinical studies, and/or nationally recognized treatment guidelines which do not Disadvantage such Product; or (vii) unless otherwise specified in this Agreement, benefit designs which prefer generic pharmaceutical products, including but not limited to, copayments for generics which are lower than copayments applicable to Graceway's Products or placement of generic pharmaceutical products on a preferred Formulary tier.
- 3.4 **Prime Warranties.** Prime represents and warrants that it shall disclose the existence or any other aspect of this Agreement to any party with whom its contracts for Formulary Management Services. Prime represents that it has a written arrangement with each Plan that acknowledges that Prime will receive Rebates and Administrative Fees from Graceway and describes the manner in which such Rebates and Administrative Fees are allocated.
- 3.5 **Additional Prime Warranties to Risk Plan Sponsors and Qualified Retiree Prescription Drug Plans.** In addition to the foregoing, Prime represents and warrants that with respect to each Plan that has a risk contract under 1903(m) of the Social Security Act (a "Risk Plan Sponsor") or Qualified Retiree Prescription Drug Plan, or each Client on behalf of a Risk Plan Sponsor or Qualified Retiree Prescription Drug Plan, that (i) Prime will advise such Plans of the amount of the Rebates and Administrative Fees received under this Agreement and of their obligation to report in accordance with the requirements of Section 1128B(b) of the Social Security Act and its implementing regulations (42 C.F.R. § 1001.952); (ii) Prime will advise each Qualified

Retiree Prescription Drug Plan, or each Client on behalf of a Qualified Retiree Prescription Drug Plan, that the Rebates and Administrative Fees hereunder are price concessions as that term is described in Medicare Part D; and (iii) Prime shall retain a copy of this Agreement and any other communications from Graceway regarding this Agreement and shall permit agents of the U.S. Department of Health and Human Services or any state Medicaid agency access to such records upon request.

- 3.6 Compliance with Laws.** Prime and Graceway each represents and warrants that it shall comply with all federal, state and local laws and regulations applicable to its operations and/or its participation in this Agreement, including without limitation (a) the Social Security Act, including, as applicable, the federal healthcare programs anti-kickback statute at Section 1128(B)(b) and its implementing regulations (42 C.F.R. Section 1001.952), and (b) all applicable federal and state health care anti-fraud and abuse laws.

SECTION 4 RECORD KEEPING AND AUDITS

- 4.1 Record Keeping.** During the Term and for a period of three (3) years thereafter or longer if required by law, each Party shall keep and maintain accurate records necessary to verify performance and compliance with this Agreement. Each Party may have access to the records of the other Party relating to such Party's performance of this Agreement during normal business hours and upon reasonable notice, and the execution of appropriate confidentiality agreements. Any inspection or audit shall be subject to any Participant confidentiality limitations, it being expressly understood that neither Party will be required to disclose any information contrary to applicable law or in violation of patient confidentiality.
- 4.2 Audit.** Each Party shall have the right, subject to the records and confidentiality provisions contained herein, to audit, or to engage an independent firm to audit the other Party's performance and compliance with its obligations under this Agreement, provided; however, that each Party shall have the right to approve or disapprove an independent auditor selected by the other Party to perform an audit on its behalf. Such approval shall not be unreasonably withheld. Each Party's right to audit will be limited to the previous eighteen (18) months for which Rebates were paid determined from the date written notice of an audit is given by a Party, and in any event, the Parties agree that audits of a Party shall occur no more than once annually. The Parties agree that once an audit applicable to a specific time period under this Agreement is completed, records applicable to such time period shall no longer be subject to any future audits, absent reasonable suspicion of fraud.

Each Party will cooperate with the request for audit and provide access to any requested information that is deemed relevant to such audit. Each Party may require the other Party or its independent auditors to execute a confidentiality and nondisclosure agreement reasonably satisfactory to the responding Party prior to the inception of any audit. The requesting Party shall pay all costs it incurs in conducting the audit.

SECTION 5 TERM AND TERMINATION

- 5.1 **Term.** This Agreement shall commence on October 1, 2008 (the "Effective Date") and shall continue in full force and effect for a period of two (2) years from the Effective Date, unless earlier terminated in accordance with the terms and provisions of this Agreement (the "**Term**").
- 5.2 **Termination of Agreement.** This Agreement may also be terminated immediately upon written notice to the other Party:
- (a) For any reason or without cause upon sixty (60) days' prior written notice to the other Party.
 - (b) If such other Party commits a material breach of this Agreement, which is not cured within thirty (30) days after receipt of written notice of same from the non-breaching Party.
 - (c) If such other Party is subject to insolvency, dissolution, liquidation, receivership, bankruptcy or similar reorganization, whether voluntary or involuntary.
- 5.3 **Change of Law.** The Parties agree to negotiate in good faith to amend this Agreement if any change of law or regulation, or interpretation of existing law our regulation would: (A) make this Agreement or a material portion of a Party's performance under this Agreement illegal; (B) prohibit or eliminate, or require a material change to any Rebates offered hereunder; (C) make such Party's performance under this Agreement impossible or materially alter the intent of the Agreement; (D) have a material adverse impact on such Party and/or any of its Affiliates (economic or otherwise); or (E) place either Party or its Affiliates at material risk of regulatory non-compliance. If the Parties are unable to reach an agreement within thirty (30) days, then either Party may immediately terminate the Agreement upon written notice to the other Party.
- 5.4 **Product Termination.** Notwithstanding anything to the contrary set forth in this Agreement, Graceway may terminate this Agreement as to a particular Product, if (i) Graceway discontinues the manufacture, sale or distribution of such Product; (ii) a patent covering such Product expires; (iii) such Product becomes available as a generic drug; (iv) Graceway stops co-promoting with or licensing such Product from another person; or (v) Graceway otherwise transfers to another person or no longer possesses adequate rights in and to such Product. Graceway shall give to Prime such notice as is reasonable under the circumstances, specifying where practical the date upon which the Product shall no longer be included in this Agreement (the "**Product Termination Date**"). Graceway shall provide written notice to Prime within ten (10) calendar days following the occurrence of such event and shall pay Rebates and Administrative Fees for that Product utilization through the end of the Quarter in which such event occurs.
- 5.5 **Effect of Termination.** Subject to section 5.4, in the event of termination or expiration of this Agreement or of any Product under this Agreement, Graceway shall pay Rebates on undisputed Utilization up through the date of any such termination or expiration, provided that Prime timely complies with this Agreement to the extent necessary for Graceway to calculate such Rebates.

SECTION 6 CONFIDENTIALITY

- 6.1. The Parties understand and agree that in the performance of this Agreement, each Party may have access to private or confidential information of the other, including but not limited to trade secrets, proprietary information, marketing and business plans, customer lists, financial information, personnel information, technical information, processes, formulas, procedures, Formulary and associated information, pharmacy lists, information on and relating to invoices and reports provided to Graceway by Prime, operations and any other information or data designated as confidential or proprietary by the disclosing Party (collectively, "Confidential Information"). Each Party agrees that (i) all Confidential Information shall remain the sole and exclusive property of the owner and disclosing Party, and (ii) that it shall maintain and cause its employees and agents to maintain the confidentiality and secrecy of the Confidential Information, and (iii) that it will use the Confidential Information solely in connection with performing its duties and obligations under this Agreement or for internal business purposes related to its relationship with the other Party. If Graceway uses a third party to review or validate claims data and invoices, Graceway agrees it will notify Prime in writing and will cause such third party to agree in writing to confidentiality obligations comparable to those set forth herein.

Notwithstanding the foregoing, such Confidential Information shall not include information that: (a) the other Party can establish to have been in its possession prior to receiving the information, (b) is now or later becomes generally publicly available through no fault of the Party receiving the information, (c) is received from a third party which had the right to disclose the information, or (d) is approved by the other Party for disclosure. In addition, the Parties expressly acknowledge and agree that they may disclose their relationship, the other Party's Confidential Information, and the Products covered by this Agreement as required by law or regulation. Graceway also acknowledges that Prime may disclose terms of this Agreement to its Plans and groups receiving Rebates under this Agreement, or for marketing purposes to prospective plans, provided such parties are under comparable confidentiality restrictions.

Immediately upon the expiration or other termination of this Agreement, each Party upon written request shall return to the other Party any and all copies of the other Party's Confidential Information, provided that one copy may be kept for archival purposes or as required by law or regulation. The Parties shall comply with any applicable laws related to Participant confidentiality, including those set forth in the Health Insurance Portability and Accountability Act. The obligations of confidentiality in this Agreement shall survive any termination or expiration of this Agreement for a period of five (5) years thereafter.

If a Party is compelled by law to disclose Confidential Information, the Party so compelled will use reasonable efforts to provide written notice to the other Party before making such disclosure.

SECTION 7 LIMITATION ON LIABILITY

SUBJECT TO SECTION 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES SUFFERED OR INCURRED BY SUCH OTHER PARTY OR ITS AFFILIATES, WHETHER BASED UPON A CLAIM OR ACTION IN CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT.

SECTION 8 INDEMNIFICATION

- 8.1 **Indemnification By Graceway.** Graceway shall defend, indemnify and hold harmless Prime, its parents, subsidiaries, affiliates, successors, assigns, officers, directors, shareholders, and employees (the "Prime Indemnitees"), from and against any and all liability, losses, damages, claims, demands, fines, causes of action, suits or proceedings and expenses connected therewith (including reasonable attorneys' fees, reasonable expert witness fees and court costs) from any third-party claim arising from or related to a material breach of this Agreement by Graceway, or Graceway's alleged negligence, violation of state or federal law, or other wrongful conduct. This indemnification does not extend to any portion of the loss due to Prime's or other person's negligence or willful misconduct.
- 8.2 **Indemnification By Prime.** Prime shall defend, indemnify and hold harmless Graceway, its parents, subsidiaries, affiliates, successors, assigns, officers, directors, shareholders, and employees (the "Graceway Indemnitees"), from and against any and all liability, losses, damages, claims, demands, fines, causes of action, suits or proceedings and expenses connected therewith (including reasonable attorneys' fees, reasonable expert witness fees and court costs) from any third-party claim arising from or related to a material breach of this Agreement by Prime, or Prime's alleged negligence, violation of state or federal law or other wrongful conduct. This indemnification does not extend to any portion of the loss due solely to Graceway's or other person's negligence or willful misconduct.
- 8.3 The indemnifications in this Section 8 are conditioned upon the following: (i) the Party seeking indemnification promptly notifying the other Party of the claim or suit; (ii) the Party seeking indemnification making all relevant records available to the other Party; (iii) the Party seeking indemnification affording the other Party the right to assume the defense of or settle such claim or suit; and (iv) the Party seeking indemnification in all ways cooperating fully with the other Party in defending against the claim or suit.

Neither Party shall be obligated to indemnify the Party seeking indemnification for claims or damages to the extent based on the negligence or other wrongful acts on the part of the Party seeking indemnification or third parties not under the other Party's control. Further, Graceway shall not be obligated to indemnify Prime Indemnitees for claims or damages to the extent based on (i) representations by Prime Indemnitees regarding Products that are materially different from the prescribing information for the

Products; or (ii) when the claim or suit involves substitution of a product of another manufacturer in place of a Product.

SECTION 9 GENERAL PROVISIONS

- 9.1 **Notices.** All notices under this Agreement shall be in writing, shall refer specifically to this Agreement, and shall be hand delivered or sent by express courier service, costs prepaid, or by facsimile to the respective addresses specified below (or to such other addresses as may be specified by notice to the other Party). All notices shall be effective upon receipt.

If to Graceway:

Graceway Pharmaceuticals, LLC
340 Martin Luther King, Jr. Blvd., Suite 500
Bristol, TN 37620
Attn: General Counsel
FAX: 423 274-2199

If to Prime:

Prime Therapeutics LLC
1305 Corporate Center Drive
Eagan, MN 55121
Attn: Vice President Trade Relations

With a copy to:

Stephanie L. Kupski
Exec. Director, Contract Management
222 Valley Creek Blvd. Ste 300
Exton, PA 19341
FAX: 267-948-0599

With a copy to:

Prime Therapeutics LLC
1305 Corporate Center Drive
Eagan, MN 55121
Attn: General Counsel

- 9.2 **Force Majeure.** Noncompliance by a Party with its obligations under this Agreement for reasons of Force Majeure shall not constitute a breach by such Party of this Agreement, but shall relieve such Party of its performance obligations related to such Force Majeure event for as long as the Force Majeure remains, without extending the Term. For purposes of this Agreement, "**Force Majeure**" means any condition that results from causes beyond a Party's reasonable control, including, without limitation, failure of public utilities or common carrier; acts of God; war, terrorism, or civil commotion; destruction of production facilities and/or materials; fire; flood; explosions; earthquake or storm; or labor disturbances.
- 9.3 **Amendments/Revisions.** No changes or amendments to this Agreement shall be authorized by either Party without the written approval of all signatories or the authorized agent of each Party.
- 9.4 **Entire Agreement.** This Agreement, including all exhibits attached hereto, constitutes the entire agreement between the parties concerning the subject matter hereof, and supersedes all prior or contemporaneous agreements and communications concerning the subject matter hereof.

- 9.5 **Governing Law and Jurisdiction.** The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law.
- 9.6 **Dispute Resolution.** If a dispute should arise with respect to the terms of this Agreement or any right or obligation created by this Agreement, the Parties shall have forty-five (45) calendar days from the date written notice of the dispute is given by one Party to the other to resolve the matter through informal discussion. If the matter is not resolved within those forty-five (45) days, and if any Party wishes to pursue the dispute, the dispute shall be submitted to binding arbitration under the Commercial Rules of the American Arbitration Association.
- 9.7 **Ineligible Parties.** As of the Effective Date of this Agreement, each Party represents and warrants that it is not (i) listed by a governmental agency as debarred from working with that agency, (ii) proposed for debarment or suspension from any governmental work, or (iii) otherwise precluded from participating in any federal program. Each Party agrees to provide the other Party with reasonable notice in writing of any event that causes a change in such Party's status.
- 9.8 **Effect of Invalidity of Any Provision.** If any provision(s) of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be impaired thereby, and such remaining provisions shall continue to be valid, binding and enforceable, only so long as the intent of the parties as expressed in this Agreement can be achieved. Otherwise, this Agreement shall terminate.
- 9.9 **Exclusive Negotiating Manager for Rebates.** Unless otherwise provided in its agreements with its Plans, Prime's agreements with its Plans provide that Prime will serve as each such Plan's exclusive negotiating manager for Rebates. Graceway agrees that it will not, during this term of this Agreement, knowingly enter into any Agreement with any Prime Plan listed on Exhibit C to pay Rebates directly to such Plan without Prime's express written consent. Prime will notify Graceway in writing of the identity of any Prime Plans to which Prime has given its consent to directly contract with Graceway for Rebates on any of the Products.
- 9.10 **Assignment.** This Agreement may not be assigned or otherwise transferred (by operation of law or otherwise) by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.
- 9.11 **Independent Contractors.** The relationship between Graceway and Prime is that of independent contractors and nothing herein shall be deemed to create or constitute the relationship of partners, joint venturers, or principal and agent between Graceway and Prime.
- 9.12 **Waiver.** The waiver by a Party of any term or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach by the other Party of the same term or condition or any other term or condition of this Agreement.

9.13 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same instrument.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

Graceway Pharmaceuticals, LLC

By:



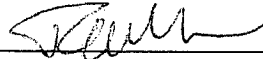
Name: Robert Moccia

Title: President and COO

Date: 2/20/09

Prime Therapeutics LLC

By:



Name: Rachelle Wan

Title: VP Pharmaceutical Trade Relations

Date: 1-7-09

Re: Fw: Graceway bankruptcy

Amy Adams to Amy S Olson

Cc Sharon Moritz

Based on past utilization it doesn't appear that this contract changes alot. I also checked and as of today there are no price increases to account for. With that being said, I took 65% of 3Q11 and am calling that the estimate for 4Q11.

Here are the 4Q11 Estimates

Company: PTI
Product: Graceway
Estimate: 4Q11
Estimate No: 111111

.....
Amy L. Adams

Manager, Rebate Operations

Prime Therapeutics

tel 612.777.5616

aadams@primetherapeutics.com

<http://www.primetherapeutics.com>

From: Amy S Olson/PTI
To: Amy Adams/PTI@PTI
Cc: Sharon Moritz/PTI@PTI
Date: 11/02/2011 12:28 PM
Subject: Fw: Graceway bankruptcy

Hi Amy,

Please see below email. Legal will also need an estimate of what would be due for 4Q11 10/1 through 11/21. Any suggestions on how to provide the most accurate estimate? Last quarters? There might be seasonality with Maxair but this should not be an issue with the other products. Also, we will need the reasons as to why we think it is most accurate. Thanks, Amy.

----- Forwarded by Amy S Olson/PTI on 11/02/2011 12:20 PM -----

From: Barbara Wood/PTI
To: Amy S Olson/PTI@PTI
Date: 11/02/2011 11:03 AM
Subject: Re: Graceway

Thanks! Sorry to have to make you jump through hoops.

Yes, we will need an estimate up through 11/21, along with our reasoning as to how we came up with the estimate.

Is previous quarter's actuals the best estimate (as opposed to 3rd qtr 2010)? Whatever we use as a starting point, we'll want to state why we think that is the most accurate basis for our estimate.

Barb

.....
Barbara J. Wood
Assistant General Counsel
Prime Therapeutics
tel 612.777.5532
cell 651.402.7309
fax 866.470.8807
bwood2@primetherapeutics.com

<http://www.primetherapeutics.com>

EXHIBIT A

Products.

Product Number/ Current NDC-9	Product Name	Generic Name
00089-0610 29336-0610	Aldara® Cream 5%	Imiquimod cream
13453-0100 29336-0100	Atopiclair Cream	
00089-0815 29336-0815	Maxair® Autohaler®	pirbuterol acetate inhalation aerosol

The term "Products" shall include all package sizes and package types, as well as any changes in the labeler code, for those Products listed in this exhibit. However, line extensions of a Product, such as new dosage forms, new routes of administration, or new strengths, will only be added to this Agreement by mutual agreement of the parties, and Graceway shall not require that such line extensions or new strengths of a Product be added to this Agreement or a Formulary in order for the original NDCs of the Product to be eligible for Rebates and Administrative Fees.

Rebate.

<u>Product Number</u> <u>Current NDC-9</u>	<u>Product</u>	<u>Rebate % (off WAC)</u>
00089-0610 29336-0610	Aldara® Cream 5%	5%
13453-0100 29336-0100	Atopiclair Cream	12%
00089-0815 29336-0815	Maxair® Autohaler®	12%

Calculation of Rebate.

Rebate = Units of Product x WAC x applicable Rebate % for Product

Plan Formulary Requirements. For purposes of this Agreement, eligibility for Rebates on Products shall be dependent upon all the following terms being met:

1. Product must be listed on the applicable Formulary.
2. Product must have equivalent or preferred status on the Formulary as compared to other branded Competitive Products.
3. Product must be listed at the lowest branded product copayment or coinsurance permitted by the Plan

Exhibit B

MARKET DEFINITIONS

GRACEWAY PRODUCT	Competitor's Product Name	Therapeutic Class
ALDARA	CARAC	Dermatologic Agents
ALDARA	CONDYLOX CREAM	Dermatologic Agents
ALDARA	EFUDEX	Dermatologic Agents
ALDARA	FLUOROPLEX	Dermatologic Agents
ALDARA	LEVULAN	Dermatologic Agents
ALDARA	SOLARAZE	Dermatologic Agents
ALDARA	VEREGEN	Dermatologic Agents

GRACEWAY PRODUCT	Competitor's Product Name	Therapeutic Class
ATOPICLAIR	CUTIVATE CREAM	Dermatologic Agents
ATOPICLAIR	CUTIVATE LOTION	Dermatologic Agents
ATOPICLAIR	CUTIVATE OINTMENT	Dermatologic Agents
ATOPICLAIR	DESONATE GEL	Dermatologic Agents
ATOPICLAIR	ELIDEL CREAM	Dermatologic Agents
ATOPICLAIR	ELOCON CREAM	Dermatologic Agents
ATOPICLAIR	LOCOID LIPOCREAM	Dermatologic Agents
ATOPICLAIR	MIMYX CREAM	Dermatologic Agents
ATOPICLAIR	PROTOPIC	Dermatologic Agents
ATOPICLAIR	VERDESO	Dermatologic Agents

APPROVED
Prime Legal
AN

Exhibit B (continued)

MARKET DEFINITIONS

GRACEWAY PRODUCT	Competitor's Product Name	Therapeutic Class
MAXAIR AUTOHALER	ProAir HFA	Respiratory Agents
MAXAIR AUTOHALER	Proventil HFA	Respiratory Agents
MAXAIR AUTOHALER	Proventil	Respiratory Agents
MAXAIR AUTOHALER	Ventolin HFA	Respiratory Agents
MAXAIR AUTOHALER	Xopenex HFA	Respiratory Agents

Market Definition Updates:

The above defined Market Definitions can be updated upon the approval of a new FDA approved pharmaceutical product within the therapeutic class if Graceway notifies Prime in writing of such change and the Parties mutually agree in writing to such change.

Market Definition changes shall be effective for the quarter following the quarter in which Prime receives written notification from Graceway about the change. If Graceway does not notify Prime in writing of a change to the Market Definition, the Market Definition shall remain unchanged.

If Graceway or any other manufacturer has more than one pharmaceutical product within a Market Definition, all of Graceway's or such other manufacturer's pharmaceutical products within the Market Definition shall be considered a single product.

APPROVED
Prime - Legal
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Exhibit C

List of Plans

Plan Name
BCBS of Florida
BCBS of Illinois
BCBS of Kansas
BCBS of Minnesota
BC&BS Mississippi
BCBS of Montana (effective 1/1/09)
BCBS of Nebraska
BCBS of New Mexico
BCBS of North Dakota
BCBS Oklahoma
BCBS of Texas
BCBS of Wyoming
Excellus BCBS
Plans under the Prime National Plan ID

Exhibit D

ADMINISTRATIVE FEES

Graceway agrees to pay Prime an Administrative Fee, as set forth in the table below, for Utilization which is eligible for Rebates hereunder.

<u>Product Number</u> <u>Current NDC-9</u>	<u>Product</u>	<u>Administrative Fee (% of WAC)</u>
00089-0610 29336-0610	Aldara® Cream 5%	3%
13453-0100 29336-0100	Atopiclair Cream	3%
00089-0815 29336-0815	Maxair® Autohaler®	3%

Calculation of Administrative Fee: Administrative Fee = Units of Product x WAC x applicable Administrative Fee % for Product

In consideration of Administrative Fees, Prime will perform services and reporting related to such Formularies, including:

- Monitor the Plans' and Clients' compliance with the terms and conditions of this Agreement.
- Calculate the amounts of Rebates and Administrative Fees applicable to Product utilization.
- Provide Graceway with detailed reports on Rebates and the Administrative Fee calculations as set forth in this Agreement.
- Conduct internal audits to verify that the terms and conditions of this Agreement are applied correctly.
- Work with Graceway on internal audits per the applicable terms of this Agreement.
- Subject to applicable law and upon request by Graceway, provide Graceway access to appropriate Prime staff to present applicable clinical information regarding Products.
- Semi-Annual contract review meeting between Graceway's National Account Manager and the appropriate Prime Pharmaceutical Trade Development representative.

PP	PN	Field Name	Type	Length	Description
Header					
X	X	Record Type	A/N	2	HD = Header
X	X	FF Action Code	A/N	2	00
X	X	Rebate Version Release Number	A/N	5	03.01
X	X	Transmission Date	N	8	Current Date
X	X	Transmission Control Number	A/N	9	Current Date CCYYMMDD
X	X	Rebate Batch Number	A/N	15	1
X	X	Contract Organization (PMO) Contract Number	A/N	15	Prime
X	X	Rebate Period Start Date	N	8	Quarter Begin Date
X	X	Rebate Period End Date	N	8	Quarter End Date
X	X	FF Contracting Organization (PMO) ID Qualifier	A/N	1	Z
X	X	Contract Organization (PMO) ID Code	A/N	17	Prime
X	X	Contracting Organization (PMO) Name	A/N	30	Prime Therapeutics LLC
X	X	FF Manufacturer (PICO) ID Qualifier	A/N	1	C
X	X	Manufacturer (PICO) Name	A/N	30	Manufacturer Name from Prime database
Utilization					
X	X	Record Type	A/N	2	UD = Utilization Record
X	X	Line Number	A/N	11	Unique Line number, starts with 1.
X	X	Data Level	A/N	2	PP = Plan prescription Level or PN = Plan NDC Summary Used For Market Share
X	X	Plan ID Qualifier	A/N	1	Z
X	X	Plan ID Code	A/N	17	Client ID (5 digits)
X	X	Plan Name	A/N	30	Plan Name
X		Pharmacy ID Qualifier	A/N	1	N = NCPDP Provider ID Number
X		Pharmacy ID Code	A/N	17	Pharmacy Number
X		Pharmacy Zip Code	A/N	9	Zip Code
X	X	Product Code Qualifier	A/N	1	N = Eleven-digit NDC
X	X	Product Code	A/N	17	NDC
X	X	Product Description	A/N	30	Brand Name
X	X	FF Total Metric Decimal Quantity	NX	15	Total Units
X	X	Unit of Measure	A/N	2	EA, ML, GM
X		Rebate Days Supply	NX	4	Days supply of product
X		Prescription Type	NX	2	1 = New/Refill, -1 Reversal
X	X	FF Total Number of Prescriptions	NX	8	Net Rx's
X		Prescription Number/Service Reference Number	A/N	7	Rx number
X		Date Filled/Date of Service	NX	8	Fill Date
	X	Therapeutic Class Code Qualifier	A/N	1	Z
	X	Therapeutic Class Code	A/N	17	Drug Group Number
	X	Therapeutic Class Description	A/N	30	Subcontract Name (Product Name, etc)
X	X	Plan Reimbursement Qualifier	A/N	1	2 - excludes dispensing fee
X	X	Plan Reimbursement Amount	NX	12	Ingredient cost paid
X		New/Refill Code	A/N	1	00 = new Rx, 01-99 Number of refills
X	X	Record Purpose Indicator	A/N	1	R - submitted for rebate utilization M - submitted for Market Share
X		Rebate Per Unit Amount	NX	12	Amount per unit being submitted
X		Requested rebate Amount	NX	12	Total Rebate being requested
X		Formulary Code	A/N	17	Financial Shell Name (C-1 Standard, etc.)
X		NPI Qualifier Code	A/N	2	NPI Qualifier
X		NPI Code	A/N	15	NPI Number
X		Claim Number	A/N	20	Rx Claim Unique Claim Number
X		COB	A/N	1	Values 0 - 8
X	X	Prime Assigned Agreement Number	A/N	4	Agreement Number
Trailer					
X	X	Record Type	A/N	2	TR = Trailer
X	X	FF Action Code	A/N	2	00, 02, 05
X	X	Rebate Version Release Number	A/N	5	03.01
X	X	Transmission Date	N	8	Current Date
X	X	Transmission Control Number	A/N	9	Current Date CCYYMMDD
X	X	Rebate Batch Number	A/N	15	2
X	X	Contract Organization (PMO) Contract Number	A/N	15	Prime
X	X	Rebate Period Start Date	N	8	Quarter Begin Date
X	X	Rebate Period End Date	N	8	Quarter End Date
X	X	FF Contracting Organization (PMO) ID Qualifier	A/N	1	Z
X	X	Contract Organization (PMO) ID Code	A/N	17	Prime
X	X	Contracting Organization (PMO) Name	A/N	30	Prime Therapeutics LLC
X	X	FF Manufacturer (PICO) ID Qualifier	A/N	1	C
X	X	Manufacturer (PICO) Name	A/N	30	Manufacturer Name from Prime database
X	X	Grand Total Metric Decimal Quantity	NX	15	Total From UD Record
X	X	Total Record Count	NX	11	Accumulation of Records HD through TR

Exhibit F Excluded Claims Criteria

In addition to the other sections of the Agreement which set out the terms and conditions for Rebate eligibility, this Exhibit F sets out the exclusive criteria for determining claims which shall be excluded from Rebate eligibility, unless otherwise mutually agreed by the Parties in writing or elsewhere in this Agreement. In the event the Parties mutually agree upon additional or different criteria than that expressed in this Exhibit F, the item agreed upon shall be automatically incorporated into the Agreement effective as of the date set forth in such writing.

If Graceway excludes claims submitted by Prime as ineligible for Rebates on the grounds that the claims fall within one or more of the Categories listed below, Graceway shall identify the criteria used to make such exclusion and, upon request from Prime, shall provide reasonable additional supporting documentation. Notwithstanding anything to the contrary here in, if Prime substantiates any claims initially excluded under the terms of this Exhibit F to the satisfaction of Graceway, Graceway shall pay Rebates for said claims.

Category	Description	Terms for Exclusion
Duplicate Rx's Same PBM	This category includes "Duplicate Prescriptions" (defined as, same Product, Prescription Number, Pharmacy, Fill Date and Refill Number) within the submitted quarter.	All claims that fit this Category's Description shall be excluded from Rebate eligibility.
Duplicate Rx's Multiple Customers	This category includes Duplicate Prescriptions (as defined above) across previous submissions from all of Graceway's customers.	<p>Claims that fit this Category's Description shall be excluded from Rebate eligibility except as described below with respect to coordination of benefits situations.</p> <p>All claims submitted by Prime for which a Plan under this Agreement provides primary coverage in a coordination of benefits scenario, shall be eligible for Rebates regardless of whether another managed care organization providing services to a plan, or a plan submits a Duplicate Prescription on behalf of a secondary payor. Graceway acknowledges that regardless of its accounting methods, all claims submitted on behalf of a Plan where such Plan is designated as the primary payor for such claims, and are not otherwise excluded under this Agreement, shall be eligible for Rebates.</p>
Units Exceeding Maximum Quantity	This category includes claims containing units in excess of the normal amounts needed for the applicable days supply for a Product, as defined by the Plan benefit.	All claims that fit this Category's Description shall be excluded from Rebate eligibility.

Invalid Pharmacy Number	This category indicates the involved pharmacy is not listed as a valid pharmacy with the National Council for Prescription Drug Plans (NCPDP).	All claims containing either missing or invalid NCPDP and/or NPI numbers shall be excluded from Rebate eligibility, unless otherwise agreed to by the Parties.
Ineligible Pharmacies	<p>I. NCPDP Dispenser Class and Type Standard. Participating Providers shall be classified in accordance with the most current NCPDP Dispenser Class and Type standards. Claims from the following Types and/or Classes of pharmacies shall be ineligible for Rebates: Government Pharmacies, including but not limited to Indian Health Service/Tribal/Urban Health Pharmacies and Military Pharmacies; IV Infusion Hospitals; VA Hospital Pharmacies; and Nuclear Pharmacies.</p> <p>For purposes of clarity, all claims from Participating Providers in any other NCPDP Dispenser Class and/or Type, including by not limited to Long Term Care Pharmacies; Mail Order Pharmacies; Dispensing Physicians; Specialty Pharmacies; and Institutional Pharmacies, shall be eligible for Rebates, unless otherwise excluded under this Agreement.</p> <p>II. 340B "Covered Entities." All claims from 340B "Covered Entities," as defined by the Public Health Service Act at 42 U.S.C. 256b(a)(4), shall be excluded from Rebate eligibility.</p> <p>III. Outside United States. All claims from Participating Providers located outside of the United States shall be excluded from Rebate eligibility.</p>	
Missing Rx Number	This category indicates prescriptions which do not contain a prescription number.	All claims which do not contain a prescription number shall be excluded from Rebate eligibility.

EXHIBIT B

**FIRST AMENDMENT TO THE
REBATE AND ADMINISTRATIVE FEE AGREEMENT BETWEEN
PRIME THERAPEUTICS LLC AND GRACEWAY PHARMACEUTICALS, LLC**

This amendment, effective July 1, 2009 (the "First Amendment") to the Rebate and Administrative Fee Agreement, (the "Agreement") by and between Prime Therapeutics LLC ("Prime") and Graceway Pharmaceuticals, LLC ("Company") is for the purpose of amending the Agreement as set forth below.

WHEREAS, Prime and Company entered into the Agreement October 1, 2008.

WHEREAS, Prime and Company desire to amend that Agreement.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. Section 1.21, "Client" shall be added as follows:

"1.21 "Client" shall mean an entity that sponsors or administers one or more Plans for which Prime has directly contracted with to provide Formulary Management Services."

2. Section 3.2 Addition or Removal of Plans is deleted and replaced with the following:

"3.2 Client List. A list identifying the Clients to be covered by this Agreement, is set forth in Exhibit C. Prime will notify Company of updates to Exhibit C. New Clients will be deemed accepted by Company unless Company provides a written rejection of such Client within thirty (30) calendar days from Company's receipt of the update from Prime. Any written rejection of a Client by Company must be accompanied by the reason(s) that Company deems the Client a non-reimbursable plan. If such written rejection is not received by Prime within the time period specified above, the Client will be considered agreed upon by Company. Notwithstanding the foregoing, Clients utilizing the National Formulary will automatically be added to this Agreement. Prime will provide Graceway with prompt notice of any deletions from Exhibit C, and any such deletions shall be automatically removed from participation under this Agreement as of the date of the deletion."


3. Exhibit A deleted and replaced with Exhibit A attached hereto.
4. Exhibit C Approved Plans is deleted and replaced with Exhibit C attached hereto.

To the extent any terms of the Agreement conflict with the terms herein, this First Amendment shall govern.

All other terms and conditions of the original Agreement will remain in full force and effect. All capitalized terms used but not defined herein shall have the definition assigned to it in the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be executed by their respective officers or representatives duly authorized to do so.

PRIME THERAPEUTICS LLC

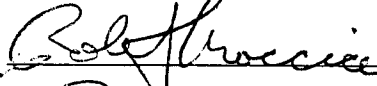
By: 

Name: Radhelle Wan

Its: VP Pharmaceutical Trade Relations

Date: 8-5-09

GRACEWAY PHARMACEUTICALS, LLC

By: 

Name: Robert J. Moccia

Its: PRESIDENT+COO

Date: 7/20/09

EXHIBIT A

1. Products.

Product Number / Current NDC-9	Product Name	Generic Name
29336-0610 00089-0610	Aldara® Cream 5%	Imiquimod cream
13453-0100 29336-0100	Atopiclair Cream	
00089-0815 29336-0815	Maxair® Autohaler®	pirbuterol acetate inhalation aerosol

The term "Products" shall include all package sizes and package types, as well as any changes in the labeler code, for those Products listed in this exhibit. However, line extensions of a Product, such as new dosage forms, new routes of administration, or new strengths, will only be added to this Agreement by mutual agreement of the parties, and Graceway shall not require that such line extensions or new strengths of a Product be added to this Agreement or a Formulary in order for the original NDCs of the Product to be eligible for Rebates and Administrative Fees.

2. Rebate.

Products that are covered on Formulary and meet the requirements set forth in this Agreement shall be eligible for Rebates as set forth below.

<u>Product Number</u> <u>Current NDC-9</u>	<u>Product</u>	<u>Rebate % (off WAC)</u>
29336-0610 00089-0610	Aldara® Cream 5%	5%
13453-0100 29336-0100	Atopiclair Cream	12%
00089-0815 29336-0815	Maxair® Autohaler®	12%

3. Calculation of Rebate.

The Rebate is calculated by multiplying the Product volume by the Rebate percentage. Product volume for a particular Product is defined as utilization of that Product by Participants.

Calculation:

- a. Total Rebate amount per NDC is determined as follows: Price per NDC multiplied by the Rebate percentage, multiplied by the number of Units. The quantity shall be measured in Units unless otherwise defined herein by the Parties.
- b. Calculation of Rebates will be determined at the Client level.
- c. The percent of market share attained will be rounded to 6 decimal places.

4. Price Protection. If Company increases the WAC price of a Product NDC by more than ten percent (10.00%) during any calendar year falling within the term of this Agreement, Company shall pay an additional Rebate percentage on utilization of such Product NDC equal to the portion of the WAC price increase that is greater than ten percent (10.00%). Such additional Rebate percentage shall become effective the first day of the calendar quarter in which the WAC price of the Product NDC exceeds ten

percent (10.00%) and shall continue for the duration of that calendar year. Once the WAC price of a Product NDC has exceeded ten percent (10.00%) within a twelve-month period, the percentage of any additional WAC price increase(s) of that Product NDC during that calendar year will be added to the additional Rebate percentage. Nothing herein shall affect the percentage of any Administrative Fees due under this Agreement.

The following example is for illustrative purposes only:

1/1/09 Product WAC price per Unit:	\$92.47
1/1/09 Product Rebate percentage:	10.0%
1/1/09 Product Rebate per Unit:	\$9.25
1/1/09 Product net price per Unit:	\$83.22 (\$92.47- \$9.25)

Hypothetical 4/1/09 Product price increase:	5.0%
4/1/09 Product price per Unit:	\$97.09
4/1/09 Product Rebate per Unit:	\$9.71 (\$97.09 x 10%)
4/1/09 Product net price per Unit:	\$87.38 (\$97.09 - \$9.71)

Hypothetical 10/1/09 Product price increase:	6.0%
10/1/09 Product price per Unit:	\$102.92
10/1/09 Product Rebate per Unit:	\$11.32 (\$102.92 x 11%)
10/1/09 Product net price per Unit:	\$91.60 (\$102.92 - \$11.32)

1/1/10 Product price per Unit:	\$102.92
1/1/10 Product Rebate percentage:	10.0%
1/1/10 Product Rebate per Unit:	\$10.29 (\$102.92 x 10%)
1/1/10 Product net price per Unit:	\$92.63 (\$102.92 - \$10.29)

Hypothetical 4/1/10 Product price increase:	5.0%
4/1/10 Product price per Unit:	\$108.07
4/1/10 Product Rebate per Unit:	\$10.81 (\$108.07 x 10%)
4/1/10 Product net price per Unit:	\$97.26 (\$108.07 - \$10.81)

Exhibit C
Client List
To the Rebate and Administrative Fee Agreement

Client List
Blue Cross and Blue Shield of Florida
Blue Cross Blue Shield of Illinois
Blue Cross and Blue Shield of Kansas
Blue Cross and Blue Shield of Minnesota
Blue Cross & Blue Shield of Mississippi
Blue Cross and Blue Shield of Montana
Blue Cross and Blue Shield of Nebraska
Blue Cross Blue Shield of New Mexico
BlueCross BlueShield of North Dakota
Blue Cross and Blue Shield of Oklahoma
Blue Cross Blue Shield of Texas
Blue Cross Blue Shield of Wyoming
Excellus BlueCross BlueShield
Clients under Prime National

EXHIBIT C

**SECOND AMENDMENT TO THE
REBATE AND ADMINISTRATIVE FEE AGREEMENT
BETWEEN
PRIME THERAPEUTICS LLC AND GRACEWAY PHARMACEUTICALS, LLC**

This Second Amendment (the "Second Amendment") to the Rebate and Administrative Fee Agreement is by and between Prime Therapeutics LLC, a Delaware limited liability company with its principal place of business located at 1305 Corporate Center Drive, Eagan, MN 55121 ("Prime") and Graceway Pharmaceuticals, LLC, a Delaware limited liability company with its principal place of business located at 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 ("Graceway"). For the purpose of the Second Amendment, Prime and Graceway may each be referred to as a "Party" and, collectively, as the "Parties."

WHEREAS, Prime and Graceway are Parties to the Rebate and Administrative Fee Agreement having the Effective Date of October 1, 2008, and all subsequent amendments thereto, if any, (collectively, the "Agreement"); and

WHEREAS, Prime and Graceway desire to amend that Agreement.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. This Second Amendment shall be **effective October 1, 2010** and shall remain in effect for the Term of the Agreement.
2. Section 1.17, "United States" definition is hereby deleted in its entirety and replaced with the following:
 - 1.17. **"United States"** shall mean the continental United States, Alaska, Hawaii, and United States' Territories.
3. **Section 5.1, Term** is hereby deleted in its entirety and replaced with the following:
 - 5.1 **Term.** This Agreement shall commence on October 1, 2008 (the "Effective Date") and shall continue in full force and effect until September 30, 2011, unless earlier terminated in accordance with the terms and provisions of this Agreement (the "Term").
4. **Exhibit A** is hereby deleted in its entirety and replaced with **Exhibit A, Rebate Product Schedule** attached hereto.
5. **Exhibit B, Market Definitions** is hereby deleted in its entirety and replaced with **Exhibit B, Market Definitions** attached hereto.
6. **Exhibit C, Client List** is hereby deleted in its entirety and replaced with **Exhibit C, Client List** attached hereto.
7. **Exhibit D, Administrative Fees** is hereby deleted in its entirety and replaced with **Exhibit D, Administrative Fees** attached hereto.

To the extent any terms of the Agreement conflict with the terms herein, this Second Amendment shall govern.

All other terms and conditions of the original Agreement will remain in full force and effect. All capitalized terms used but not defined herein shall have the definition assigned to it in the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be executed by their respective officers or representatives duly authorized to do so.

PRIME THERAPEUTICS LLC

By: 

Name: Rachelle Wan

Title: VP Pharmaceutical Trade Relations

Date: 9-16-10

GRACEWAY PHARMACEUTICALS, LLC

By: 

Name: Robert Meccia

Title: President and COO

Date: 7/29/10

Exhibit A Rebate Product Schedule

1. Products.

Product Number / Current NDC-9	Product Name	Generic Name
29336-0710	Zyclara™ Cream 3.75%	Imiquimod cream
29336-0100	Atopiclair Cream	
29336-0815	Maxair® Autohaler®	pirbuterol acetate inhalation aerosol

The term "Products" shall include all package sizes and package types, as well as any changes in the labeler code, for those Products listed in this Exhibit A. However, line extensions of a Product, such as new dosage forms, new routes of administration, or new strengths, will only be added to this Agreement by mutual agreement of the parties, and Graceway shall not require that such line extensions or new strengths of a Product be added to this Agreement or a Formulary in order for the original NDCs of the Product to be eligible for Rebates and Administrative Fees.

2. Rebate.

Products that are covered on Formulary and meet the requirements set forth in this Agreement shall be eligible for Rebates as set forth below.

Product Number Current NDC-9	Product	Rebate % (off WAC)
29336-0710	Zyclara™ Cream 3.75%*	12%
29336-0100	Atopiclair Cream	12%
29336-0815	Maxair® Autohaler®	12%

* Zyclara™ is Rebate eligible when quantity limits, based on FDA approved package insert, are applied.

3. Calculation of Rebate.

The Rebate is calculated as set forth below.

Calculation:

- a. Total Rebate amount per NDC is determined as follows: WAC per NDC multiplied by the Rebate percentage, multiplied by the number of Units. The quantity shall be measured in Units unless otherwise defined herein by the Parties.
- b. Calculation of Rebates will be determined at the Client level.
- c. The percent of market share attained will be rounded to 6 decimal places.

4. Price Protection.

If Graceway increases the WAC price of a Product NDC by more than ten percent (10.00%) during any calendar year falling within the term of this Agreement, Graceway shall pay an additional Rebate percentage on utilization of such Product NDC equal to the portion of the WAC price increase that is greater than ten percent (10.00%). Such additional Rebate percentage shall become effective the first day of the calendar quarter in which the WAC price of the Product NDC exceeds ten percent (10.00%) and shall continue for the duration of that calendar year. Once the WAC price of a Product NDC has exceeded ten percent (10.00%) within a twelve-month period, the percentage of any additional WAC price increase(s) of that Product NDC during that calendar year will be added to the additional Rebate percentage. Nothing herein shall affect the percentage of any Administrative Fees due under this Agreement.

The following example is for illustrative purposes only:

1/1/09 Product WAC price per Unit:	\$92.47
1/1/09 Product Rebate percentage:	10.0%
1/1/09 Product Rebate per Unit:	\$9.25
1/1/09 Product net price per Unit:	\$83.22 (\$92.47 - \$9.25)
Hypothetical 4/1/09 Product price increase:	5.0%
4/1/09 Product price per Unit:	\$97.09
4/1/09 Product Rebate per Unit:	\$9.71 (\$97.09 x 10%)
4/1/09 Product net price per Unit:	\$87.38 (\$97.09 - \$9.71)
Hypothetical 10/1/09 Product price increase:	6.0%
10/1/09 Product price per Unit:	\$102.92
10/1/09 Product Rebate per Unit:	\$11.32 (\$102.92 x 11%)
10/1/09 Product net price per Unit:	\$91.60 (\$102.92 - \$11.32)
1/1/10 Product price per Unit:	\$102.92
1/1/10 Product Rebate percentage:	10.0%
1/1/10 Product Rebate per Unit:	\$10.29 (\$102.92 x 10%)
1/1/10 Product net price per Unit:	\$92.63 (\$102.92 - \$10.29)
Hypothetical 4/1/10 Product price increase:	5.0%
4/1/10 Product price per Unit:	\$108.07
4/1/10 Product Rebate per Unit:	\$10.81 (\$108.07 x 10%)
4/1/10 Product net price per Unit:	\$97.26 (\$108.07 - \$10.81)

Exhibit B
Market Definitions

Graceway Product	Competitive Product Name	Market Definitions
ZYCLARA	ALDARA	Dermatologic Agents
ZYCLARA	CARAC	Dermatologic Agents
ZYCLARA	EFUDEX	Dermatologic Agents
ZYCLARA	FLUOROPLEX	Dermatologic Agents
ZYCLARA	LEVULAN	Dermatologic Agents
ZYCLARA	SOLARAZE	Dermatologic Agents

Graceway Product	Competitive Product Name	Market Definitions
MAXAIR AUTOHALER	PROAIR HFA	Respiratory Agents
MAXAIR AUTOHALER	PROVENTIL HFA	Respiratory Agents
MAXAIR AUTOHALER	PROVENTIL	Respiratory Agents
MAXAIR AUTOHALER	VENTOLIN HFA	Respiratory Agents
MAXAIR AUTOHALER	XOPENEX HFA	Respiratory Agents

Exhibit B (Continued)
Market Definitions

Graceway Product	Competitive Product Name	Market Definitions
ATOPICLAIR	CUTIVATE CREAM	Dermatologic Agents
ATOPICLAIR	CUTIVATE LOTION	Dermatologic Agents
ATOPICLAIR	CUTIVATE OINTMENT	Dermatologic Agents
ATOPICLAIR	DESONATE GEL	Dermatologic Agents
ATOPICLAIR	ELIDEL CREAM	Dermatologic Agents
ATOPICLAIR	ELOCON CREAM	Dermatologic Agents
ATOPICLAIR	LOCOID LIPOCREAM	Dermatologic Agents
ATOPICLAIR	MIMYX CREAM	Dermatologic Agents
ATOPICLAIR	PROTOPIC	Dermatologic Agents
ATOPICLAIR	EPICERAM	Dermatologic Agents

Market Definition Updates:

The above defined Market Definitions can be updated upon the approval of a new FDA approved pharmaceutical product within the therapeutic class if Graceway notifies Prime in writing of such change and the Parties mutually agree in writing to such change.

Market Definition changes shall be effective for the quarter following the quarter in which Prime receives written notification from Graceway about the change. If Graceway does not notify Prime in writing of a change to the Market Definition, the Market Definition shall remain unchanged.

If Graceway or any other manufacturer has more than one pharmaceutical product within a Market Definition, all of Graceway's or such other manufacturer's pharmaceutical products within the Market Definition shall be considered a single product.

Exhibit C
Client List
To the Rebate and Administrative Fee Agreement

Client List
Blue Cross and Blue Shield of Alabama
Blue Cross and Blue Shield of Florida
Blue Cross Blue Shield of Illinois
Blue Cross and Blue Shield of Kansas
Blue Cross and Blue Shield of Minnesota
Blue Cross & Blue Shield of Mississippi
Blue Cross and Blue Shield of Montana
Blue Cross and Blue Shield of Nebraska
Blue Cross Blue Shield of New Mexico
BlueCross BlueShield of North Dakota
Blue Cross and Blue Shield of Oklahoma
Blue Cross Blue Shield of Texas
Blue Cross Blue Shield of Wyoming
Excellus BlueCross BlueShield
Clients under Prime National

Exhibit D Administrative Fees

Graceway agrees to pay Prime an Administrative Fee, as set forth in the table below, for Utilization which is eligible for Rebates hereunder.

<u>Product Number</u> <u>Current NDC-9</u>	<u>Product</u>	<u>Administrative Fee (% of</u> <u>WAC)</u>
29336-0710	Zyclara™ Cream 3.75%	3%
29336-0100	Atopiclair Cream	3%
29336-0815	Maxair® Autohaler®	3%

Calculation of Administrative Fee: Administrative Fee = Units of Product x WAC x applicable Administrative Fee % for Product

In consideration of Administrative Fees, Prime will perform services and reporting related to such Formularies, including:

- Monitor the Plans' and Clients' compliance with the terms and conditions of this Agreement.
- Calculate the amounts of Rebates and Administrative Fees applicable to Product utilization.
- Provide Graceway with detailed reports on Rebates and the Administrative Fee calculations as set forth in this Agreement.
- Conduct internal audits to verify that the terms and conditions of this Agreement are applied correctly.
- Work with Graceway on internal audits per the applicable terms of this Agreement.
- Subject to applicable law and upon request by Graceway, provide Graceway access to appropriate Prime staff to present applicable clinical information regarding Products.
- Semi-Annual contract review meeting between Graceway's National Account Manager and the appropriate Prime Pharmaceutical Trade Development representative.

EXHIBIT D

**THIRD AMENDMENT TO THE
REBATE AND ADMINISTRATIVE FEE AGREEMENT
BETWEEN
PRIME THERAPEUTICS LLC AND GRACEWAY PHARMACEUTICALS, LLC**

This Third Amendment (the "Third Amendment") to the Rebate and Administrative Fee Agreement is by and between Prime Therapeutics LLC, a Delaware limited liability company with its principal place of business located at 1305 Corporate Center Drive, Eagan, MN 55121 ("Prime") and Graceway Pharmaceuticals, LLC, a Delaware limited liability company with its principal place of business located at 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 ("Graceway"). For the purpose of the Third Amendment, Prime and Graceway may each be referred to as a "Party" and, collectively, as the "Parties."

WHEREAS, Prime and Graceway are Parties to the Rebate and Administrative Fee Agreement having the Effective Date of October 1, 2008, and all subsequent amendments thereto, if any, (collectively, the "Agreement"); and

WHEREAS, Prime and Graceway desire to amend that Agreement.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. This Third Amendment shall be **effective October 1, 2011** and shall remain in effect for the Term of the Agreement.
2. **Section 5.1, Term** is hereby deleted and replaced with the following:
 - 5.1 **Term.** This Agreement shall commence on October 1, 2008 (the "Effective Date") and shall continue in full force and effect until December 31, 2011, unless earlier terminated in accordance with the terms and provisions of this Agreement (the "Term").

To the extent any terms of the Agreement conflict with the terms herein, this Third Amendment shall govern.

All other terms and conditions of the Agreement will remain in full force and effect. All capitalized terms used but not defined herein shall have the definition assigned to it in the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to be executed by their respective officers or representatives duly authorized to do so.

PRIME THERAPEUTICS LLC

By: _____

Name: Peter J. Wickersham

Title: Senior Vice President, Cost of Care

Date: 9/29/11

GRACEWAY PHARMACEUTICALS, LLC

By: _____

Name: Robert Moccia

Title: President and COO

Date: 10/3/11

EXHIBIT E

PRIME THERAPEUTICS LLC

MEDICARE PART D REBATE AND ADMINISTRATIVE FEE AGREEMENT

This Medicare Part D Rebate and Administrative Fee Agreement ("Agreement") is entered into by and between **Prime Therapeutics LLC**, a Delaware limited liability company with its principal place of business located at 1305 Corporate Center Drive, Eagan, Minnesota 55121 ("Prime") and pharmaceutical drug manufacturer, **Graceway Pharmaceuticals, LLC**, a Delaware limited liability company with its principal place of business located at 340 Martin Luther King Jr. Blvd, Suite 500, Bristol, Tennessee 37620 ("Company"). Prime and Company are jointly referred to herein as the "Parties" and individually as a "Party."

WHEREAS, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 added an outpatient prescription drug benefit entitled Medicare Part D to the Medicare program;

WHEREAS, clients of Prime have been selected by, and have contracts with, the Centers for Medicare and Medicaid Services ("CMS") to be sponsors of prescription drug plans (PDPs), Medicare Advantage prescription drug plans (MA-PDs) and offer outpatient prescription drug benefits through Part D Plans to eligible Members of such Part D Plans;

WHEREAS, Prime is in the business of providing pharmacy benefit management services and has contracts with its clients who are sponsors of Part D Plans to provide pharmacy benefit management services to such Part D Plans;

WHEREAS, Company is engaged in the business of developing, manufacturing, and marketing prescription drugs; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions under which Company will pay Rebates to Prime on behalf of Part D Sponsors' Part D Plans and Administrative Fees to Prime.

NOW, THEREFORE, in consideration of the foregoing and of the representations, warranties, and promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** For the purpose of this Agreement, the following terms will have the meanings set forth below:
 - a. **"Administrative Fee(s)"** shall mean a fee paid by Company to Prime for services provided by Prime to Company as set forth in Schedule F.
 - b. **"Act"** shall mean the Medicare Prescription Drug, Improvement and Modernization Act of 2003 as codified under 1860D of Title XVIII of the Social Security Act as amended by the Patient Protection and Affordable Care Act and as amended by the Health Care and Education Reconciliation Act of 2010.
 - c. **"CMS Contract"** shall mean a contract that a Part D Sponsor enters into with CMS under which such Part D Sponsor agrees to provide prescription drug coverage under a Part D Plan pursuant to the requirements set forth under the Act and the Part D Regulations.
 - d. **"Disadvantaging"** shall mean a Product is treated less favorably than other branded Pharmaceutical Products in the same Therapeutic Class through Formulary tier placement, copay or coinsurance level, utilization management, step therapy, Prior Authorization, or other access or

MW

reimbursement restrictions for the Product, unless otherwise agreed to in the Agreement, and subject to the exceptions listed in subsection 3.d. of this Agreement.

e. **"Formulary"** shall mean an electronic or paper list of Pharmaceutical Products which are covered by a Part D Plan as defined at 42 CFR §423.4.

f. **"Formulary Management Services"** shall mean services provided by Prime to Part D Sponsors on behalf of the Part D Plans under separate contractual arrangements with such Part D Sponsors. Formulary Management Services shall include services related to one or more of the following: clinical and financial consultative services; Rebate administration; drug utilization evaluation; consultation and/or implementation of drug utilization management tools such as Prior Authorization, step therapy, or quantity limits.

g. **"Invoice Period"** shall mean a length of time equal to a calendar quarter under this Agreement.

h. **"Member"** shall mean an individual who is enrolled in or covered by a Part D Plan.

i. **"Part D Plan"** shall mean a prescription drug plan ("PDP"), a Medicare Advantage prescription drug plan ("MA-PD"), as defined at 42 CFR §423.4, which is offered by a Part D Sponsor, has been approved by CMS as specified at 42 CFR 423.272, and in regard to which Prime has agreed to provide Formulary Management Services.

A Part D Plan shall not include: (i) programs or entities which maintain no eligibility criteria or (ii) programs or entities for which Prime or its Part D Sponsors provide only claims processing services.

j. **"Part D Regulations"** shall mean the statutes, rules, regulations, CMS policies and guidelines and instructions applicable to Part D Plans, Part D Sponsors, first tier entities and downstream entities as defined at 42 CFR §423.4, as the same may be amended or supplemented from time to time, together with any other regulations promulgated from time to time to implement the Act, as applicable.

k. **"Part D Sponsor"** shall mean an entity offering a Part D Plan, as defined above, which has entered into a CMS Contract and for which Prime has agreed to provide Formulary Management Services.

l. **"Participating Provider"** shall mean a person or an entity properly licensed to dispense legend Pharmaceutical Products, including a mail service pharmacy, a dispensing physician or a long term care pharmacy, which has agreed to provide services to Members and has an agreement in effect with Prime or a Part D Sponsor.

m. **"Pharmacy and Therapeutics Committee" or "P&T"** shall mean a group of physicians, pharmacists and other health care professionals who function as an advisory panel to Prime and/or the Part D Sponsors regarding the safety, efficacy, cost and uniqueness of Pharmaceutical Products, and the development and maintenance of the Formularies.

n. **"Pharmaceutical Product"** shall mean pharmaceutical and other biological products, which are branded drugs or generic drugs.

o. **"Price"** shall mean the published wholesale acquisition cost ("WAC") of a Product charged by Company to purchasing wholesalers, excluding payment terms, such as prompt payment or other payments, discounts, credits, chargebacks, or freight charges, as established by Company and effective as of the last day of an Invoice Period. The Price is subject to change by Graceway at any time and from time to time without notice. Price is obtained by Prime from Medi-Span, First DataBank or such other industry accepted provider of Pharmaceutical Product price information as selected by Prime.

- p. **"Prior Authorization"** shall mean a Pharmaceutical Product is covered by a Part D Plan only when appropriate pre-existing criteria applicable for the prescribing of such Pharmaceutical Product have been satisfied.
- q. **"Products"** shall mean the Pharmaceutical Products sold and/or marketed by Company and listed in Exhibit A to this Agreement.
- r. **"Rebates"** shall mean a discount paid by Company to Prime on behalf of Part D Sponsors for Product(s) dispensed to a Member by a Participating Provider, for which the conditions required to receive a Rebate as set forth in this Agreement are satisfied. Rebates do not include Administrative Fees.
- s. **"Therapeutic Class"** shall mean Pharmaceutical Products that are therapeutically equivalent and included in the same class as Products, consistent with Medi Span, or as otherwise agreed upon by Prime and Company. The Pharmaceutical Products that are included in a Therapeutic Class under this Agreement are listed in Exhibit B.
- t. **"Unit"** shall mean the smallest unit of measure (e.g. tablet, capsule, milliliter, gram).
- u. **"United States"** shall mean the continental United States, Alaska, Hawaii, and United States' Territories.

2. **INVOICING AND PAYMENT OF REBATES AND ADMINISTRATIVE FEES.**

- a. **Rebate Amounts.** Company agrees to pay to Prime the amount of Rebates as set forth in Exhibit C for each Product listed on Exhibit A that satisfies the Rebate eligibility requirements in this Agreement. Such Rebates shall be exclusive of any and all rebates or other forms of compensation or remuneration that Company owes to Prime under a separate contractual obligation(s). For avoidance of doubt, claims applicable to a Member's utilization of Products which are not covered by a Part D Plan solely due to the application of a deductible or an initial coverage limit (e.g., the "donut hole"), but which otherwise would be covered under such Part D Plan, shall be eligible for Rebates and Administrative Fees under this Agreement.
- b. **Administrative Fee.** Subject to the terms and conditions of this Agreement, Company agrees to pay Prime an Administrative Fee as set forth in and in accordance with Exhibit F to this Agreement. Any Administrative Fee reflected on Exhibit F will be a percentage of the Price of the Product. Prime and Company acknowledge and agree that the Administrative Fee is not given in exchange for any explicit or implicit agreement to recommend or provide favorable status for the Product.
- c. **Invoicing.** Prime will transmit a Rebate invoice to Company within forty-five (45) calendar days after the end of each Invoice Period, for Products dispensed to Members by Participating Providers that satisfy the Rebate eligibility requirements in this Agreement during that period and, if applicable, during the just prior six (6) months (the "Rebate Invoice"). Any applicable Administrative Fee invoice (the "Administrative Fee Invoice") will be separately transmitted at or near the time the Rebate Invoice is transmitted to Company. Rebate Invoices and Administrative Fee Invoices are hereinafter collectively referred to as the "Invoice" or "Invoices". Both Parties agree to support the National Council for Prescription Drug Plans ("NCPDP") billing and payment standards for Rebate Invoices.
- d. **Rebate Invoice Data.** All Rebate Invoices will include with respect to each paid claim of prescriptions dispensed for Products listed in Exhibit A the information set forth in Exhibit E. If a Part D Plan fails to satisfy the criteria for payment of Rebates for any Invoice Period, Prime will not be obligated to provide Company with any Rebate Invoice data applicable to such Invoice Period for such Part D Plan, and Company shall not be obligated to pay Rebates applicable to such Part D Plan.

- e. Claims Exclusion Criteria. In addition to the general Rebate eligibility requirements under the Agreement, such as the Formulary status of a Product, the criteria for determining specific claims exclusions are set forth in Exhibit D.
- f. Company Payments. Company shall pay each Invoice for the applicable Invoice Period within thirty (30) calendar days of Company's receipt of such Invoices. Company will transmit its payment to Prime either electronically or by check, the specific means to be agreed upon by the Parties. Payments by Company of the Invoices shall include information about the payment at a Part D Plan ID, Product, and National Drug Code ("NDC") level in an electronic format mutually agreed to by the Parties, which shall be sent to Prime in conjunction with the Invoice amounts.
- Company agrees that the time period by which it is to pay any Invoices for any Invoice Period will not be delayed by: (i) changes made to the Invoice data by Company; (ii) delays by Company in responding to the Invoice data; or (iii) a resubmission of all or any part of the Invoice data by Prime at the request of Company due to Company's errors, oversights, or omissions. Notwithstanding the foregoing, should an Invoice from Prime be erroneous due to Prime's oversight or omission, Company may request Prime to correct and resubmit such Invoice and the time period by which Company is to pay Rebates and Administrative Fees may be delayed by the amount of time it takes Prime to correct and resubmit such Invoice.
- g. Disputed Invoices. In the event Company disputes, any portion of an Invoice, Company shall pay the undisputed portion of each respective Invoice within thirty (30) calendar days of Company's receipt of the Invoice, including a complete statement indicating Company's calculation of Rebates and Administrative Fees and the basis for any disputed amounts. Disputes by Company regarding the data elements of a Rebate Invoice shall be limited to the data elements which are defined under Exhibits D and E of this Agreement. The Parties will use commercially reasonable efforts to informally resolve any disputes of Rebate Invoices in accordance with Section 6.n. of this Agreement.
- h. Late Payments. If Company fails to pay an undisputed amount of any Invoice or respond to the Invoice within the applicable payment period, Company will be obligated to pay interest to Prime on the full unpaid amount or, if amounts are disputed, on the unpaid undisputed amount at the rate of the lesser of (i) one percent (1.0%) per month, or (ii) the maximum amount allowed by law. Company will pay such interest to Prime within thirty (30) calendar days of receiving a late payment invoice from Prime.
- i. Overpayments and Underpayments. In the event that either Party claims that Company has overpaid or underpaid Rebates and/or Administrative Fees, as a result of an audit or otherwise, the Party claiming to have overpaid or been underpaid Rebates and/or Administrative Fees shall notify the other Party in writing of the amount of such claim and the specific grounds on which that claim is based. The responding Party shall then have thirty (30) calendar days to submit a written response to the claiming Party. The Parties agree to use commercially reasonable efforts to informally resolve any such claims. If the Parties are unable to reach a mutually acceptable informal resolution, the claiming Party may utilize the dispute resolution procedures set forth in section 6.n. of this Agreement. Except as the result of an audit properly conducted pursuant to section 4.b of this Agreement, any written notice of claim for overpayment or underpayment of Rebates and/or Administrative Fees must be asserted in a written document dated and received by the Party against whom the claim is made no later than eighteen (18) months from the date of the respective Invoice. Except as the result of an audit properly conducted pursuant to section 4.b of this Agreement, unless written notice is made by the claiming Party within eighteen (18) months from the date of an invoice, the Parties expressly waive the right to contest or challenge that invoice.
- j. Sale of Products and Change to Marketing Arrangements. Company shall notify Prime in writing within thirty (30) calendar days of any sale of a Product or change to a marketing arrangement, which impacts payment of Rebates and Administrative Fees by Company under this Agreement. In the event such a sale or change to a marketing arrangement occurs, Company shall pay Rebates and

Administrative Fees on any such Product through the end of the Invoice Period in which such sale or change occurs, unless another party agrees to fully assume that obligation.

k. Costs of Product Recalls and Field Corrections. If Company removes a Product from the market or conducts a field correction on its own initiative, by U.S. Food and Drug Administration ("FDA") request or by FDA order, Company shall reimburse Prime for the direct, actual, reasonable and documented costs and expenses it or the Part D Sponsors incurs in responding to the recall or field correction. Such costs and expenses include, but are not limited to: (i) costs and expenses incurred by Prime and/or a Part D Sponsor to (A) communicate with Part D Sponsors, Part D Plans and/or Members about the recall or correction, (B) modify its Formulary management systems, and/or (C) to modify the Formulary, and/or (ii) costs and expenses incurred by a Part D Sponsor to reimburse Members for a Product which was dispensed to Members, but which was not completely usable due to the recall or field correction.

l. Best Price. Prime acknowledges that the Medicaid Drug Rebate Program provides that Company may exclude the price of Products used by Members of a Part D Plan from its calculation of the "best price" for Products (42 U.S.C. §1396r-8). The offer of the Rebates and Administrative Fees is conditioned upon the ability of Company to exclude such amounts from the calculation of the Medicaid "best price". If any Rebate or Administrative Fee calculated with respect to any NDC number for a Product for a certain quarter would cause the creation of a new "best price" for that Product, due to the inapplicability of the exclusion or otherwise, Company reserves the right in its sole discretion to prospectively to the highest level that avoids the establishment of a new best price and retrospectively on Rebates not yet paid, decrease the Rebate for the Product to an amount such that the resultant price for the Product shall be equal to the then-applicable Medicaid "best price".

3. **OBLIGATIONS OF PRIME.**

a. Part D Sponsor List. On at least a quarterly basis Prime shall provide a list to Company that identifies the Part D Sponsors covered by this Agreement. Prime shall also notify Company of new Part D Sponsors to be covered by the Agreement prior to invoicing for Rebates and Administrative Fees applicable to such new Part D Sponsors.

b. Copy of Formulary. Prime shall maintain and make available to Company, a full copy of the Formulary(ies) either in electronic or paper format on an annual basis, and any updates to such Formulary(ies) on a quarterly basis.

c. Inclusion of Products on Formulary. In order for a Product listed on Exhibit A to this Agreement to be eligible for Rebates, Prime and/or a Part D Plan will list such Product on Formulary upon acceptance by the applicable P&T Committee. Each Part D Plan that lists and covers a Product on a Formulary in accordance with the requirements of this Agreement shall be eligible for Rebates for Product dispensed to Members. Prime and/or a Part D Plan may include a Product in more than one Therapeutic Class on a Formulary.

The Rebates requirements under this Agreement are conditions of eligibility and are not an obligation imposed on Prime or any particular Part D Plan. Prime agrees that any Rebate negotiations or decisions do not and have not influenced decisions on clinical safety or efficacy of Products covered under this Agreement. In the event that one or more Product(s) is removed from a Formulary, Company shall not be obligated to pay Rebates or Administrative Fees for such Product(s) for that Formulary, after such removal occurs. Notwithstanding the foregoing, nothing in this paragraph shall limit Company's obligations under this Agreement with respect to other Products, which remain on Formulary.

Company acknowledges and agrees that, the Formulary(ies) may be subject to certain requirements under the Part D Regulations, including, but not limited to: (i) CMS's right to evaluate and compare the Formulary(ies) and its categories and classes with the model guidelines developed by the

United States Pharmacopoeia; (ii) review by a P&T Committee; and (iii) certain timing limitations restricting changes to the Formulary's Therapeutic Classes to the beginning of each Part D Plan year. For avoidance of doubt, the Products included on such Formulary may be changed more than once a year.

d. Exceptions from Disadvantaging. Company agrees that the following shall not be considered disadvantageous to its Products: (i) Any cost designations of Products, including but not limited to, Formulary tier designations, cost sensitive lists or relative dollar signs, which are based on the Act, Part D Regulations and CMS Formulary guidelines; (ii) preference for a competing Pharmaceutical Product by Prime or a Part D Plan over a Product on an individual Members basis for reasons of medical appropriateness as determined by a physician or pharmacist or other licensed health care professional; (iii) utilization management procedures, such as step therapy, or quantity limits which are based on FDA approved indications, prescribing information, dosing schedules, clinical studies, and/or nationally recognized treatment guidelines which do not Disadvantage such Product, unless otherwise agreed to in this Agreement; (iv) unless otherwise specified in this Agreement, benefit designs which prefer generic Pharmaceutical Products, including but not limited to, copayments for generic Pharmaceutical Products which are lower than copayments applicable to Products or placement of generic Pharmaceutical Products on a preferred Formulary tier; (v) placement of Products on some but not all of Prime's or a Part D Plan's Formularies; (vi) any educational or similar program conducted by Prime or a Part D Plan under which Prime or the Part D Plan communicate to health care providers and/or Participating Providers about a new form or line of a competing Pharmaceutical Product on Formulary to assist Members of a Part D Plan already on the competing Pharmaceutical Product to transition to the new form or line of such Pharmaceutical Product; or (vii) actions taken by the dispensing pharmacy.

e. Own Use. Prime agrees that to the best of its knowledge any Product(s) dispensed to a Member pursuant to this Agreement will have been dispensed for the Member's own use under a Part D Plan that has included the Product on Formulary and not for resale or distribution. "Own Use" shall have the meaning defined in *Abbott Laboratories, Inc. v. Portland Retail Druggist Ass'n., Inc.*, 425 U.S. 1 (1976) and *DeModena v. Kaiser Foundation Health Plan, Inc.*, 743 F.2d 1388 (9th Cir. 1984).

f. Disclosures Required by Law. Prime represents that to the extent required by law (including any requirements under the Employee Retirement Income Security Act of 1974, as amended), it shall disclose the existence or any other aspect of this Agreement to any party which receives Rebates under this Agreement.

g. Distribution of Rebates. Company acknowledges and agrees that the Rebates paid pursuant to this Agreement have been negotiated by Prime for the benefit of the Part D Sponsors with which it has a business arrangement. Rebates shall be paid to Prime for distribution and allocation to the Part D Sponsors, pursuant to the contractual agreement between Prime and the Part D Sponsor. Company shall have no right to influence such distribution or allocation.

h. Safe Harbor. The Parties each agree that, in performance of this Agreement, each Party will, to the extent applicable, fully comply with the provisions of the Social Security Act, 1128B(b) (42 U.S.C. § 1320a-7b(b)), which, inter alia, prohibit the knowing or willful solicitation or receipt of any remuneration, directly or indirectly, in return for purchasing or recommending or arranging purchasing of any goods, services, or items for which payment may be made in whole or in part under a federal or state healthcare program. The Parties acknowledge and agree that the Rebates paid pursuant to this Agreement are intended to constitute discounts (as such term is used at 42 U.S.C. § 1320a-7b(b)(3)(A) and in regulations at 42 C.F.R. § 1001.952(h) (the "Discount Safe Harbor")). The Parties further acknowledge and agree that the Administrative Fees paid pursuant to this Agreement are intended to constitute payments covered under the regulations at 42 C.F.R. § 1001.952 (j) (the "GPO Safe Harbor"). In the event that the Department of Health and Human Services Office of the Inspector General subsequently clarifies or promulgates safe harbor regulations under which the Rebates and

Administrative Fees hereunder may be eligible for additional safe harbor protection(s), the Parties shall meet to consider whether modifications of this Agreement are appropriate.

i. Reporting. Rebates provided in accordance with this Agreement will be considered discounts and/or price concessions off the purchase price of Products and will be treated as "direct or indirect remuneration" ("DIR") as such term is described in 42 C.F.R. § 423.308. To the extent Administrative Fees provided in accordance with this Agreement do not constitute bona fide service fees as defined in 42 C.F.R. §§414.802 and 447.502, such fees will be considered discounts and/or price concessions off the purchase price of Products, and will, to that extent, be treated as DIR. The Parties have not characterized the Administrative Fees hereunder as bona fide service fees. Prime represents and warrants that: (i) Prime shall disclose to each Part D Sponsor the existence of this Agreement; and (ii) each Part D Sponsor is aware of its obligation to report Rebates and Administrative Fees to the appropriate federal and/or state agencies and authorities in accordance with federal and state laws and regulations, including in accordance with the Act, the Part D Regulations, and any subsequent amendments or modifications applicable thereto. At no time shall Prime take any steps to retain or allocate Rebates or Administrative Fees in a manner inconsistent with or inappropriate under the Act and Part D Regulations.

4. RECORDS, AUDIT AND CONFIDENTIALITY.

a. Records. During the term of this Agreement and for a period of three (3) years thereafter, or such longer period as may be required by law, including specifically the Part D Regulations, each of the Parties shall maintain records related to its obligations and responsibilities under this Agreement.

b. Audit. Each Party shall have the right, subject to the records and confidentiality provisions contained herein, to audit, or to engage an independent firm to audit the other Party's performance and compliance with its obligations under this Agreement, provided; however, that each Party shall have the right to approve or disapprove an independent auditor selected by the other Party to perform an audit on its behalf. Such approval shall not be unreasonably withheld. Except as otherwise required by law, each Party's right to audit will be limited to the previous eighteen (18) months for which Rebates have been paid as determined from the date written notice of an audit is given by a Party, and the Parties further agree that audits of a Party shall occur no more than once annually. The Parties agree that once an audit applicable to a specific time period under this Agreement is completed, records applicable to such time period shall no longer be subject to any future audits other than as required by law or based on reasonable suspicion of fraud.

Each Party will cooperate with the request for audit and provide access to any requested information that is deemed relevant to such audit during normal business hours and upon reasonable notice. Notwithstanding the foregoing, Prime is not required to provide actual claims data for competing Pharmaceutical Products for such audit. Each Party shall have the right to specify certain confidential, trade secret or proprietary information that should not be disclosed to the other Party it being expressly understood that neither Party will be required to disclose any information contrary to applicable law or in violation of Member confidentiality. Each Party may require the other Party or its independent auditors to execute a confidentiality and nondisclosure agreement reasonably satisfactory to the responding Party prior to the inception of any audit. The requesting Party shall pay all costs it incurs in conducting the audit or inspection request.

The Parties acknowledge and agree that CMS, the Department of Health and Human Services, the Comptroller General, a Part D Sponsor and/or their designees may have the right to inspect records and information relating to each Party's performance under this Agreement pursuant to applicable Part D Regulations, and upon the request by any such party, each Party shall comply, to the extent required of such Party by law, with the requests pursuant to the Part D Regulations and any other applicable law.

c. Confidentiality. The Parties understand and agree that in the performance of this Agreement, each Party may have access to private or confidential information of the other, including but not limited to trade secrets, proprietary information, marketing and business plans, customer lists, financial information, personnel information, technical information, processes, formulas, procedures, Formulary and associated information, pharmacy lists, information on and relating to invoices and reports provided to Company by Prime, operations and any other information or data designated as confidential or proprietary by the disclosing Party (collectively, "Confidential Information"). Each Party agrees that (i) all Confidential Information shall remain the sole and exclusive property of the owner and disclosing Party; (ii) that it shall maintain and cause its employees, agents, directors, officers and assigns to maintain the confidentiality and secrecy of the Confidential Information; and (iii) that it will use the Confidential Information solely in connection with performing its duties and obligations under this Agreement or for internal business purposes related to its relationship with the other Party. If Company uses a third party to review or validate claims data and invoices, Company agrees it will notify Prime in writing and will cause such third party to agree in writing to confidentiality obligations which are at least as stringent as those set forth herein.

Notwithstanding the foregoing, such Confidential Information shall not include information that: (i) the other Party can establish to have been in its possession prior to receiving the information; (ii) is now or later becomes generally publicly available through no fault of the Party receiving the information; (iii) is received from a third party which had the right to disclose the information; or (iv) is approved by the other Party for disclosure. In addition, the Parties expressly acknowledge and agree that they may disclose their relationship, the other Party's Confidential Information, and the Products covered by this Agreement as required by law or regulation. Company also acknowledges that Prime may disclose terms of this Agreement to those Part D Sponsors that are in receipt of Rebates in accordance with this Agreement or their auditors, or for marketing purposes to prospective plans, provided such parties are under comparable confidentiality restrictions.

Immediately upon the expiration or other termination of this Agreement, each Party upon written request shall return to the other Party any and all copies of the other Party's Confidential Information, provided one copy may be kept for archival purposes or as required by law or regulation. The Parties shall comply with any applicable laws related to Member confidentiality, including state and federal privacy and security requirements, and the security and privacy provisions stated in the Part D Regulations at 42 CFR §403.812. The obligations of confidentiality in this Agreement shall survive any termination of this Agreement for a period of five (5) years thereafter, or such longer period as required by law.

Company acknowledges that Prime may be required to make its books and records available, including the Confidential Information under this Agreement, to CMS in accordance with 42 CFR §423.505 (i)(2). Except where Prime may disclose Confidential Information to CMS as required, if a Party is compelled by law to disclose Confidential Information, the Party so compelled will use reasonable efforts to provide written notice to the other Party before making such disclosure. To the extent Prime is required by law or this Agreement to disclose Company's Confidential Information (including information identifying the Rebates or Administrative Fees paid by Company and the terms and conditions of this Agreement, to CMS or another third party), Prime shall clearly label such Confidential Information as Company's proprietary and confidential business information and shall include at the top of each page containing Company's Confidential Information the statement "confidential commercial or financial information not subject to disclosure under FOIA."

5. TERM AND TERMINATION.

a. Term. This Agreement shall commence **October 1, 2010** ("Effective Date") and, unless terminated earlier pursuant to the provisions below, shall remain in effect for two (2) years from the Effective Date ("Term").

b. Termination.

i. Either Party may terminate this Agreement without cause by providing the other Party ninety (90) days advance written notice.

ii. Either Party may terminate this Agreement in the event of a material breach of the terms of this Agreement by the other Party. Such termination shall be effective thirty (30) calendar days after the non-breaching Party gives written notice to the other Party specifying the nature of the breach, unless the other Party cures the breach before the end of the thirty (30) calendar day period.

iii. Either Party may terminate this Agreement upon thirty (30) calendar days advance written notice in the event the other Party (i) ceases to be actively engaged in business or becomes insolvent, is dissolved or liquidated; (ii) files or has filed against it a petition in bankruptcy and such petition is not dismissed within thirty (30) calendar days of the filing; or (iii) makes a general assignment for the benefit of its creditors.

iv. Either Party may terminate this Agreement immediately if any change of law or regulation, or interpretation by a federal, state or other similar agency, including a court of law, of existing law or regulation would (i) make this Agreement or a material portion of a Party's performance under this Agreement illegal; (ii) prohibit or eliminate, or require a material change to Rebates offered hereunder; (iii) make such Party's performance under this Agreement impossible or materially alter the intent of this Agreement; (iv) have a material adverse impact on such Party and/or any of its affiliates (economic or otherwise); or (v) place either Party or its affiliates at material risk of regulatory non-compliance. Notwithstanding the foregoing, the Parties agree to engage in good faith negotiations in an attempt to reach mutually agreeable terms which comply with the changed law or regulation, or interpretation. If the Parties are unable to come to mutually agreeable terms, either Party may terminate the Agreement upon thirty (30) calendar days written notice.

v. Prime may terminate this Agreement with written notice in the event its duties and/or obligations provided hereunder as they relate to performance of obligations under a CMS Contract are suspended, terminated or otherwise revoked by CMS or a Part D Sponsor. Termination pursuant to this paragraph shall be effective immediately upon receipt of notice.

vi. Notwithstanding anything to the contrary set forth in this Agreement, Company may terminate a Product from this Agreement, if a patent covering such Product expires, or such Product becomes available as a generic Pharmaceutical Product. Company shall provide written notice to Prime of such event and Company shall pay Rebates and Administrative Fees for Product utilization through the end of the Invoice Period in which such event occurs.

Notwithstanding the foregoing, no termination under this Section 5 shall affect the rights and obligations of the Parties accruing prior to the effective date of such termination.

6. MISCELLANEOUS.

a. Compliance with Law. The Parties each agree that they will separately be responsible for securing and maintaining all required licenses, permits and certificates applicable to their respective activities, if any, and each shall comply with any and all applicable federal, state and local laws, regulations and ordinances, including, but not limited to the applicable requirements of the Health Insurance Portability and Accountability Act and the regulations applicable thereto, the Act and applicable Part D Regulations. The Parties also agree that, upon request, they will cooperate with a Part D Sponsor, Part D Plan and/or Participating Provider in their efforts to comply with the laws, regulations and other requirements of applicable regulatory authorities. Prime acknowledges that Company is not a covered entity under the Health Insurance Portability and Accountability Act.

b. No Effect on Other Agreements. Company agrees that it has not and will not link, or attempt to link, any pricing or contractual terms or conditions offered or made available in connection with this Agreement with those in any present or future contract not relating solely to the Medicare Part D program between Prime and Company or with any third party.

c. Exclusive Negotiating Manager for Rebates. Unless otherwise provided in its agreements with its Part D Sponsors, Prime will serve as each Part D Sponsor's exclusive negotiating manager for Rebates. Company agrees that it will not, during this term of this Agreement, knowingly enter into any agreement with a Part D Sponsor to pay Rebates directly to such Part D Sponsor without Prime's express prior written consent. Prime will notify Company in writing of the identity of any Part D Sponsor to which Prime has given its consent to directly contract with Company for Rebates on any of the Products.

d. Severability. The Parties each agree that if any provision of this Agreement should be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of any such prohibition without impairing the remaining provisions in any way. If either Party is materially adversely affected, the parties agree to negotiate in good faith, in an effort to reach a new agreement regarding the subject matter of the severed provision.

e. Force Majeure. Neither Party shall be liable to the other or any third parties for any delays in the performance of their obligations under this Agreement, if such delays were caused by acts of God, war, riot, insurrection, strike, labor disputes, storms, floods, fires, explosions, delay of carriers, suppliers or telecommunications providers, government acts or regulations or other similar circumstances beyond that Party's control; provided, however, that once the delay is eliminated, the Party shall comply with its obligations as promptly as possible.

f. Assignment. This Agreement may not be assigned, directly or indirectly, by operation of law or otherwise, by either Party without the prior written consent of the other Party except as follows. Company may assign the Agreement to a purchaser of all or substantially all of Company's assets used in connection with performing this Agreement. In the event Company makes such assignment, Company will cause the assignee to assume in writing all obligations of Company under this Agreement. Company will provide Prime written notice of any such assignment.

g. Notice. Any notice and/or other communication required or provided for under this Agreement shall be in writing and shall be deemed given when either personally delivered, sent by certified U.S. Mail, delivered by air courier, or transmitted by facsimile or electronic mail and confirmed in writing (sent by air courier or certified U.S. Mail) to the other Party at the address set forth below, or on the first page of this Agreement, or to other such address as may be provided in writing for the delivery of notices hereunder upon ten (10) business days prior written notice as provided herein.

To Prime:

Prime Therapeutics LLC
Attn: VP Pharmaceutical Trade Relations
1305 Corporate Center Drive
Eagan, MN 55121

With a copy to:

Prime Therapeutics LLC
Attn: General Counsel
1305 Corporate Center Drive
Eagan, MN 55121

To Graceway:

Graceway Pharmaceuticals, LLC
340 Martin Luther King Jr. Blvd., Suite 500
Bristol, TN 37620
Attn: General Counsel
Fax: 423-274-2199

With a copy to:

Graceway Pharmaceuticals, LLC
222 Valley Creek Blvd., Suite 300
Exton, PA 19341
Attn: Executive Director, Contract Management
Fax: 267-948-0599

- h. Headings. Paragraph headings are for reference only and shall not be used in construing this Agreement.
- i. Entire Agreement. This Agreement is the entire agreement between the Parties in regard to its subject matter and supersedes any prior agreements or understandings for Products dispensed on dates of service on and after the Effective Date.
- j. Amendment. This Agreement may not be amended or modified except by written amendment signed by the Parties.
- k. Federally Funded Health Care Programs. The Rebates and Administrative Fees that Company pays to Prime under this Agreement imposes on Prime no obligation, express or implied, to promote, recommend, or arrange for the purchase, prescribing, or dispensing of any Products for which payment may be made under a federally funded health care program (including, without limitation, Medicare or Medicaid) on a fee for service basis.
- l. Ineligible Parties. As of the Effective Date of this Agreement, each Party represents and warrants that it is not (i) listed by a governmental agency as debarred from working with that agency, (ii) proposed for debarment or suspension from any governmental work, or (iii) otherwise precluded from participating in any federal program. Each Party agrees to notify the other Party within a reasonable period of time in writing of any event that causes a change in such Party's status.
- m. Governing Law. This Agreement will be construed in accordance with the laws of Delaware.
- n. Dispute Resolution. In the event a dispute between Prime and Company arises out of or is related to this Agreement, the Parties will meet and negotiate in good faith to attempt to resolve the dispute.

In the event the dispute is not resolved within thirty (30) calendar days of the date one Party sent written notice of the dispute to the other Party and if any Party wishes to pursue the dispute, either Party may seek legal or equitable relief. **THE PARTIES IRREVOCABLY WAIVE THEIR RIGHT TO A JURY TRIAL IN ANY ACTION COMMENCED HEREUNDER AND AGREE TO SUBMIT THE DISPUTE TO A BENCH TRIAL BEFORE THE PRESIDING JUDGE.** Each Party acknowledges and agrees that this waiver is given freely, knowingly, and after due opportunity for consultation with counsel regarding the same, and that this waiver constitutes a part of the consideration under the Agreement.

The Parties agree that any action in relation to an alleged breach of this Agreement will be commenced within two (2) years of the date of the breach or the date the breach reasonably should have been discovered, whichever is later. Any action not brought within that two (2) year time period will be barred, without regard to any other limitations period set forth by law or statute.

o. Indemnification. Company shall defend, indemnify and hold harmless Prime, its parents, subsidiaries, affiliates, successors, assigns, officers, directors, shareholders, and employees (the "Prime Indemnitees"), from and against any and all liability, losses, damages, claims, demands, fines, causes of action, suits or proceedings and expenses connected therewith (including reasonable attorneys' fees, reasonable expert witness fees and court costs) resulting from a claim by a third party arising from or related to a material breach of this Agreement by Company, or Company's negligence, violation of state or federal law, or other wrongful conduct.

Prime shall defend, indemnify and hold harmless Company, its parents, subsidiaries, affiliates, successors, assigns, officers, directors, shareholders, and employees, from and against any and all liability, losses, damages, claims, demands, fines, causes of action, suits or proceedings and expenses connected therewith (including reasonable attorneys' fees, reasonable expert witness fees and court costs) from any third-party claim arising from or related to a material breach of this Agreement by Prime, or Prime's alleged negligence, violation of state or federal law or other wrongful conduct.

This indemnification is conditioned upon the following: (i) the Party seeking indemnification promptly notifying the other Party of the claim or suit; (ii) the Party seeking indemnification making all relevant records available to the other Party; (iii) the Party seeking indemnification affording the other Party the right to assume the defense of or settle such claim or suit; and (iv) the Party seeking indemnification in all ways cooperating fully with the other Party in defending against the claim or suit.

Neither Party shall be obligated to indemnify the Party seeking indemnification for claims or damages to the extent based on the negligence or other wrongful acts on the part of the Party seeking indemnification or third parties not under the other Party's control. Further, Company shall not be obligated to indemnify Prime Indemnitees for claims or damages to the extent based on (i) representations by Prime Indemnitees regarding Products that are materially different from the prescribing information for the Products; or (ii) when the claim or suit involves substitution of a product of another manufacturer in place of a Product.

p. Limitation of Liability. **SUBJECT TO SECTION 6.o, INDEMNIFICATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES SUFFERED OR INCURRED BY SUCH OTHER PARTY OR ITS AFFILIATES, WHETHER BASED UPON A CLAIM OR ACTION IN CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

PRIME THERAPEUTICS LLC

By:

Name: Peter J. Wickersham

Title: Senior Vice President, Cost of Care

Date:

12/2/10

GRACEWAY PHARMACEUTICALS, LLC

By:

Name: Robert J. Moccia

Title: President - COO

Date:

12/6/2010

Exhibit A Rebated Product Listing

Product Name	NDC	Strength
Zyclara™	29336-0710-28	3.75% Topical Cream

The term "Products" shall include all package sizes and package types, as well as any changes in the labeler code, for those Products listed in this exhibit. However, line extensions of a Product, such as new dosage forms, new routes of administration, or new strengths, will only be added to this Agreement by mutual agreement of the Parties, and Company shall not require that such line extensions or new strengths of a Product be added to this Agreement or a Formulary in order for the original NDCs of the Product to be eligible for Rebates and Administrative Fees.

Exhibit B Therapeutic Class Definition

Dermatologic Agents

Product Name	Strength
Zyclara [®]	3.75% Topical Cream
Aldara [®]	5% Topical Cream
Carac	0.5% Topical Cream
Efudex	5% Topical Solution 5% Topical Cream
Fluoroplex	1% Topical Cream
Levulan	20% Topical Solution
Solaraze	3% Topical Gel

Therapeutic Class Updates:

The above defined Therapeutic Class(es) can be updated upon the approval of a new FDA approved Pharmaceutical Product within the Therapeutic Class if Company notifies Prime in writing of such change and the Parties mutually agree in writing to such change.

Notwithstanding the above, if Prime discovers a need to change a Therapeutic Class, such Therapeutic Class(es) can be changed if Prime notifies Company in writing of such change, and the Parties mutually agree in writing.

Therapeutic Class changes shall be effective for the Invoice Period following the Invoice Period in which Prime receives written notification from Company about the Therapeutic Class change. If Company does not notify Prime in writing of a change to the Therapeutic Class, the Therapeutic Class shall remain unchanged.

If Company or any other manufacturer has more than one Pharmaceutical Product within a Therapeutic Class, all of Company's or such other manufacturer's Pharmaceutical Products within the Therapeutic Class shall be considered a single Pharmaceutical Product.

Exhibit C

Rebated Product Schedule

1. **Formulary Position.** Only Products covered by a Part D Plan under this Agreement and listed as a Preferred Brand on Formulary are eligible for Rebates. For purposes of this Agreement, "Preferred Brand" means the Product is listed on the preferred brand tier of a Formulary which represents a copay or coinsurance applicable to the preferred brand tier. The Parties agree that in addition to the other requirements in this Agreement, only Products not Disadvantaged will be eligible for Rebates. Notwithstanding the foregoing, Zyclara[™] shall be eligible for Rebates when Prior Authorization criteria for appropriate use based on FDA approved indications set forth in the FDA approved Product package insert is applied.
2. **Calculation:**
 - a. Total Rebate amount per NDC is determined as follows: Price per NDC multiplied by the Rebate percentage, multiplied by the number of Units. The quantity shall be measured in Units unless otherwise defined herein by the Parties.
 - b. Calculation of Rebates will be determined at the Part D Sponsor level.

3. **Rebated Product Table:**

Company Product	Rebate Percentage Preferred Brand
Zyclara [™]	15%

4. **Price Protection.** If Company increases the WAC price of a Product NDC by more than ten percent (10.00%) during any calendar year falling within the term of this Agreement, Company shall pay an additional Rebate percentage on utilization of such Product NDC equal to the portion of the WAC price increase that is greater than ten percent (10.00%). Such additional Rebate percentage shall become effective the first day of the calendar Invoice Period in which the WAC price of the Product NDC exceeds ten percent (10.00%) and shall continue for the duration of that calendar year. Once the WAC price of a Product NDC has exceeded ten percent (10.00%) within a calendar year period, the percentage of any additional WAC price increase(s) of that Product NDC during that calendar year will be added to the additional Rebate percentage. Nothing herein shall affect the percentage of any Administrative Fees due under this Agreement.

The following example is for illustrative purposes only:

1/1/10 Product WAC price per Unit:	\$92.47
1/1/10 Product Rebate percentage:	10.0%
1/1/10 Product Rebate per Unit:	\$9.25
1/1/10 Product net price per Unit:	\$83.22 (\$92.47- \$9.25)
Hypothetical 4/1/10 Product price increase:	2.0%
4/1/10 Product price per Unit:	\$94.32
4/1/10 Product Rebate per Unit:	\$9.43 (\$94.32 x 10%)
4/1/10 Product net price per Unit:	\$84.89 (\$94.32 - \$9.43)
Hypothetical 10/1/10 Product price increase:	10.0%
10/1/10 Product price per Unit:	\$103.75
10/1/10 Product Rebate per Unit:	\$12.45 (\$103.75 x 12%)
10/1/10 Product net price per Unit:	\$91.30 (\$103.75 - \$12.45)

Confidential commercial or financial information not subject to disclosure under FOIA

1/1/11 Product price per Unit:	\$103.75
1/1/11 Product Rebate percentage:	10.0%
1/1/11 Product Rebate per Unit:	\$10.38 ($\$103.75 \times 10\%$)
1/1/11 Product net price per Unit:	\$93.37 ($\$103.75 - \10.38)
Hypothetical 4/1/11 Product price increase:	14.00%
4/1/11 Product price per Unit:	\$118.28
4/1/11 Product Rebate per Unit:	\$16.56 ($\$118.28 \times 14\%$)
4/1/11 Product net price per Unit:	\$101.72 ($\$118.28 - \16.56)

Exhibit D

Excluded Claims Criteria

In addition to the other sections of the Agreement which set out the terms and conditions for Rebate eligibility, this Exhibit D sets out the exclusive criteria for determining claims which shall be excluded from Rebate eligibility, unless otherwise mutually agreed by the Parties in writing or elsewhere in this Agreement. In the event the Parties mutually agree upon additional or different criteria than that expressed in this Exhibit D, the item agreed upon shall be automatically incorporated into the Agreement effective as of the date set forth in such writing.

If Company excludes claims submitted by Prime as ineligible for Rebates on the grounds that the claims fall within one or more of the Categories listed below, Company shall identify the criteria used to make such exclusion and provide a listing to Prime of those excluded claims in Excel format. Upon request from Prime, Company shall provide reasonable additional supporting documentation. Notwithstanding anything to the contrary here in, if Prime substantiates any claims initially excluded under the terms of this Exhibit D to the satisfaction of Company, Company shall pay Rebates for said claims.

Category	Description	Terms for Exclusion
Duplicate Rx's Same PBM	This category includes "Duplicate Prescriptions" (defined as, same Product, Prescription Number, Pharmacy, Fill Date and Refill Number) within the submitted Invoice Period.	All claims that fit this Category's Description shall be excluded from Rebate eligibility.
Duplicate Rx's Multiple Customers	This category includes Duplicate Prescriptions (as defined above) across previous submissions from all of Company's MA-PD, and PDP customers.	<p>Claims that fit this Category's Description shall be excluded from Rebate eligibility except as described below with respect to coordination of benefits situations.</p> <p>All claims submitted by Prime for which a Part D Plan under this Agreement provides primary coverage in a coordination of benefits scenario, shall be eligible for Rebates regardless of whether another managed care organization providing services to a Part D plan, or a Part D plan submits a Duplicate Prescription on behalf of a secondary payor. Company acknowledges that regardless of its accounting methods, all claims submitted on behalf of a Part D Plan where such Part D Plan is designated as the primary payor for such claims, and are not otherwise excluded under this Agreement, shall be eligible for Rebates.</p>
Units Exceeding Maximum Quantity	This category includes claims containing units in excess of the normal amounts needed for the applicable days supply for a Product, as defined by the Part D Plan benefit.	All claims that fit this Category's Description shall be excluded from Rebate eligibility.
Invalid Pharmacy Number	This category indicates the involved pharmacy is not listed as a valid pharmacy with the National Council for Prescription Drug Plans (NCPDP).	All claims containing either missing or invalid NCPDP and/or NPI numbers shall be excluded from Rebate eligibility, unless otherwise agreed to by the Parties.

Ineligible Participating Providers and/or Claims	<p>I. NCPDP Dispenser Class and Type Standard. Participating Providers shall be classified in accordance with the most current NCPDP Dispenser Class and Type standards. Claims from the following Types and/or Classes of pharmacies shall be ineligible for Rebates: Government Pharmacies, including but not limited to Indian Health Service/Tribal/Urban Health Pharmacies and Military Pharmacies; IV Infusion Hospitals; VA Hospital Pharmacies; and Nuclear Pharmacies.</p> <p>For purposes of clarity, all claims from Participating Providers in any other NCPDP Dispenser Class and/or Type, including but not limited to Long Term Care Pharmacies; Mail Order Pharmacies; Dispensing Physicians; Specialty Pharmacies; and Institutional Pharmacies, shall be eligible for Rebates, unless otherwise excluded under this Agreement.</p> <p>II. 340B Claims. All claims subject to discounts under section 340B of the Public Health Service Act shall be excluded from Rebate eligibility.</p> <p>III. Outside United States. All claims from Participating Providers located outside of the United States shall be excluded from Rebate eligibility.</p>	
Missing Rx Number	This category indicates prescriptions which do not contain a prescription number.	All claims which do not contain a prescription number shall be excluded from Rebate eligibility.

Prime Therapeutics LLC NCPDP Fields Provided Version 04.01

EXHIBIT E

PP	PN	Field Name	Type	Length	Description
Header					
X	X	Record Type	A/N	2	HD = Header
X	X	FF Action Code	A/N	2	00
X	X	Rebate Version Release Number	A/N	5	03.01
X	X	Transmission Date	N	8	Current Date
X	X	Transmission Control Number	A/N	9	Current Date CCYYMMDD
X	X	Rebate Batch Number	A/N	15	1
X	X	Contract Organization (PMO) Contract Number	A/N	15	Prime
X	X	Rebate Period Start Date	N	8	Invoice Period Begin Date
X	X	Rebate Period End Date	N	8	Invoice Period End Date
X	X	FF Contracting Organization (PMO) ID Qualifier	A/N	1	Z
X	X	Contract Organization (PMO) ID Code	A/N	17	Prime
X	X	Contracting Organization (PMO) Name	A/N	30	Prime Therapeutics LLC
X	X	FF Manufacturer (PICO) ID Qualifier	A/N	1	C
X	X	Manufacturer (PICO) Name	A/N	30	Manufacturer Name from Prime database
Utilization					
X	X	Record Type	A/N	2	UD = Utilization Record
X	X	Line Number	A/N	11	Unique Line number, starts with 1.
X	X	Data Level	A/N	2	PP = Plan prescription Level or PN = Plan NDC Summary Used For Market Share
X	X	Plan ID Qualifier	A/N	1	Z
X	X	Plan ID Code	A/N	17	Part D Plan ID (5 digits)
X	X	Plan Name	A/N	30	Plan Name
X		Pharmacy ID Qualifier	A/N	1	N = NCPDP Provider ID Number
X		Pharmacy ID Code	A/N	17	Pharmacy Number
X		Pharmacy Zip Code	A/N	9	Zip Code
X	X	Product Code Qualifier	A/N	1	N = Eleven-digit NDC
X	X	Product Code	A/N	17	NDC
X	X	Product Description	A/N	30	Brand Name
X	X	FF Total Metric Decimal Quantity	NX	15	Total Units
X	X	Unit of Measure	A/N	2	EA, ML, GM
X		Rebate Days Supply	NX	4	Days supply of product
X		Prescription Type	NX	2	1 = New/Refill, -1 Reversal
X	X	FF Total Number of Prescriptions	NX	8	Net Rx's
X		Prescription Number/Service Reference Number	A/N	7	Rx number
X		Date Filled/Date of Service	NX	8	Fill Date
	X	Therapeutic Class Code Qualifier	A/N	1	Z
	X	Therapeutic Class Code	A/N	17	Drug Group Number
	X	Therapeutic Class Description	A/N	30	Subcontract Name (Product Name, etc)
X	X	Plan Reimbursement Qualifier	A/N	1	2 – excludes dispensing fee
X	X	Plan Reimbursement Amount	NX	12	Ingredient cost paid
X		New/Refill Code	A/N	1	00 = new Rx, 01-99 Number of refills
X	X	Record Purpose Indicator	A/N	1	R – submitted for rebate utilization M – submitted for Market Share
X		Rebate Per Unit Amount	NX	12	Amount per unit being submitted
X		Requested rebate Amount	NX	12	Total Rebate being requested
X		Formulary Code	A/N	17	Financial Shell Name (C-1 Standard, etc.)
X		NPI Qualifier Code	A/N	2	NPI Qualifier
X		NPI Code	A/N	15	NPI Number
X		Claim Number	A/N	20	Rx Claim Unique Claim Number
X		COB	A/N	1	Values 0 - 8
X	X	Prime Assigned Agreement Number	A/N	4	Agreement Number
Trailer					
X	X	Record Type	A/N	2	TR = Trailer
X	X	FF Action Code	A/N	2	00, 02, 05
X	X	Rebate Version Release Number	A/N	5	03.01
X	X	Transmission Date	N	8	Current Date
X	X	Transmission Control Number	A/N	9	Current Date CCYYMMDD
X	X	Rebate Batch Number	A/N	15	2
X	X	Contract Organization (PMO) Contract Number	A/N	15	Prime
X	X	Rebate Period Start Date	N	8	Invoice Period Begin Date
X	X	Rebate Period End Date	N	8	Invoice Period End Date
X	X	FF Contracting Organization (PMO) ID Qualifier	A/N	1	Z
X	X	Contract Organization (PMO) ID Code	A/N	17	Prime
X	X	Contracting Organization (PMO) Name	A/N	30	Prime Therapeutics LLC
X	X	FF Manufacturer (PICO) ID Qualifier	A/N	1	C
X	X	Manufacturer (PICO) Name	A/N	30	Manufacturer Name from Prime database
X	X	Grand Total Metric Decimal Quantity	NX	15	Total From UD Record
X	X	Total Record Count	NX	11	Accumulation of Records HD through TR

mw

Exhibit F

Administrative Fees

Company agrees to pay Prime an Administrative Fee for all Product utilization which is eligible for Rebates hereunder. Such Administrative Fees will be paid by Company to Prime in recognition of the savings to Company in negotiating with Prime rather than the Part D Sponsors and for other services provided by Prime to Company as set forth below. The Administrative Fee shall equal three percent (3.00%) of the Price.

Products eligible for Administrative Fees are listed in Exhibit A of this Agreement.

Prime will provide the following services:

- Contract with and monitor the Part D Sponsors' compliance with the terms and conditions for Rebate eligibility under this Agreement.
- Provide Formulary information to Part D Sponsors, Part D Plans, Participating Providers and/or Members to facilitate knowledge of Products
- Calculate the amounts of Rebates and Administrative Fees applicable to Product utilization.
- Invoice Company for Rebates and Administrative Fees.
- Provide Company with detailed reports on Rebates and the Administrative Fee calculations as set forth in this Agreement.
- Conduct internal audits to verify that the terms and conditions of this Agreement are applied correctly.
- Work with Company on audits per the applicable terms of this Agreement.
- Subject to applicable law and upon request by Company, provide Company access to appropriate Prime staff to present applicable clinical information regarding Products.
- Contract review meeting between Company's National Account Manager and the appropriate Prime Pharmaceutical Trade Development representative.
- Ad hoc reporting and/or modeling to determine market competitive rates.

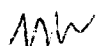


EXHIBIT F

**FIRST AMENDMENT TO THE
MEDICARE PART D REBATE AND ADMINISTRATIVE FEE AGREEMENT
BETWEEN
PRIME THERAPEUTICS LLC AND GRACEWAY PHARMACEUTICALS, LLC**

This First Amendment (the "First Amendment") to the Medicare Part D Rebate and Administrative Fee Agreement is by and between **Prime Therapeutics LLC**, a Delaware limited liability company with its principal place of business located at 1305 Corporate Center Drive, Eagan, MN 55121 ("Prime") and **Graceway Pharmaceuticals, LLC**, a Delaware limited liability company with its principal place of business located at 340 Martin Luther King Jr. Blvd., Suite 500, Bristol, TN 37620 ("Company"). For the purpose of this First Amendment, Prime and Company may each be referred to as a "Party" and, collectively, as the "Parties."

WHEREAS, Prime and Company are Parties to the Medicare Part D Rebate and Administrative Fee Agreement having the Effective Date of October 1, 2010, and all subsequent amendments thereto, if any, (collectively, the "Agreement"); and

WHEREAS, Prime and Company desire to amend the Agreement.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. This First Amendment shall be **effective January 1, 2012** and shall remain in effect for the Term of the Agreement.
2. **Section 5.a., Term**, is hereby deleted and replaced with the following:
 - a. Term. This Agreement shall commence on October 1, 2010 ("Effective Date") and, unless terminated earlier pursuant to the provisions below, shall remain in effect through December 31, 2013 ("Term").
3. **Exhibit C, Rebated Product Schedule**, is hereby deleted and replaced with **Exhibit C, Rebated Product Schedule**, attached hereto.

To the extent any terms of the Agreement conflict with the terms herein, this First Amendment shall govern.

All other terms and conditions of the Agreement will remain in full force and effect. All capitalized terms used but not defined herein shall have the definition assigned to it in the Agreement.

SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be executed by their respective officers or representatives duly authorized to do so.

PRIME THERAPEUTICS LLC

By: 

Name: Peter J. Wickersham

Title: Senior Vice President, Cost of Care

Date: 6/8/11

GRACEWAY PHARMACEUTICALS, LLC

By: 

Name: Robert Moccia

Title: President and COO

Date: 6/13/11

Exhibit C

Rebated Product Schedule

1. **Formulary Position.** Only Products covered by a Part D Plan's prescription drug program and positioned as a Preferred Brand on Formulary are eligible for Rebates under this Agreement. For purposes of this Agreement, "Preferred Brand" means the Product is positioned at the lowest copay or coinsurance tier available for branded Pharmaceutical Products which are listed in such Product's Therapeutic Class. The Parties agree that in addition to the other requirements in this Agreement, only Products not Disadvantaged will be eligible for Rebates. Notwithstanding the foregoing, Zyclara® shall be eligible for Rebates when Prior Authorization criteria for appropriate use based on FDA approved indications set forth in the FDA approved Product package insert is applied.
2. **Calculation:**
 - a. Total Rebate amount per NDC is determined as follows: Price per NDC multiplied by the Rebate percentage, multiplied by the number of Units. The quantity shall be measured in Units unless otherwise defined herein by the Parties.
 - b. Calculation of Rebates will be determined at the Part D Sponsor level.

3. **Rebated Product Table:**

Company Product	Rebate Percentage Preferred Brand
Zyclara®	15%

4. **Price Protection.** If Company increases the WAC price of a Product NDC by more than ten percent (10.00%) during any calendar year falling within the term of this Agreement, Company shall pay an additional Rebate percentage on utilization of such Product NDC equal to the portion of the WAC price increase that is greater than ten percent (10.00%). Such additional Rebate percentage shall become effective the first day of the calendar Invoice Period in which the WAC price of the Product NDC exceeds ten percent (10.00%) and shall continue for the duration of that calendar year. Once the WAC price of a Product NDC has exceeded ten percent (10.00%) within a calendar year period, the percentage of any additional WAC price increase(s) of that Product NDC during that calendar year will be added to the additional Rebate percentage. Nothing herein shall affect the percentage of any Administrative Fees due under this Agreement.

The following example is for illustrative purposes only:

1/1/10 Product WAC price per Unit:	\$92.47
1/1/10 Product Rebate percentage:	10.0%
1/1/10 Product Rebate per Unit:	\$9.25
1/1/10 Product net price per Unit:	\$83.22 (\$92.47- \$9.25)
Hypothetical 4/1/10 Product price increase:	2.0%
4/1/10 Product price per Unit:	\$94.32
4/1/10 Product Rebate per Unit:	\$9.43 (\$94.32 x 10%)
4/1/10 Product net price per Unit:	\$84.89 (\$94.32 - \$9.43)

Hypothetical 10/1/10 Product price increase: 10.0%
10/1/10 Product price per Unit: \$103.75
10/1/10 Product Rebate per Unit: \$12.45 ($\$103.75 \times 12\%$)
10/1/10 Product net price per Unit: \$91.30 ($\$103.75 - \12.45)

1/1/11 Product price per Unit: \$103.75
1/1/11 Product Rebate percentage: 10.0%
1/1/11 Product Rebate per Unit: \$10.38 ($\$103.75 \times 10\%$)
1/1/11 Product net price per Unit: \$93.37 ($\$103.75 - \10.38)

Hypothetical 4/1/11 Product price increase: 14.00%
4/1/11 Product price per Unit: \$118.28
4/1/11 Product Rebate per Unit: \$16.56 ($\$118.28 \times 14\%$)
4/1/11 Product net price per Unit: \$101.72 ($\$118.28 - \16.56)

EXHIBIT G

Part D Contract (and Related Amendment)

Date of Breach	September 28, 2011
End Date of the Agreements	December 31, 2013
Damages for Breach	\$67,655.34*

* Based on a per diem average of administrative and rebate fees realized by Prime over the life of the Part D Contract and related amendments.

Commercial Contract (and Related Amendments)

Date of Breach	September 28, 2011
End Date of the Agreements	December 31, 2011
Damages for Breach	\$120,456.82*

* Based on (i) a per diem average of administrative and rebate fees realized by Prime over the life of the Commercial Contract and related amendments, and (ii) amounts that would have been realized by Prime due to the recent addition of a new client, Scriptsave.

TOTAL DAMAGES FOR CONTRACT REJECTION:

\$188,112.16



Amy Sobaszekiewicz
Legal Department Coordinator

tel: 612.777.5717

fax: 866.470.8807

asobaszekiewicz@primetherapeutics.com

December 30, 2011

BMC Group, Inc.
Attn: Graceway Claims Processing
18750 Lake Drive East
Chanhassen, MN 55317

RE: Debtor: Graceway Pharmaceuticals, LLC
Creditor: Prime Therapeutics, LLC

To Whom It May Concern:

On behalf of Barbara Wood, enclosed, please find Prime's Proof of Claim for the above referenced debtor.

Please do not hesitate to contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Sobaszekiewicz", with a stylized flourish at the end.

Amy Sobaszekiewicz
Legal Department Coordinator

Enclosure