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*Attorneys for Debtor and Debtor-in-Possession*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:  
  
PASCACK VALLEY HOSPITAL ASSOCIATION, INC.,  
  
Debtor.

Hon. Rosemary Gambardella

Case No. 07-23686 (RG)  
Chapter 11

**Hearing Date and Time:  
January 8, 2008 at 11:00 a.m.**

**Oral Argument Requested If  
Opposition Is Filed**

**NOTICE OF DEBTOR'S MOTION SEEKING THE ENTRY OF AN ORDER, PURSUANT  
TO 11 U.S.C. § 365(a), AUTHORIZING THE DEBTOR TO REJECT EXECUTORY  
CONTRACT WITH JOHNSON & JOHNSON HEALTH CARE SYSTEMS INC., DBA  
LIFESCAN, INC. AS OF NOVEMBER 21, 2007**

**PLEASE TAKE NOTICE** that on January 8, 2008, at 11 a.m., or as soon thereafter as counsel may be heard, the above-captioned debtor and debtor in possession (the "Debtor"), by its undersigned attorneys, shall move (the "Motion") before the Honorable Rosemary Gambardella at the United States Bankruptcy Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, 3<sup>rd</sup> Floor, Newark, New Jersey, seeking the entry of an order, pursuant to section 365 of chapter 11, Title 11 of the United States Code, authorizing the Debtor to reject, as of November

21, 2007, a certain executory contract between the Debtor and Johnson & Johnson Health Care Systems Inc., dba Lifescan, Inc. dated September 26, 2007.

**PLEASE TAKE FURTHER NOTICE** that the undersigned shall rely upon the Application and exhibits thereto submitted herewith, and that no brief is necessary as the factual and legal bases for the relief requested are adequately set forth in the Application and the Motion presents no novel issues of law.

**PLEASE TAKE FURTHER NOTICE** that any objection to the relief requested in the Motion shall be in writing, stating with specificity grounds therefor, and shall be filed with the Court and served upon the Debtor's undersigned counsel so as to be received no later than 5:00 p.m. on January 1, 2008.

**PLEASE TAKE FURTHER NOTICE** that the Debtor requests oral argument of the Motion if opposition thereto is filed, in accordance with Local Bankruptcy Rule 9013-1(f).

**PLEASE TAKE FURTHER NOTICE** that unless answering papers are served in accordance with Local Bankruptcy Rule 9013-1(d), the Motion may be deemed uncontested and the Court, in its discretion, may enter an Order in the form filed herewith.

**PLEASE TAKE FURTHER NOTICE** that a form of Order granting the relief requested by the Motion is submitted herewith in accordance with Local Bankruptcy Rule 9072-1.

Dated: December 14, 2007

**SILLS CUMMIS & GROSS, P.C.**  
*Attorneys for Debtor and Debtor-in-Possession  
Pascack Valley Hospital Association, Inc.*

By: /s/ Charles N. Panzer  
Charles N. Panzer

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Debtor.

Hon. Rosemary Gambardella  
Case No. 07-23686  
Chapter 11

**Hearing Date and Time:  
January 8, 2008 at 11:00 a.m.**

**Oral Argument Requested If  
Opposition Is Filed**

**APPLICATION IN SUPPORT OF DEBTOR'S MOTION SEEKING THE ENTRY OF AN  
ORDER, PURSUANT TO 11 U.S.C. § 365(a), AUTHORIZING THE DEBTOR TO REJECT  
EXECUTORY CONTRACT WITH JOHNSON & JOHNSON HEALTH CARE SYSTEMS  
INC., DBA LIFESCAN, INC. AS OF NOVEMBER 21, 2007**

**TO: THE HONORABLE ROSEMARY GAMBARDELLA, U.S.B.J.**

Pascack Valley Hospital Association, Inc., the debtor and debtor-in-possession (the "Debtor"), by and through its attorneys, Sills Cummis & Gross P.C., submits this Application in support of the Debtor's motion (the "Motion") seeking the entry of an order, pursuant to section 365 of chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"), authorizing the Debtor to reject, as of November 21, 2007, a certain executory contract (the "Lifescan Agreement") between the Debtor and Johnson & Johnson Health Care Systems Inc., dba

Lifescan, Inc. (“Lifescan”) dated September 26, 2007. In support the Motion, the Debtor respectfully represents as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).
2. The statutory basis for the relief requested herein is section 365 of the Bankruptcy Code. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

**BACKGROUND AND RELEVANT FACTS**

3. On September 24, 2007 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.
4. Since the Petition Date, the Debtor has remained in possession of its assets and has continued the management of its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
5. The Debtor is a licensed 280-bed acute care hospital located in Bergen County, New Jersey that, until November 21, 2007, provided in-patient, out-patient, and related health care services to the general public. A detailed description of the Debtor’s business and the facts precipitating the filing of the Debtor’s Chapter 11 proceeding is set forth in the Affidavit of Leonard Weil submitted in support of the Debtor’s various “first day” motions (the “First Day Affidavit”). Those facts are incorporated herein by reference.
6. As set forth in more detail in the Weil Affidavit, the Debtor determined that it could not continue in operation because of its exceptionally poor financial performance and prospects. As of November 21, 2007, the Debtor permanently ceased all operations as an acute

care hospital, pursuant to a closure plan and application for a certificate of need submitted to the New Jersey Department of Health and Senior Services.

7. This Motion to reject the Lifescan Agreement is necessitated by the Debtor's cessation of operations, and the November 21, 2007 effective date of the proposed rejection (the "Rejection Date") coordinates with the date of discontinuation of the Debtor's use of the equipment, goods and services that are the subjects of the Lifescan Agreement.

The Lifescan Agreement to Be Rejected

8. Pursuant to the Lifescan Agreement, *inter alia*, (i) the Debtor agreed to purchase from Lifescan, at certain specified prices, certain minimum quantities of blood glucose monitors and supplies (collectively, the "Lifescan Products"), and to rent certain related equipment, software and accessories (collectively, "Lifescan Equipment and Software") at agreed prices, and (ii) Lifescan agreed to sell to the Debtor such Lifescan Products, and to provide the Debtor with the use of the Lifescan Equipment and Software, at the agreed prices. The term of the Lifescan Agreement expires November 25, 2011. A copy of the Lifescan Agreement is annexed hereto as Exhibit A.

9. The Debtor seeks to reject the Lifescan Agreement as of November 21, 2007 because the Debtor ceased operating the aspects of its business requiring the use of the Lifescan Products and the Lifescan Equipment and Software as of that date, and the Debtor has not used the Lifescan Products and the Lifescan Equipment and Software as of that date.

**RELIEF REQUESTED AND APPLICABLE LAW**

10. By the Motion, the Debtor seeks an order, pursuant to section 365 of the Bankruptcy Code, authorizing the Debtor to reject the Lifescan Agreement as of November 21,

2007, in conjunction with the cessation of the Debtor's operations and after which the Debtor has not used any of the Lifescan Products and the Lifescan Equipment and Software.

11. The Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a).

12. Although section 365(a) of the Bankruptcy Code does not provide a standard for determining when it is appropriate for a court to approve a debtor in possession's rejection of an unexpired lease or executory contract, courts have uniformly deferred to the business judgment of the debtor. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Matter of Taylor*, 103 B.R. 511, 517 (D.N.J. 1990), *aff'd in part, rev'd in part*, 913 F.2d 102 (3d Cir. 1990) (citing, *Sharon Steel Corp. v. Nat'l. Gas Distributors Corp.*, 812 F.2d 36, 39-40 (3d Cir. 1989)); *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987).

13. The "business judgment" test requires the debtor to demonstrate that the rejection of a lease will benefit the debtor's estate. *Wheeling-Pittsburgh*, 72 B.R. at 846.

14. Here, application of the "business judgment" test unequivocally establishes that the Debtor should be authorized to reject the Lifescan Agreement as of November 21, 2007. As set forth above, the Debtor concluded in its sound business judgment that it is not feasible to continue its business, and that it had no viable alternative but to wind down its business, cease operations and liquidate its assets. Accordingly, in order to terminate its obligations concerning the Lifescan Products and the Lifescan Equipment and Software, which the Debtor no longer needs and has not used since it ceased business operations as of November 21, 2007, the Debtor seeks to reject the Lifescan Agreement as of that date.

**NOTICE**

15. Notice of the Motion and proposed form of order will be served on (i) the United States Trustee for Region 3, Newark, New Jersey; (ii) counsel for HFG Healthco-IV, LLC; (iii) counsel for Bank of New York, as Master Trustee; (iv) counsel for the Creditors' Committee; (v) the New Jersey Department of Health and Senior Services; (vi) counsel for Pension Benefit Guaranty Corporation; (vi) all parties requesting notice pursuant to Fed. R. Bankr. P. 2002; and (vii) Lifescan.

**WAIVER OF MEMORANDUM OF LAW**

16. The Debtor respectfully submits that no memorandum of law is necessary in connection with this Motion, as the factual and legal bases for the relief requested are adequately set forth in the Application and the Motion presents no novel issues of law. Accordingly, the Debtor respectfully requests that the Court waive the requirement contained in D.N.J. LBR 9013-2 that a separate memorandum of law be submitted.

**NO PRIOR REQUEST**

17. No prior motion for the relief requested herein has been made to this or any other court.

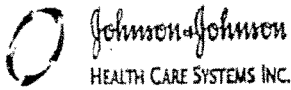
**WHEREFORE**, the Debtor respectfully requests the entry of an Order granting the relief requested herein, and granting such other and further relief as is just and proper.

**SILLS CUMMIS & GROSS, P.C.**  
*Attorneys for Debtor and Debtor-in-Possession*  
*Pascack Valley Hospital Association, Inc.*

By: /s/ Charles N. Panzer  
Charles N. Panzer

Dated: December 14, 2007

# **Exhibit A**



**Novation/ Johnson & Johnson Health Care Systems Inc.**

**LifeScan, Inc. Agreement (LB60042)**

**Letter of Commitment (LOC)**

**SECTION 1: MEMBER INFORMATION**

This LOC is between Johnson & Johnson Health Care Systems Inc. ("JJHCS") and the Member below to participate in the above referenced Agreement. Products and Pricing are listed in Exhibit A.1 in the Agreement.

GPO		MEMBER	
Name:	Novation	Name:	Pascack Valley Hospital
Address:	125 East John Carpenter Freeway Irving, TX 75062-2324	Address:	250 Old Hook Road Westwood, NJ 07675
Phone No:		Phone No.:	201-368-3268
Fax No:		Fax No.:	
Attn:		Attn:	John Koetzner
Contract:	Blood Glucose Monitors & Supplies	System Name:	
Term:		Commitment:	4.16 Years
From:	October 1, 2006		
To:	September 30, 2009		
Supplier will complete the information below upon final execution of this LOC. The Effective Date will be no less than 55 days after final execution by Supplier.			
Effective Date:	55 Days from final Execution Date	End Date:	50 Months from Effective Date
From:	SEP 26 2007	To:	NOV 25 2011

**SECTION 2: COMMITMENT SELECTION**

1. Check all that Apply:
- Individual Member  System
  - Teaching Facility

2. Commitment Term: Commitment

Less than 24 months	<input type="checkbox"/>
24 months or greater	<input checked="" type="checkbox"/>

3. OneTouch® SureSoft™ Commitment

Tier	Annual Volume	Commitment
1	Access (no volume commitment)	<input checked="" type="checkbox"/>
2	25,000 - 99,999	<input type="checkbox"/>
3	100,000 - 199,999	<input type="checkbox"/>
4	200,000 - 349,999	<input type="checkbox"/>
5	350,000+	<input type="checkbox"/>

4. SureStep® Pro Strip Commitment

Tier	Annual Test Strip Volume	Commitment
1	Access (no volume commitment)	<input type="checkbox"/>
2	10,000 - 24,999	<input type="checkbox"/>
3	25,000 - 39,999	<input type="checkbox"/>
4	40,000 - 59,999	<input type="checkbox"/>
5	70,000 - 99,999	<input checked="" type="checkbox"/>
6	100,000 - 299,999	<input type="checkbox"/>

Tier	Annual Test Strip Volume	Commitment
7	300,000 - 499,999	<input type="checkbox"/>
8	500,000 - 699,999	<input type="checkbox"/>
9	700,000 - 1,999,999	<input type="checkbox"/>
10	2,000,000 - 3,999,999	<input type="checkbox"/>
11	4,000,000+	<input type="checkbox"/>

5. Consumer Strip Commitment

Tier	Annual Test Strip Volume	Commitment
1	Access (no volume commitment)	<input checked="" type="checkbox"/>
2	10,000 - 99,999	<input type="checkbox"/>
3	100,000 - 499,999	<input type="checkbox"/>
4	500,000 +	<input type="checkbox"/>

Special strip pricing will be offered to Member Teaching Facilities by signing this SureStep®Flexx and SureStep®Pro LOC. Teaching Facility is defined as a teaching hospital by the COTH (Council of Teaching Hospitals and Health Systems), a division of the American Association of Medical Colleges (AAMC), criteria as follows:

- Institution must have a documented affiliation agreement with an accredited medical school.
- Institution must sponsor or participate in at least four active residency programs.
- Two of the approved residency programs should be in medicine, surgery, family practice, obstetrics/gynecology, pediatrics or psychiatry.

Please see Attachment C for all other Classes of Trade and Pricing Eligibility

**SECTION 3: PARTICIPATING MEMBERS**

The following table is for Acute or Alternate Care Sites that are Owned, Leased, or Managed (OLM as defined by the Agreement) by the Acute Care facility listed above. This list must be completed at the time of this form's original submission. Any sites not listed on this form at the time of its original submission will not receive the appropriate contract pricing.

JHCS#	Member	Address	City	ST	*OLM Status	Committed Annual SureStep®Pro Test Strip Volume	Committed Annual Lancet Volume	Committed Annual Consumer Strip Volume
1								
2								
3								
4								
5								
6								
7								
8								

O = Owned; L = Leased; M = Managed (only facilities that are Owned, Leased or Managed by the System are eligible)

**Section 4: PRODUCTS AND PRICING**

The price of the Products shall be as listed on the Product Price List (Exhibit A). The equipment that LifeScan agrees to supply to the Member is set forth in Section 4 tables 3, 4 & 5. The total value of equipment being financed through the Package Price is \$9,489.26. The Member agrees to purchase at least 291,187 strips during the Commitment Term. Supplier agrees that the Member may pay for said equipment through a surcharge on the base strip price. The total strip price (base strip price plus the surcharge) will be \$18.25 per box of test strips according to the equipment purchase cost and pricing breakdown shown in Table 1 below. For the purpose of this LOC, the term "Package Price" shall be defined as a Base Test Strip price plus any or all of the following which apply (as shown in Table 1): Base Strip Price, Meters, Extended Service, Connectivity and/or Buyout.

**TABLE 1 – PRICING INFORMATION**

	Package Price	Up Front Payment
Base Strip Price	\$16.80	\$0.00
Meters	\$0.00 <sup>4,5</sup>	\$0.00
Extended Service	\$0.50	\$0.00
Connectivity <sup>4</sup>	\$0.00	\$0.00
Buyout <sup>6</sup>	\$1.97	\$0.00
Subtotal	\$18.27	\$0.00
Rounding	\$0.02 <sup>2</sup>	N/A
Total Package Price For a Box of 50 Test Strips <sup>7</sup>	\$18.25 <sup>2,1</sup>	\$0.00

**Table 1 Notes:**

- 1 - Includes financing charge on package price
- 2 - All package prices rounded down to nearest nickel
- 3 - Final package price does not include Distributor mark-up
- 4 - See tables 3, 4 or 5 for details
- 5 - See Attachment A for details, if any.
- 6 - Buyout includes unpaid balance from previous contracts with LifeScan or its Affiliate concerning Products. Any equipment included in the Buyout may be listed under "Quantity Owned" in Tables 3, 4 & 5.
- 7 - SureStep®Pro Test Strips

The Member has committed to purchase at least 291,167 test strips over the term of this LOC. If the Member fails to purchase at least 291,167 strips by the end of the Commitment Term, Member agrees to pay immediately any unpaid balance owing on equipment supplied by LifeScan including but not limited to capital equipment provided to Member at less than list price pursuant to any promotional programs outlined in Attachment A. If the Member purchases 291,167 strips before end of the term of this LOC, then the LOC shall expire once 291,167 strips have been purchased from the Effective Date of this LOC at which time the Member would sign a new LOC reflecting the Base Strip Price from the original LOC and remaining term. At any time the Member may purchase their capital equipment (except for the Software therein) outright by paying the remaining cost of the equipment and the associated financing charges. Upon outright purchasing of the capital equipment (except for the Software therein), the Member may sign a new LOC or an Amendment to the LOC reflecting the Base Strip Price from the original LOC and remaining term.

**TABLE 2 – ONETOUCH® SURESOFT COMMITMENT**

ANNUAL ONETOUCH® SURESOFT™ COMMITMENT (# of Devices)	0
TOTAL ONETOUCH® SURESOFT™ COMMITMENT (# of Devices)	0
ONETOUCH® SURESOFT™ PRICE PER DEVICE	\$0.16
ONETOUCH® SURESOFT™ PRICE PER BOX OF 100	\$15.00 <sup>1</sup>
ONETOUCH® SURESOFT™ PRICE PER BOX OF 200	\$30.00 <sup>1</sup>

<sup>1</sup>On an annual basis Supplier will review Member purchases and commitment to determine Member's eligibility for associated tier discounts. In the event that the Member fails to meet its Total OneTouch® SureSoft™ Total Annual Commitment, Supplier will notify Member and adjust the Member's pricing to the correct pricing tier.

**TABLE 3 – METERS/BEDSIDE UNITS**

Quantity Provided/ Purchased	Quantity Owned	Description	Part Number	< 24 Month Contract Price <sup>1</sup>	> 24 Month Contract Price	Additional Discount <sup>2</sup>	Extended Price
		SureStep® Pro Bedside Unit Version 2.0	020-074	\$1,600.00	\$1,600.00		
	22	SureStep® Flexx Meter w/barcode scanner and MUSC	020-181-03	\$600.00	\$390.00		
		SureStep® Flexx Meter w/o barcode scanner	020-182	\$460.00	\$300.00		
		SureStep® Flexx Meter w/barcode scanner	020-181-02	\$578.00	\$360.00		
		SureStep® Flexx Barcode Scanner Module	020-183	\$275.00	\$200.00		
		SureStep® Hospital Blood Glucose Monitoring System	010-882	\$105.00	\$105.00		

1. Up front purchase
2. Additional Discount per Attachment A, if any.

**TABLE 4 – SOFTWARE, WORKSTATIONS, AND RELATED COMPONENTS**

Quantity Provided/ Purchased	Quantity Owned	Description	Part Number	< 24 Month Contract Price	> 24 Month Contract Price	Extended Price **
	1	Laptop Workstation (for buyout purposes only)	010-833	\$2,560.00	\$2,560.00	
		Desktop Workstation (for buyout purposes only)	020-104	\$2,160.00	\$2,160.00	
		DataLink® v3.2 License- Install Kit for New Customers (per computer workstation)	021-097	\$1,800.00	\$1,800.00	
	1	DataLink® v3.2 License- Install Kit for existing customers (per computer workstation)	021-097	\$800.00	\$800.00	
		CPU (computer workstation) for use with DataLink® v3.2 Install Kit	200-107-01	\$1,400.00	\$1,400.00	
		Desktop Workstation Monitor Flat Panel	200-056-04	\$495.00	\$495.00	
		Desktop Workstation Monitor	200-056	\$250.00	\$250.00	
		Printer	200-063	\$295.00	\$295.00	
		Printer Cable	010-848	\$9.00	\$9.00	
		Serial Server Connector	020-377	\$13.00	\$13.00	
		Serial Server	200-045	\$365.00	\$365.00	
		Terminal Server Connector	020-078	\$11.00	\$11.00	
		Terminal Server	020-102	\$1,200.00	\$1,200.00	
	6	US Robotics Modem	200-041	\$138.00	\$138.00	
	12	Serial Port Connector	020-079	\$21.00	\$21.00	
		Serial Modem Cable	012-478	\$9.00	\$9.00	
		Network Patch Cable	610-005	\$9.00	\$9.00	
		Network Crossover Cable	610-008	\$9.00	\$9.00	
		Modem to Serial Server Cable	610-007	\$13.00	\$13.00	
		Null Modem Adapter	210-128	\$3.00	\$3.00	
		RS-232 Cable	010-389	\$37.00	\$37.00	
		25-9 Pin Adapter	210-036	\$11.00	\$11.00	

Quantity Provided/ Purchased	Quantity Owned	Description	Part Number	< 24 Month Contract Price	> 24 Month Contract Price	Extended Price **
		Serial Cable	012-537	\$13.00	\$13.00	
	3	Modem Connection Cables	011-288	\$32.00	\$32.00	
		Network Connection Cables	011-359	\$40.00	\$40.00	
	6	Connection Module and Power Supply	020-239	\$168.00	\$168.00	
	3	Connection Cradle - SureStepPro Bedside Unit	011-286	\$24.00	\$24.00	
	15	Connection Cradle - SureStepFlex Meter	012-650	\$24.00	\$24.00	
		DataLink Sync Software License* (per Computer); Includes DataLink Sync Manager	021-296-01	\$60.00	\$60.00	
	1	DataLink Connection Guide	060-522	\$8.00	\$8.00	
		One Touch DataLink Web License (Incls. One CD, one server License, One User CAL for SQL)	021-309	\$1,000.00	\$1,000.00	
		SQL Server 2000 "user" Client Access License	088-580	\$155.00	\$155.00	
		One Touch DataLink Wireless Unit (one unit)	021-302	\$352.00	\$352.00	
		DataLink Sync Manager Software License* (One time)	071-831-01	\$100.00	\$100.00	
		Service Fee to perform Installations/Upgrades/Enhancements: DataLink Sync, DataLink Sync Manager, DataLink v3.2 Install Kit and SureStepFlex meter enhancements.  LifeScan fee for installers for upgrades or additions. Products purchased separately; additional charges may apply	N/A	\$1,500.00	\$1,500.00	
		One Touch DataLink Wireless Install Kit	021-305-01	NA	\$0.00	
		MeterLink 3.3	021-323-01	NA	\$0.00	
<b>Total Workstations and Related Components Costs</b>						<b>\$0.00</b>

\*Member agrees to install no more than quantity provided.

\*\* See Attachment A for details, if any.

**DataLink**

a) **LifeScan Software.** If Member purchases one or more licenses (i.e., pays the applicable license fees) for LifeScan Software listed in the LOC (such as the DataLink Data Management Software or the DataLink Sync Software), such software shall be licensed in accordance with the terms and conditions of this LOC and the additional terms and conditions in Attachment B - Software License Addendum. Breach of such Addendum shall be considered a breach of this LOC. In the event of a conflict between (1) this LOC and (2) the Attachment B - Software License Addendum, the LOC shall govern, except with respect to the license grant, confidentiality provisions, and warranty provisions, in which case the Attachment B - Software License Addendum shall govern with respect to the LifeScan Software licensed under Attachment B. The Attachment B - Software License Addendum shall not apply to Third Party Interfaces or any other third-party software.

b) **Software in Meter Equipment.** LifeScan shall retain ownership of all LifeScan Software installed or embedded in Equipment listed in the LOC, ("Meters and Bedside Units"). Any LifeScan Software in Meter Equipment may be used only with such Meter Equipment, and Member shall neither disclose nor distribute such LifeScan Software separately from such Meter Equipment to any third party, and Member shall not reverse engineer, disassemble, or decompile such LifeScan Software. Subject to the terms and conditions of this LOC, Supplier hereby grants Member a non-exclusive, non-transferable, non-sub licensable license to use the LifeScan Software in Meter Equipment solely with and as part of Member's use of such Meter Equipment.

**TABLE 5 - ELECTRONIC DATA INTERFACE (EDI) COMPONENTS, OPTIONS AND RELATED TERMS**

Quantity Provided/ Purchased	Quantity Owned <sup>1</sup>	Description	Part Number	< 24 Month Contract Price	> 24 Month Contract Price	Extended Price ***
		Third Party Interface: Quick-Linc™ EDI 3,4	N/A	\$12,100.00	\$12,100.00	
		Third Party Interface: Quick-Linc™ Script 2,3,4	N/A	\$20,500.00	\$20,500.00	
		Third Party Interface: ISI to Quick-Linc™ EDI, 1 time charge 3,4	N/A	\$8,375.00	\$8,375.00	
		Third Party Interface: ISI to Quick-Linc™ Script, 1 time charge 2,3,4	N/A	\$11,800.00	\$11,800.00	
		ISI Migration for DataLink v3.2 Install Kit EDI 3,4	N/A	\$2,000.00	\$2,000.00	
		ISI Migration for DataLink v3.2 Install Kit Script 2,3,4	N/A	\$2,000.00	\$2,000.00	
<b>Total Electronic Data Interface (EDI) Components Costs</b>						

**Pricing Notes – Tables 3, 4 or 5:**

1. Includes previously installed, owned or leased equipment.
2. The Extended Price listed in Table 5 does not include any Member-Initiated modifications to the Quick-Linc™ Scripted interface after the Quick-Linc™ Scripted interface has initially been installed. LIS software or LIS software maintenance costs and such modifications shall be billed by the LIS Lifescan at the prevailing market rate for time and materials.
3. The Extended Price listed in Table 5 does not include the Electronic Data Interface (EDI) manufacturer's a) portion of the interface, b) installation of the interface or c) monthly maintenance costs all of which are payable directly to the EDI manufacturer. Any final price quotes pertaining to the EDI manufacturer's portion of the EDI shall be negotiated between such manufacturer and Member.
4. Third Party Interfaces are not manufactured by LifeScan. Third Party Interfaces must be licensed, installed, warranted, and supported pursuant to a separate agreement between Member and the respective Third Party Interface manufacturer.
5. The Total Price in Tables 4 and 5 is for software and the installation of that software for a LifeScan Scripted Interface. The Total Price does include the development and installation of the Scripted Interface. It does not include any Member-Initiated modifications to the Scripted interface after the Scripted Interface has become operational. Member initiated modifications will be billed at the industry rate for time and materials.

The Supplier and Member acknowledge that the SureStep®Flex System has been provided under a purchasing plan in accordance with Section 4 Table 1. Supplier shall transfer title of all components of the SureStep®Flex System and/or SureStep®Pro System to the Member upon execution of this LOC. Supplier is not responsible for replacement of any component of the SureStep®Flex System and/or SureStep®Pro System due to theft, loss, opening of any components, or damage including damage resulting from using software other than the DataLink™ Control Software. For required maintenance contact your LifeScan and/or Supplier's Representative. If any component of the SureStep®Flex System and/or SureStep®Pro System is stolen, lost or damaged it is the Member's responsibility to purchase replacement SureStep®Flex System and/or SureStep®Pro System components from Supplier.

6. The OneTouch® DataLink® Wireless Unit operates in accordance with the IEEE 802.11(b) standard. If Member uses this unit, Member is responsible for installing and maintaining networking equipment that supports IEEE 802.11(b).
7. Microsoft SQL Server 2000 Standard Edition ("SQL Server 2000") is integrated within the DataLink® 3.2 software. If Member runs DataLink® 3.2 on a server (with DataLink® Web), a Microsoft "user" client access license (CAL) for SQL Server 2000 is required for each concurrent user that accesses the DataLink® software from a client computer. One such "user" CAL is included in the price of the OneTouch® DataLink® Web software license. Member may purchase additional "user" CALs from LifeScan (part number 086580) or may purchase "user" or "device" CALs directly from Microsoft or an authorized Microsoft distributor. "Device" CALs are another type of CAL available from Microsoft or an authorized Microsoft distributor (but not from LifeScan) for SQL Server 2000 software. A "device" CAL permits one client computer (*i.e.*, device), used by any user, to access the SQL Server 2000 software, and a "user" CAL permits one user, using any client computer (*i.e.*, device), to access the SQL Server 2000 software. If Member has its own version of SQL Server 2000, it is usually possible for Member to use its version of SQL Server 2000 instead of the copy included within the DataLink® 3.2 software, subject to compliance with all Microsoft licensing requirements and DataLink® software technical requirements.
8. The OneTouch® DataLink® Web software runs on a Microsoft Windows Server 2003 operating system. The OneTouch® DataLink® Web software uses one Windows Server 2003 CAL for administrative purposes and one additional Windows Server 2003 CAL for each concurrent user (*i.e.*, point-of-care coordinator) accessing the OneTouch® DataLink® Web software. For example, when one (and only one) point-of-care coordinator is using the OneTouch® DataLink® Web software, two Windows Server 2003 CALs are needed on the applicable server during such time period. If two point-of-care coordinators are concurrently using OneTouch® DataLink® Web, three Windows Server 2003 CALs are required during such concurrent use. The OneTouch® DataLink® software does not include any Windows Server 2003 CALs. Member is responsible for obtaining all Windows Server 2003 CALs directly from Microsoft or an authorized Microsoft distributor.
9. A copy of DataLink® Sync is included on the OneTouch® DataLink® Web CD for the purpose of enabling a user (*i.e.*, a point-of-care coordinator) to remotely configure and troubleshoot OneTouch® meters. If Member purchases a OneTouch® DataLink® Web license, no additional DataLink® Sync licenses are needed to use DataLink® Sync for the administrative purposes of configuring and troubleshooting OneTouch® meters. However, if DataLink® Sync is used at nursing stations to upload data from the meters to a server or point-of-care coordinator's computer, Member must purchase a separate DataLink® Sync license from LifeScan for each computer which runs DataLink® Sync for the purpose of uploading data from the meters to a server or point-of-care coordinator's computer. For instance, if DataLink® Sync is used at ten nursing-station computers for uploading data from the meters to a server running OneTouch® DataLink® Web, Member must purchase a minimum of ten DataLink® Sync licenses (regardless of whether DataLink® Sync is being used concurrently on the ten computers or not).

### Section 5: TERMS AND CONDITIONS

**Member Acknowledgements.** Member acknowledges that 1) it is a Member of VHA, UHC or HPPI and therefore entitled to purchase under the Novation Agreement and 2) Supplier will pay Administrative Fees to Novation on Member's purchases under the above referenced Agreement in accordance with 42 C.F.R. Section 1001.952(j).

**Arbitration.** This LOC shall be deemed to be made and entered into pursuant to the internal substantive laws of the State of Illinois. The venue for the litigation of any controversy or claim arising out of or relating to this LOC, or the breach thereof, shall be the state courts of Illinois or the federal courts sitting in Illinois. EACH PARTY HEREBY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY FEDERAL OR STATE JUDICIAL PROCEEDING. Each party hereby waives any right to seek punitive, exemplary, multiplied or consequential damages. No party may seek or obtain prejudgment interest or attorney's fees or costs.

**Product Importation.** Products manufactured or sold by LifeScan that are purchased outside LifeScan-approved channels of distribution – including LifeScan products imported into the United States from abroad – may not be handled and stored appropriately and may not bear appropriate labeling for sale in the United States. Accordingly, Member agrees not to purchase Products manufactured or sold by LifeScan outside the LifeScan-approved channels of distribution, including LifeScan Products imported into the United States from abroad. Breach of this subsection renders the LOC immediately voidable by LifeScan. If the LOC is voided pursuant to this provision all amounts for capital equipment under Section 4 above shall immediately become due and owing.

#### LifeScan Commitments:

- a. LifeScan shall provide the Member with computer software operating on a Workstation that collects, stores, and passes data from the LifeScan Blood Glucose Monitors to the Member's host system.
- b. LifeScan shall diagnose, repair and or replace the LifeScan provided Workstation (per the warranty terms in the LOC), and all LifeScan provided software at no charge to the Member providing Member is not in default on any provisions of this LOC or in arrears on any payments due to LifeScan. This LOC does not include Member's requested or required changes to the LifeScan provided computer software. LifeScan warrants that all components of the system, other than third-party components, will not deviate from LifeScan's published specifications.
- c. LifeScan may, based on its sole discretion, modify the DataLink Connectivity Products listed in Table 4 and Table 5. Modifications include maintenance releases and Product enhancements. Maintenance release modifications are complimentary. If the Member chooses to accept a Product enhancement it may be billed the industry rate for time and materials. LifeScan reserves the right to add a maintenance fee for providing DataLink Product support.
- d. LifeScan warrants that test result data will be accurately transmitted from the LifeScan Blood Glucose Monitor to the workstation and through the DataLink™ Information Systems Interface (ISI), if enabled, only when test results are generated with genuine LifeScan Blood Glucose Monitors and Test Strips and DataLink™ Products operating within specified label claims and as defined in the User Manual, and that are free of user error. LifeScan does not warrant the accuracy of operator input. If Member modifies any of the DataLink Products listed in Table 4 or Table 5 outside of the Product's labeling/packaging, LifeScan can not warrant the accuracy of the data transmission or the integrity of the data.

#### Member Commitments:

- a. Member shall provide preventive maintenance on the Workstation and all devices connected to the Workstation in accordance with the respective manufacturers' recommendations.
- b. Member shall provide environmental conditions within those specified by the manufacturers of the Workstation and all connected devices.
- c. Member shall permit LifeScan to have remote or on-site access to the Workstation, software, and data files for problem resolution as well as the loading of software updates.
- d. Member shall provide a telephone line connection to the Workstation for LifeScan remote access.
- e. Member shall not make any modifications to the Workstation or any connected devices without prior written authorization from LifeScan.
- f. Member shall not modify any software settings on the Workstation.
- g. Member shall not load or run any computer program(s) on the Workstation other than those supplied by LifeScan.
- h. Member shall follow the trouble shooting procedures as defined in the User Manual(s) prior to reporting any problems to LifeScan.
- i. Member shall identify to LifeScan up to three persons who will serve as a Member representative for all support issues under this LOC.
- j. Member shall read all LifeScan provided documentation prior to implementing any software updates.
- k. Member shall notify LifeScan ninety (90) days in advance of any changes in the Member's lab system, network, Hospital / Clinical Information System, etc. that will have an impact on the LifeScan provided software / hardware. Any request for modification by the Member will be subject to charge. The Member will be charged for time and materials required in performing the modification at the prevailing market rate.
- l. Member shall perform all maintenance functions within the time frame defined in the LifeScan Inc. User Manual(s).
- m. If Member installs Equipment, Member is solely responsible for:
- n. ensuring proper installation of the equipment based on manufacturers' and supplier's documentation and verifying successful installation
- o. providing a qualified person to perform the installation. If the qualified person can not complete the installation, Supplier reserves the right to dispatch a qualified installer to install the uninstalled Equipment and Member will be billed by Supplier at the prevailing market rate for time and materials.
- p. Member shall be responsible for the cost of any replacement Equipment from Supplier if any component of the Equipment is stolen, lost or damaged including damage resulting from using software other than the LifeScan Software.
- q. Member is responsible for ensuring that any "DataLink Connectivity Products" listed in Exhibit A and purchased by Member are compatible with and do not interfere with Member's network and non-LifeScan healthcare equipment

(including ensuring that Member has the infrastructure and security to support any wireless devices supplied by LifeScan (e.g., OneTouch® DataLink® Wireless)). Member, at its expense, shall indemnify and defend (or, at its option, settle) any action brought against LifeScan as a result of Member's failure to comply with this responsibility.

- r. Obtain Products only through LifeScan or its Affiliate or an Authorized Wholesaler and in no event purchase products manufactured or sold by LifeScan or LifeScan outside LifeScan-approved channels of distribution, including LifeScan products imported into the United States from abroad. Products manufactured or sold by LifeScan that are purchased outside LifeScan-approved channels of distribution – including LifeScan products imported into the United States from abroad – may not be handled and stored appropriately and may not bear appropriate labeling for sale in the United States. Breach of this subsection renders this LOC immediately voidable by LifeScan.
- s. Failure to comply with these requirements may void all warranties and Extended Services hereunder.

**Own Use.** All Products purchased by Members under this LOC must be used by Members solely on inpatients, outpatients, staff, employees, students, inpatient training, inpatient discharge programs, diabetes training programs, gestational programs, indigent programs, employee diabetes testing programs, for their own or their dependents' use and not for resale in retail outlets or transfer to another institution, including other institutions within Member's System (if System LOC is a Multiple Price System LOC) or otherwise affiliated with Member directly or through any distribution channel. For those Alternate Care Members that supply or distribute Supplier's Products to nursing homes, prisons, home health care, or health care agencies supplying product to home bound patients, Own Use shall mean that Product shall only be used only for patients of those institutions and not for resale in retail outlets or transfer to another institution or distributor directly or through any distribution channel.

**Product Diversion.** Members shall not divert or sell any Products purchased under this LOC directly or through any distribution channel to any end-user, business entity or other third party including any other Member, except as permitted under the Own Use Section above. Any violation of this subsection or the Own Use subsection shall be collectively hereinafter referred to as "Diversion." If any Member is identified as potentially engaging in Diversion of Supplier's Products, and prior to suspending any such suspected Member, Supplier will use commercially reasonable efforts to analyze the Member's current and historical sales and contact the Member to review the Member's purchasing patterns and business model. After such review, Supplier may suspend such Member from access to contract pricing for Products upon at least two (2) business days notice to Novation and the Member. In exceptional circumstances, Supplier may suspend a Member immediately upon notice to Novation and Member explaining the basis for the suspension. Within 60 days of a Member's suspension for suspected Diversion, Supplier will conduct an additional review of the Member's business to verify and validate whether or not the Member was engaged in Diversion. This 60 day period may be extended by mutual agreement of Novation and Supplier if Supplier can not complete the additional review process within that time despite all reasonable efforts. If the review indicates that the Member was not engaged in Diversion then Supplier will reinstate the Member's Product pricing retroactive to the effective date of the Member's suspension. If the review finds that the Member was engaged in Diversion then the Member will be immediately terminated retroactive to the earlier of the effective date of the Member's LOC or the first date of the Member's purchases under this LOC, and the Member shall promptly reimburse Supplier for the difference between the list price in effect at the time of sale and the contract price of all Product purchases, multiplied by the total quantity of Products purchased by the Member under this LOC. Provided however, that if the Member allows Supplier reasonable access to its purchase, sales and shipping records related to the Products, and the Member documents legitimate purchases of Product to Supplier's reasonable satisfaction, not to be unreasonably withheld, then the Member shall only be responsible to promptly reimburse Supplier, as described above, for the difference between the list price in effect at the time of sale and the contract price of any diverted Product.

**Audit.** Supplier shall have the right in its sole discretion, upon reasonable cause consistent with Supplier's standard audit practices and during regular business hours, to audit the books and records of the Member to determine whether the Member is in compliance with this LOC. Such audits shall be limited to one in any twelve-month period and any request for audit must be made not later than twenty-four months after the close of the contract year relevant to such report or claim unless required to respond to a government request.

**Performance Review.** For Volume Committed Tiers, Supplier will monitor Member's purchases and in any situation where a Member is not maintaining the applicable Volume Commitments for the Pricing Tier indicated on their LOC, Supplier reserves the right to adjust pricing to the appropriate Pricing Tier. Supplier shall provide no less than thirty (30) days notice of any such adjustments to Member. Member will be required to sign a new Letter of Commitment.

**Distribution.** Products shall be obtained from an Authorized Distributor. The attached prices, listed in Exhibit A.1 and Section 4 Table 1, are Dealer net acquisition prices. The prices quoted do not include the dealer handling charge or any other fees. The Member must negotiate with an Authorized Supplier's Distributor for the Member's acquisition price. All terms and conditions of the distributor shall apply. Products may be purchased directly from Supplier if pre-approved by Supplier. In the event that a Member orders such a Product directly from Supplier, delivery shall be by F.O.B. Origin with freight and insurance prepaid, 2% 30, Net 31 Date of invoice, funds due in bank on day 30. Member agrees to comply with the order requirements, returned goods policies and damaged and unsaleable goods policies of Supplier in effect at the time the order is placed.

#### WARRANTY AND SERVICE

- A. Supplier warrants that the Products other than the LifeScan Software licensed separately hereunder pursuant to Attachment B, if any, and Third Party interfaces products (Third party interface shall mean interface (scripted and/or EDI) offered by a non-LifeScan entity that LifeScan contracted to do the work) will be free from defects in material and workmanship and that they will conform to their respective labeled specifications for the following periods from the date of delivery:

1. SureStep® Pro and SureStep® Flex System - one year standard, extended warranties on the Workstations and Bedside Units/Meters may be purchased at an additional cost.
2. SureStep® Hospital, ONE TOUCH® II Hospital - three years

Supplier calibrates ONE TOUCH® II Hospital meters to function with genuine ONE TOUCH® Test Strips only and SureStep® meters to function with genuine SureStep® Test Strips only; SureStep® Pro and SureStep® Flex Meters to function with SureStep® Pro Test Strips only; Supplier cannot warrant the performance of the system if

other brands of test strips are used. Supplier warrants that any Product with an expiration date will be free from defects in material and workmanship and will conform to its labeled specifications from the date of delivery until its respective expiration date, provided the Product has not been opened or damaged. Supplier warrants that any non-meter Products without expiration dates will be free from defects in material and workmanship and that they will conform to their respective labeled specifications for a period of one year from the date of delivery. Supplier further warrants that no Product bearing its name and covered by this LOC is adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** In the event of a breach of the foregoing, Supplier will, at its option, either replace all non-conforming Product or refund the purchase price. Such replacement or refund shall be the sole and exclusive remedy of the Member and in no event shall Supplier be liable to the Member for loss of profit, loss of use, or damage to person or property, incidental or consequential damages of any kind resulting from breach of warranty or any other obligation under this LOC.

- B. **Extended Service Option on SureStep@Flexx Meter and Workstation**  
Extended service on the Meters and Workstations may be purchased at additional cost. The warranty period includes the standard one year warranty period.

1. **Extended Service Strip Price Cost Option**  
The Member has elected the four (4.17) year extended service option on the Meters and Workstations listed in Section 4 tables 3, 4 & 5. The price for this option is included in the Package Price listed in Section 4 Table 1.

**Prior Agreements.** BY SUBMISSION OF THIS LOC, THE MEMBER HEREBY GRANTS SUPPLIER PERMISSION TO REMOVE MEMBER FROM ANY AND ALL PRIOR AGREEMENT CONTRACTED PRICING FOR LIFESCAN PRODUCTS.


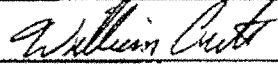
**Execution.** Member hereby warrants that all information on this LOC is accurate. This LOC will not be considered valid until signed by the Member and Supplier. Any alterations or modifications will void this form.

**DEFINITIONS:**

- **DataLink Data Management Software ("DDMS")** shall mean LifeScan's data management software for monitoring the status of LifeScan's SureStep® glucose meters on a computer workstation, for configuring such meters from a computer workstation, and for generating reports on a computer workstation based on data received from such meters.
- **LifeScan Software** shall mean software owned by LifeScan including third-party software licensed to LifeScan for incorporation into LifeScan-owned software). All software (i) listed in the LOC, Table 1 (such as the DataLink Data Management Software or DataLink Sync software) or (ii) installed or imbedded in Equipment listed in the LOC, Tables 3, 4 & 5 is LifeScan Software. LifeScan Software does NOT include any Third Party Interfaces or any other third-party software listed in the LOC, whether purchased through LifeScan or a third party.
- **Third Party Interface** shall mean third-party software that serves as an interface (in either scripted or Electronic Data Interface (EDI) form) between the DDMS and select laboratory and/or host systems.

55 days after final execution of this LOC by Supplier, the Member will be eligible for pricing as available under this LOC provided that the Member has satisfied all eligibility requirements. Supplier shall validate and approve or deny any such Member LOC sign up through the Novation Forms Manager application within 14 days after submission by Member. For any non-approved sign up form, Supplier shall provide information and comment about any such non-approval through the Novation's Forms Manager.

AGREED AND ACCEPTED:

<b>Member</b>	<b>LIFESCAN</b>
	
Signature	Signature
<u>DAVID P. VIETOU</u>	<b>William Preto</b>
Name (Please Print)	Name (Please Print) <del>Director, Contracts</del>
<u>U.P. Support Services</u>	Services & Installations
Title	Title
<u>07/19/07</u>	<u>7/30/07</u>
Date	Date

Additional Attachments: (check one below)

- None
- Attachment A - Marketing Programs
- Attachment B - Software License Addendum

Return to:  
 LifeScan, Inc.  
 Attention: Contract Services Department  
 1000 Gibraltar Drive  
 Milpitas, CA 95035

### Attachment B – Software License Addendum

This Addendum sets forth terms under which LifeScan Software listed in the LOC is licensed under the LOC, provided that no license is granted unless Member purchases an applicable software license from LifeScan for such LifeScan Software. The terms in this Addendum are in addition to the terms in the LOC.

1. **Definitions.** In this Addendum, the following terms shall have the meanings assigned to them below whenever printed with initial capitalization. Capitalized terms not defined in this Addendum shall have the meaning specified in the LOC.
  - a. **Authorized Site** shall mean the address set forth for Member on the first page of the LOC or any other Member business location for which Member may purchase Products under this LOC.
  - b. **Documentation** shall mean the instructional end user documentation accompanying the LifeScan Software.
  - c. **Licensed LifeScan Software** shall mean the LifeScan Software listed Tables 3, 4 & 5 of the LOC for which Member purchases a license under this LOC. Licensed LifeScan Software does not include any Third Party Interfaces.
2. **License Grant**
  - a. **License.** Subject to the terms and conditions of the LOC (including this Addendum), Supplier grants Member a personal, nontransferable, nonexclusive, non-sublicensable license to use the Licensed LifeScan Software (in object code only) and the Documentation at the Authorized Site, provided that Member may install and use the Licensed LifeScan Software on only the number and type of computers for which Member has purchased a license for the Licensed LifeScan Software. Installation and use of the Licensed LifeScan Software must be in accordance with the Documentation. With respect to Licensed LifeScan Software for servers, Member must obtain any applicable client access licenses for each workstation or user that accesses the server software. If Member purchases a workstation from LifeScan with software, Member shall use such software on only such workstation. (font size for this last sentence needs to be fixed)
  - b. **Restrictions.** Member shall not (i) permit any third party to use the Licensed LifeScan Software; (ii) modify or change the Licensed LifeScan Software, any of its components or configuration; (iii) decompile, disassemble or otherwise reverse engineer any components of the Licensed LifeScan Software; or (iv) copy the Licensed LifeScan Software or Documentation, except that Member may make one back-up copy of the Licensed LifeScan Software provided that Member reproduces all copyright, trademark, and other proprietary rights notices appearing in the Licensed LifeScan Software. The Licensed LifeScan Software must be used in accordance with the Documentation.
3. **Computer and Network Connections.** Unless otherwise agreed between the parties in writing, Member shall be solely responsible for the purchase or lease, installation, testing and maintenance of adequate network connections and equipment, computer hardware, and computer software pertaining to computer and network operation and protection (e.g., operating system software, virus protection software, etc.). Supplier is not responsible for failure of the Licensed LifeScan Software to function as warranted herein because of inadequate or defective network connections, computer viruses or any other cause beyond the reasonable control of Supplier.
4. **Title to Licensed LifeScan Software.** The Licensed LifeScan Software is proprietary to LifeScan and title thereto remains with LifeScan. LifeScan will acquire and retain all licenses for any third-party supporting software provided to Member by Supplier in connection with the Licensed LifeScan Software. Member will not delete or in any manner alter the copyright, trademark, and other proprietary notices of Supplier or LifeScan and its licensors appearing in the Licensed LifeScan Software and Documentation as delivered to Member. All rights to patents, copyrights, trademarks and trade secrets in the Licensed LifeScan Software or any modifications made at Member's request are and shall remain with LifeScan or, as applicable, with LifeScan's licensors.
5. **Payment.** For each copy of the Licensed LifeScan Software that the Member uses or installs, the Member shall pay the license fee for the Licensed LifeScan Software in the LOC, where such license fee may be paid upfront or included in the Total Package Price.
6. **Confidentiality of Licensed LifeScan Software and Documentation.**
  - a. **Obligations.** Member will not disclose or, except as expressly permitted hereunder, use the Licensed LifeScan Software or Documentation and will take all reasonable measures to maintain the confidentiality of the Licensed LifeScan Software and Documentation, which will in no event be less than the measures Member uses to maintain the confidentiality of its own information of equal importance. Member agrees to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to the Licensed LifeScan Software and Documentation to satisfy its obligations hereunder. Member shall be liable under the LOC for any unauthorized disclosure of the Licensed LifeScan Software and Documentation by its employees or consultants.
  - b. **Injunctive Relief.** Member acknowledges that the Licensed LifeScan Software includes Supplier, LifeScan or both trade secrets, the disclosure of which would cause substantial harm to Supplier that could not be remedied by the payment of damages alone. Accordingly, Supplier, LifeScan or both will be entitled to injunctive relief and other equitable relief for any breach of this Section 6.
7. **Warranty.**
  - a. Supplier warrants that, for one (1) year from the date of delivery, the Licensed LifeScan Software will conform, as to all material operational features, in accordance with the Documentation when installed and will be free of defects that materially affect system performance. The foregoing warranty shall not be valid if (i) the Licensed LifeScan Software is subject to conditions beyond specified operating constraints, unauthorized modification, or unauthorized installation, or (ii) any defect, which is the subject of a claim, made hereunder results from Member-supplied hardware or software.
  - b. If the Licensed LifeScan Software is found defective by Supplier, Supplier's sole obligation under this warranty is to remedy such defect in a manner consistent with Supplier's regular business practices. In the event that Supplier is unable to remedy such defect within a reasonable amount of time, Supplier may terminate the license granted hereunder by written notice to Member and refund the license fee paid by Member.

- c. THE WARRANTY SET FORTH IN SECTION 7(a) IS THE ONLY WARRANTY MADE BY SUPPLIER WITH RESPECT TO THE LICENSED LIFESCAN SOFTWARE. SUPPLIER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. SUPPLIER DOES NOT WARRANT THAT THE LICENSED LIFESCAN SOFTWARE WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION. THE STATED EXPRESS WARRANTY IN SECTION 7(a) IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF SUPPLIER FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE LICENSED LIFESCAN SOFTWARE.
8. **Enhancements and Maintenance Releases.** In accordance with the LOC, Supplier, at its option, may provide Member with (i) Maintenance Releases for the Licensed LifeScan Software, which Member shall promptly install, and (ii) Product Enhancements for the Licensed LifeScan Software, which Member, at its option, may license for a license fee (if any) specified by Supplier.
9. **Termination and Survival**
- a. **Survival.** Upon termination or expiration of the LOC, all provisions of this Addendum shall survive except for Section 7a (Warranty), Section 7b (Warranty), and Section 8 (Enhancements & Maintenance Releases). Notwithstanding the foregoing, the licenses granted in this Addendum (Section 2a) shall survive only if they have not been terminated under Section 9(b) of this Addendum and only if Member has paid Supplier the license fee as required by Section 5 of this Addendum and all other payments due under the LOC.
- b. **Termination of Licenses.** Notwithstanding anything to the contrary, Supplier may immediately terminate the licenses granted in Section 2(a) of this Addendum in the event of breach by Member of the terms and conditions of the LOC (including this Addendum). (The license granted in Section 2(a) will automatically terminate upon the insolvency or bankruptcy of Member.) In the event of termination of the licenses in Section 2(a) of this Addendum, Member shall: (1) promptly cease use of the Licensed LifeScan Software; (2) immediately return to Supplier all electronic discs of the Licensed LifeScan Software (or other applicable portable electronic medium on which the Licensed LifeScan Software is stored) and the Documentation, together with any other proprietary items supplied by Supplier to Member pursuant to this Addendum; and (3) with respect to any copies of the Licensed LifeScan Software installed on computers, Member shall irretrievably delete the Licensed LifeScan Software and related documentation from all Member computer hardware, and an officer of Member shall certify in writing to LifeScan that it has performed the foregoing within thirty (30) days after any such termination. Termination of the license of the Licensed LifeScan Software pursuant to this provision is in addition to any other remedies available at law or in equity, and shall not relieve either party of any of its obligations to the other existing as of the date of termination, or operate as a waiver of any breaches of this LOC.
10. **Microsoft and Symantec Software**
- a. Symantec Corporation's pcAnywhere™ software and Microsoft Corporation's SQL Server 2000 Standard Edition software ("SQL Server 2000") are integrated within the DataLink Data Management Software. Member may use the Symantec and Microsoft software integrated within the DataLink Data Management Software only with the DataLink Data Management Software. Uses not associated with the DataLink Data Management Software are prohibited.
- b. Use of the pcAnywhere™ software and SQL Server 2000 software with the DataLink Data Management Software is subject to compliance with Symantec's license terms for pcAnywhere™ and Microsoft's license terms for SQL Server 2000, respectively. Member agrees to comply with such license terms and to indemnify and defend (or at its option, settle) any action brought against LifeScan based on Member's failure to comply with such license terms (including, but not limited to claims based on Member's failure to purchase the applicable number of SQL Server 2000 client access licenses). Microsoft Corporation's license terms for SQL Server 2000 can be found on Microsoft's website. Please see the document titled "Product Use Rights" at the following link: <http://www.microsoft.com/licensing/resources/downloads/default.aspx>. (Note: Member should contact LifeScan for a copy of the SQL Server 2000 license terms if Member is unable to find them at the preceding link.) Symantec's license terms for pcAnywhere can be found on computers on which the DataLink Data Management Software is installed at C:\Program Files\Symantec\pcAnywhere\EULA.rtf. Also, LifeScan will supply Member with the applicable Symantec and Microsoft's license terms at Member's request.
- c. If Member runs the DataLink Data Management Software on a server (using OneTouch® DataLink® Web), a Microsoft "user" client access license (CAL) for SQL Server 2000 is required for each concurrent user that accesses the DataLink Data Management Software. One such "user" CAL is included in the price of the OneTouch® DataLink® Web software license. If "user" CALs for SQL Server 2000 are offered for sale by LifeScan, Member may purchase additional "user" CALs from LifeScan. Otherwise, Member is responsible for purchasing CALs ("user" or "device") from Microsoft or an authorized Microsoft distributor. Member is responsible for ensuring it has the adequate type and number of SQL Server 2000 CALs to support its use of the DataLink Data Management Software.
- d. Use of the DataLink Data Management Software on a server (using OneTouch® DataLink® Web) also requires Microsoft Windows Server 2003 CALs, as described in Pricing & Product Note #7 in Section 4 of this LOC. Member is responsible for obtaining all Windows Server 2003 CALs required for the DataLink
- e. Supplier is not an agent or representative of Microsoft or Symantec. Supplier has no authority to negotiate or modify the terms of the Microsoft or Symantec license terms or make any representations or commitments on behalf of Symantec or Microsoft.
- f. Supplier is the primary contact for any issues related to the DataLink Data Management Software (including the integrated Symantec pcAnywhere or Microsoft SQL Server 2000 applications).

Warranty of Authority. The individual signing on behalf of Member below hereby represents and warrants that he or she is duly authorized to execute this LOC and bind Member to its terms; by appropriate corporate action of Member if necessary.

IN WITNESS WHEREOF the Member and Supplier have caused this LOC to be executed by their duly authorized officers or representatives.

AGREED AND ACCEPTED:

MEMBER		SUPPLIER	
<i>Paul R. Dand, VP Supply Services</i>	<i>07/19/07</i>	<i>William Pretto</i>	<i>7/13/07</i>
Customer Signature & Title	Date	LifeScan Signature & Title	Date

Return to:  
 LifeScan, Inc.  
 Attention: Contract Services Department  
 1000 Gibraltar Drive  
 Milpitas, CA 95035

**William Pretto**  
 Director, Contracts  
 Services & Installations

**Attachment C**

**ELIGIBILITY REQUIREMENTS:**

Class of Trade and Pricing Eligibility:

**Inpatient Products (as labeled in Exhibit A.1 of Master Agreement) - Access Pricing Only:**

- Surgery Centers
- Nursing Home Providers (Long Term Closed Door Pharmacy, no Retail Pharmacy)\*
- Health Care Centers\*
- Home Health Care Providers (no Retail Pharmacy)\*
- Ambulance Services
- Dialysis Centers (Pharmacy or DEA#)
- Single Service Facilities (outpatient facilities, no retail pharmacy)

**Inpatient Products (As labeled in Exhibit A.1 of Master Agreement) - Access & Committed Pricing:**

- Hospitals (Acute Care facilities, IDNs)
- Teaching Hospitals (as defined in Section 6)
- Clinical Lab
- Nursing Home with Pharmacy (on-site license)
- City, County State Hospitals
- Psychiatric Hospitals

**Consumer Products (as Labeled in Exhibit A.1 of master Agreement) Access Pricing Only:**

- Surgery Centers
- Health Care Centers
- Ambulance Services
- Dialysis Centers (Pharmacy or DEA#)
- Single Service Facilities (outpatient facilities, no retail pharmacy)

**Consumer Products (as labeled in Exhibit A.1 of the Master Agreement) Access & Committed Pricing Only:**

- Hospitals (Acute Care facilities, IDNs)
- Teaching Hospitals (as defined in Section 6)
- Clinical Lab
- Nursing Home with Pharmacy (on-site license)
- Nursing Home Providers (Long Term Closed Door Pharmacy, no Retail Pharmacy)\*
- Home Health Care Providers (no Retail Pharmacy)\*
- City, County State Hospitals
- Psychiatric Hospitals

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
Caption in Compliance with D.N.J. LBR 9004-2(c)

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In re:

PASCACK VALLEY HOSPITAL ASSOCIATION, INC.,

Debtor.

Hon. Rosemary Gambardella

Case No. 07-23686

Chapter 11

**ORDER, PURSUANT TO 11 U.S.C. § 365(a), AUTHORIZING THE DEBTOR TO  
REJECT EXECUTORY CONTRACT WITH JOHNSON & JOHNSON HEALTH  
CARE SYSTEMS INC., DBA LIFESCAN, INC. AS OF NOVEMBER 21, 2007**

The relief set forth on the following page, numbered two (2), is hereby  
**ORDERED.**

Debtor: PASCACK VALLEY HOSPITAL ASSOCIATION, INC.  
Case No.: 07-23686  
Caption of Order: Order, Pursuant to 11 U.S.C. § 365(a), Authorizing Debtor to Reject Executory Contract With Johnson & Johnson Health Care Systems, Inc., dba Lifescan, Inc. as of November 21, 2007

This matter having been raised before this Court by motion (the “Motion”) of Pascaek Valley Hospital Association, Inc., the debtor and debtor-in-possession herein (the “Debtor”), seeking the entry of an order, pursuant to section 365 of chapter 11, Title 11 of the United States Code, authorizing the Debtor to reject, as of November 21, 2007, a certain executory contract (the “Lifescan Agreement”) between the Debtor and Johnson & Johnson Health Care Systems Inc., dba Lifescan, Inc. dated September 26, 2007; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District of New Jersey; and the consideration of the Motion, the supporting application and exhibits thereto (the “Application”), and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b); and the Court having considered the Application filed in support of the Motion and any responses or objections thereto; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Motion is granted in all respects.
2. Pursuant to 11 U.S.C. § 365(a), the Debtor is authorized to reject the Lifescan Agreement.
3. The effective date of the Debtor’s rejection of the Lifescan Agreement is November 21, 2007.