

# **Settlement Agreement**

**by and among**

**Plaintiff States,**

**End-Payor Plaintiffs,**

**Organon USA Inc.**

**and**

**Akzo Nobel N.V.**

September 28, 2004

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**SETTLEMENT AGREEMENT BY AND AMONG PLAINTIFF STATES, END-PAYOR  
PLAINTIFFS, ORGANON USA INC. AND AKZO NOBEL N.V.**

This Settlement Agreement is made and entered into this 28<sup>th</sup> day of September, 2004 by and among the End-Payor Plaintiffs (as defined below), on behalf of themselves and in their respective capacities as representatives of the Settlement Class (as defined below); the Plaintiff States (as defined below), by and through their respective Attorneys General, Corporation Counsel or duly and lawfully authorized persons exercising similar authority (collectively with the End-Payor Plaintiffs, “**Plaintiffs**”); and Organon USA Inc. and Akzo Nobel N.V., by and through their undersigned counsel.

**W I T N E S S E T H:**

WHEREAS, on December 31, 2003, the End-Payor Plaintiffs filed an Amended Consolidated Class Action Complaint in *In re Remeron End-Payor Antitrust Litigation*, Master Docket No. 02-CV-2007, consolidated in the U.S. District Court for the District of New Jersey; and

WHEREAS, concurrently with the submission of this Settlement Agreement for preliminary approval by the Court, the Plaintiff States intend to file a complaint (the “**State Complaint**”) in this litigation captioned *States of Texas, et al. v. Organon USA Inc. and Akzo Nobel N.V.*, Master Docket No. 02-CV-2007 (FSH) (D.N.J.), in the U.S. District Court for the District of New Jersey; and

WHEREAS, the End-Payor Plaintiffs and the Plaintiff States have asserted claims against Defendants (as defined below) for injunctive and monetary relief under federal antitrust law and under antitrust and/or unfair competition laws of Plaintiff States, and for imposition of a constructive trust and for disgorgement based on principles of unjust enrichment; and

WHEREAS, Defendants vigorously deny each and every one of Plaintiffs' allegations of unlawful and inequitable conduct and Plaintiffs' entitlement to damages, restitution, disgorgement or any other legal or equitable relief in connection with Plaintiffs' claims arising therefrom and have asserted a number of defenses to Plaintiffs' claims; and

WHEREAS, Plaintiffs and Defendants agree that neither this Settlement Agreement, nor anything contained herein or contemplated hereby, shall be deemed or construed to be an admission or evidence of any violation of any statute, law, rule or regulation, or of any liability or wrongdoing by Defendants, or of the truth or validity of any of Plaintiffs' claims or allegations; and

WHEREAS, arm's-length negotiations have taken place between counsel for Plaintiffs and counsel for Defendants in reaching the terms of this Settlement Agreement, and Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts and after carefully considering the circumstances of this litigation, including the claims asserted in the End-Payor Complaint (as defined below) and the State Complaint, the possible legal and factual defenses thereto, and the applicable law, that it would be in the best interests of the Plaintiffs and the members of the Settlement Class to enter into this Settlement Agreement to avoid the uncertainties of this particularly complex litigation and to assure a benefit to those represented by the Plaintiffs and to the members of the Settlement Class, and further, that Plaintiffs' counsel consider the settlement set forth herein to be fair, reasonable, and adequate and in the best interests of the Plaintiffs and the members of the Settlement Class; and

WHEREAS, Defendants, while continuing to deny the allegations, any violation of law or wrongdoing, and any liability with respect to any and all claims asserted in any Complaint, have concluded that they will enter into this Settlement Agreement to avoid the further expense,

inconvenience, and burden of this litigation, and the distraction and diversion of their personnel and resources, and to avoid the risks inherent in uncertain, complex litigation; and

WHEREAS, the undersigned have each determined it to be in their respective best interests and in the best interests of those whom they represent to resolve this dispute and to enter into this Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

## I. DEFINITIONS

When used anywhere in this Settlement Agreement:

A. **“Akzo”** means Defendant Akzo Nobel N.V. and its past, present and future directors, officers, employees, shareholders, affiliates, divisions, predecessors, parents, subsidiaries, other organizational units of any kind, general or limited partners, successors, and assigns; and the past, present and future agents, representatives, attorneys, heirs, executors, administrators, and other persons acting on behalf of any of them.

B. **“Class Period”** shall have the meaning ascribed to it in Section I.RR of this Settlement Agreement.

C. **“Comparable Law”** shall have the meaning ascribed to it in Section II.C.2 of this Settlement Agreement.

D. **“Complaints”** means, collectively, the End-Payor Complaint, the State Complaint, and any predecessor or successor pleading to the End-Payor Complaint or the State Complaint; and **“Complaint”** means any of them individually.

E. **“Court”** means the United States District Court for the District of New Jersey.

F. **“Defendant”** means either Akzo or Organon. **“Defendants”** means both Akzo and Organon.

G. **“Discovery Materials”** means any (i) materials, documents, data and information (whether in paper, electronic or any other format, whether an original or any copy or reproduction, and whether found in the recipient Party’s possession in its entirety or in any part) produced in this litigation by a Party to this Settlement Agreement (collectively, **“Data”**), (ii) any summaries, abstracts, excerpts, tables, computations, databases, indices or descriptions of any Data (collectively, **“Summaries”**), and (iii) information recorded in any tangible form that is derived from any Data (collectively, **“Derivative Data”**); and includes any Data, Summaries or Derivative Data provided to (or, in the case of Summaries or Derivative Data, prepared by) a recipient Party’s consultants, experts and co-counsel. For purposes of this Settlement Agreement, Discovery Materials shall not be deemed to include the work product of any Party or of counsel to any Party in the possession of such Party or counsel, nor shall it include copies of any papers that have been filed with the Court; *provided* that all such work product and papers shall remain subject to the Protective Order.

H. **“Effective”** shall have the meaning ascribed to it in Section IX.A of this Settlement Agreement.

I. **“Effective Date”** shall have the meaning ascribed to it in Section IX.B of this Settlement Agreement.

J. **“End Payor”** means any consumer or Third Party Payor and includes, without limitation, the End-Payor Plaintiffs.

K. **“End-Payor Complaint”** means the End-Payor Plaintiffs’ Amended Consolidated Class Action Complaint in *In re Remeron End-Payor Antitrust Litigation*, Master



Docket No. 02-CV-2007 (D.N.J. dated Dec. 31, 2003), and all constituent complaints consolidated thereunder, including but not limited to the complaints filed in connection with the following actions: *Gayle Taylor v. Organon Inc. and Akzo Nobel N.V.*, No. 02-cv-02007-FSH-PS (D.N.J.); *Robert Kapella v. Organon Inc. and Akzo Nobel N.V.*, No. 02-cv-02384-FSH (D.N.J.); *Vista Healthplan, Inc. v. Organon, Inc. and Akzo Nobel, N.V.*, No. 02-cv-04364-SWK (S.D.N.Y.); and *United Food and Commercial Workers Local 56 Health & Welfare Fund and Board of Trustees of the United Food and Commercial Workers Local 56 Health and Welfare Fund v. Organon Inc. and Akzo Nobel N.V.*, No. 02-cv-03153-FSH-PS (D.N.J.).

L. **“End-Payor Plaintiffs”** means United Food and Commercial Workers Local 56 Health & Welfare Fund, Board of Trustees of United Food and Commercial Workers Local 56 Health & Welfare Fund, Vista Healthplan, Inc., Gayle Taylor, Dianne Mason and Robert Kapella, the named plaintiffs who filed the Amended Consolidated Class Action Complaint in *In re Remeron End-Payor Antitrust Litigation*, Master Docket No. 02-CV-2007 (D.N.J.).

M. **“Escrow Accounts”** means the Notice Fund Escrow Account and the Settlement Fund Escrow Account; and **“Escrow Account”** means either of them individually.

N. **“Escrow Agent”** means the person or entity mutually agreed to and designated by the Representatives in the Escrow Agreement to administer the Escrow Accounts.

O. **“Escrow Agreement”** means the escrow agreement, pursuant to which (i) the Notice Fund shall be deposited and administered in an escrow account (the **“Notice Fund Escrow Account”**) and (ii) the Settlement Fund shall be separately deposited and administered in a separate escrow account (the **“Settlement Fund Escrow Account”**), without any material change to Attachment A annexed hereto.

P. **“Event of Termination”** shall have the meaning ascribed to it in Section X.A of this Settlement Agreement.

Q. **“Excess Commencement Date”** shall have the meaning ascribed to it in Section III.D of this Settlement Agreement.

R. **“Excess Costs”** shall have the meaning ascribed to it in Section III.D of this Settlement Agreement.

S. **“Exercise Period”** shall have the meaning ascribed to it in Section X.B of this Settlement Agreement.

T. **“Fee Payment”** shall have the meaning ascribed to it in Section III.B.1 of this Settlement Agreement.

U. **“Final Judgment and Order”** means the Court's final order, without any material change to Attachment D annexed hereto.

V. **“Injunction”** shall have the meaning ascribed to it in Section II.E of this Settlement Agreement.

W. **“Mirtazapine Products”** means Remeron® and/or its AB-rated equivalents.

X. **“Notice Fund”** shall have the meaning ascribed to it in Section I.SS of this Settlement Agreement.

Y. **“Notice of Settlement”** means the document annexed hereto as Attachment E.

Z. **“Notice of Termination”** shall have the meaning ascribed to it in Section X.B of this Settlement Agreement.

AA. **“Notice Payment”** shall have the meaning ascribed to it in Section III.A of this Settlement Agreement.

BB. **“Notice Period”** shall have the meaning ascribed to it in Section IV.C of this Settlement Agreement.

CC. **“Notice Plan”** shall have the meaning ascribed to it in Section IV.A of this Settlement Agreement.

DD. **“Opt-Out Deadline”** means the date set by the Court as the deadline for members of the Settlement Class to request exclusion from the Settlement Class, which date shall fall on the last day of the Notice Period.

EE. **“Organon”** means Defendant Organon USA Inc. and its past, present and future directors, officers, employees, shareholders, affiliates, divisions, predecessors, parents, subsidiaries, other organizational units of any kind, general or limited partners, successors, and assigns; and the past, present and future agents, representatives, attorneys, heirs, executors, administrators, and other persons acting on behalf of any of them.

FF. **“Parties”** means the End-Payor Plaintiffs, the Plaintiff States and the Defendants; and **“Party”** means any of them individually.

GG. **“Plaintiff States”** means the undersigned states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and all possessions and territories of the United States of America, each of which has joined in and executed this Settlement Agreement in its sovereign capacity and on behalf of its respective state agencies and consumers residing in its respective state.

HH. **“Plaintiffs”** shall have the meaning ascribed to it in the preamble to this Settlement Agreement.

II. **“Plaintiffs’ Co-Lead Counsel”** means Fine, Kaplan and Black, RPC and Schiffrin & Barroway, L.L.P.

JJ. **“Preliminary Approval Order”** means the Court's order preliminarily approving this Settlement Agreement and preliminarily certifying the Settlement Class, adopted and entered without any material change to Attachment B annexed hereto.

KK. **“Protective Order”** means that certain Stipulation and Protective Order entered by the Court on February 25, 2002, as amended on June 24, 2003 and October 27, 2003, and as the same may be further amended.

LL. **“Released Claims”** means all claims, debts, obligations, damages, liabilities, actions, proceedings, assertions, and causes of action (**“Claims”**), which any Releasor had, has, or may in the future have against any Releasee that were or could have been asserted by any Releasor arising out of or concerning the allegations, or the facts and circumstances giving rise to the allegations, in the Complaints or in any other complaint filed in any action that has been consolidated or coordinated with any of the Complaints, including but not limited to Claims arising under federal or state antitrust, unfair competition, or consumer protection laws, under state or federal deceptive practices acts, or under common law, whether known or unknown, whether accrued in whole or in part of any kind whatsoever, from the beginning of time through the date this Settlement Agreement is preliminarily approved by the Court. For the avoidance of doubt, the Parties acknowledge that Released Claims shall not be construed to address in any way (1) any Claim arising solely from and asserting damages based solely on an alleged physical injury, or (2) Claims asserted by any Plaintiff State that do not arise from the facts, matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act set forth in the Complaints or in any other complaint filed in any action that has been consolidated or coordinated with any of the Complaints, such as Claims relating to “best price” or “average wholesale price” reporting practices or to Medicaid fraud or abuse.

MM. “**Releasees**” means the Defendants and their respective past, present and future directors, officers, employees, shareholders, affiliates, divisions, agents, representatives, attorneys, heirs, executors, administrators, predecessors, parents, subsidiaries, general or limited partners, successors, and assigns.

NN. “**Releasers**” means:

1. The Plaintiff States, on behalf of themselves and including:
  - a. the past, present and future departments, bureaus, and agencies of the Plaintiff States as actual or alleged purchasers or reimbursers; and
  - b. the Plaintiff States’ quasi-sovereign interests in fair competition and the economic welfare of their citizenry, and/or in the Plaintiff States’ sovereign capacities; and
  - c. Plaintiff States either in their *parens patriae* or functionally equivalent capacity, or as class representatives or in a functionally equivalent capacity, or as both, in each case on behalf of natural person members of the Settlement Class who reside in their respective states; and
2. The End-Payor Plaintiffs, on behalf of themselves and members of the Settlement Class, and, to the fullest extent permitted by law, their respective past, present and future directors, officers, employees, members, shareholders, attorneys, heirs, executors, administrators, general or limited partners, affiliates, divisions, agents, representatives,

predecessors, parents, subsidiaries, agencies, departments, institutions, successors and assigns.

OO. **“Representatives”** means (1) Plaintiffs’ Co-Lead Counsel, acting on behalf of the End-Payor Plaintiffs and the Settlement Class, and (2) State Liaison Counsel, acting on behalf of the Plaintiff States, governmental entities and consumers in the Plaintiff States, and the Plaintiff States’ respective consumer and (non-federal) governmental End-Payor members of the Settlement Class, and (3) counsel for Defendants, acting on behalf of the Defendants; and **“Representative”** means any of them individually.

PP. **“Section 1542”** shall have the meaning ascribed to it in Section II.C.1 of this Settlement Agreement.

QQ. **“Settlement Administration Costs”** means actual notice and administrative fees and costs reasonably incurred before or after the Court’s entry of the Preliminary Approval Order for the purpose of (i) providing notice of settlement to members of the Settlement Class, (ii) processing claims and administering the settlement, (iii) paying any Taxes and/or Tax Expenses with respect to the Settlement Fund, the Notice Fund and the Escrow Accounts and (iv) paying reasonable fees and costs to the Escrow Agent in accordance with the terms of the Escrow Agreement.

RR. **“Settlement Class”** means, for purposes of this Settlement Agreement only, all End Payors (including any assignees of such End Payors) who purchased and/or paid all or part of the purchase price of Mirtazapine Products in the United States during the period beginning June 15, 2001 through the date of the Preliminary Approval Order (the **“Class Period”**). Excluded from the Settlement Class are (i) Defendants and any of their subsidiaries and affiliates, (ii) all federal governmental entities, agencies and instrumentalities, and (iii) all

wholesalers and retailers and all persons or entities that purchased Mirtazapine Products primarily for purposes of resale.

SS. **“Settlement Consideration”** means an aggregate amount of up to Thirty-Six Million and no/100 Dollars (\$36,000,000.00), consisting of the sum of: (1) Thirty-Three Million and no/100 Dollars (\$33,000,000.00) that Defendants will collectively pay into the Settlement Fund Escrow Account pursuant to Section III.C of this Settlement Agreement and the Escrow Agreement (the **“Settlement Payment”**), plus any interest, dividends and other distributions and payments earned on that sum (the Settlement Payment plus accrued interest, dividends and other distributions and payments earned thereon being the **“Settlement Fund”**), plus (2) up to Two Million and no/100 Dollars (\$2,000,000.00) that Defendants will collectively pay into the Notice Fund Escrow Account as the Notice Payment pursuant to Section III.A of this Settlement Agreement and the Escrow Agreement, plus any interest, dividends and other distributions and payments earned on that sum (the Notice Payment plus accrued interest, dividends and other distributions and payments earned thereon being the **“Notice Fund”**), plus (3) up to One Million and no/100 Dollars (\$1,000,000.00) that Defendants will collectively pay to State Liaison Counsel, on behalf of all counsel for the Plaintiff States, in payment of the Fee Payment pursuant to Section III.B.1 of this Settlement Agreement.

TT. **“Settlement Documents”** shall have the meaning ascribed to it in Section XI.A of this Settlement Agreement.

UU. **“State Complaint”** shall have the meaning ascribed to it in the recitals to this Settlement Agreement.

VV. **“State Fee Report”** shall have the meaning ascribed to it in Section III.B.1 of this Settlement Agreement.

WW. **“State Liaison Counsel”** means the Attorneys General of the States of Florida and Texas.

XX. **“Sunset Date”** shall have the meaning ascribed to it in Section IX.C of this Settlement Agreement.

YY. **“Sunset Notice”** shall have the meaning ascribed to it in Section IX.C of this Settlement Agreement.

ZZ. **“Taxes”** shall have the meaning ascribed to it in Section V.C.3 of this Settlement Agreement.

AAA. **“Tax Expenses”** shall have the meaning ascribed to it in Section V.C.3 of this Settlement Agreement.

BBB. **“Termination Refund”** shall have the meaning ascribed to it in Section X.C of this Settlement Agreement.

CCC. **“Third Party Payor”** or **“TPP”** means any entity that is (i) a party to a contract, issuer of a policy or sponsor of a plan, and is also (ii) at risk, pursuant to such contract, policy or plan, to provide prescription drug benefits, or to pay or reimburse all or part of the cost of Mirtazapine Products dispensed to natural persons covered by such contract, policy or plan.

DDD. **“United States”** means the 50 states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and all possessions and territories of the United States of America.

## II. RELEASES AND COVENANTS

A. **Releases.** Upon the Effective Date of this Settlement Agreement, the Releasers, on behalf of themselves and their respective entities and individuals (including without limitation the members of the Settlement Class who have not timely and validly excluded themselves),



unconditionally, fully and finally release and discharge forever the Releasees from the Released Claims and any liability arising therefrom. All Released Claims are released and discharged to the fullest extent permitted by law.

B. **Covenant Not to Sue.** Each of the Releasors hereby covenants and agrees, to the fullest extent permitted by law, that it shall not hereafter seek to establish liability or assert Claims, on behalf of itself or any other person or entity or class thereof, against any of the Releasees, in whole or in part, for any of the Released Claims.

C. **Additional Release.** With respect to Released Claims, the Releasors, on behalf of themselves and their respective entities and individuals, shall also be deemed to have expressly waived, released and forever discharged any and all provisions, rights and benefits that may be available under:

1. Section 1542 of the California Civil Code (“**Section 1542**”), which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor;

and

2. any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 (each a “**Comparable Law**”).

Members of the Settlement Class shall be advised of the statutory language of Section 1542 and the possible availability of Comparable Laws in the Notice of Settlement and, with this understanding, nevertheless shall elect to and shall assume all risks for Released Claims heretofore and hereafter arising, whether known or unknown, suspected or unsuspected,

contingent or non-contingent; shall release and forever discharge such Released Claims; and shall specifically waive any rights they may have under Section 1542 and any Comparable Law as to such Claims. Members of the Settlement Class shall also be fully advised that if the facts, with respect to which the releases of the Released Claims are given and on which the dismissal with prejudice contained in the Final Judgment and Order is based, are found hereafter to be other than, or different from, the facts now believed by them to be true, they shall expressly accept and assume the risk of such possible differences and facts, shall expressly waive and fully, finally and forever settle, release and discharge any such Claims as Released Claims under this Settlement Agreement, and shall agree that the releases set forth in this Settlement Agreement shall be and remain effective notwithstanding such differences in facts.

D. **Effect of Releases.** Upon and after the Effective Date, this Settlement Agreement may be pleaded as a full and complete defense to any action that may be instituted, prosecuted, or attempted with respect to any of the Released Claims. The Releasers and Defendants further agree that this Settlement Agreement may be pleaded as necessary for the purpose of enforcing this Settlement Agreement.

E. **Injunction.** Defendants have agreed to injunctive relief with the Plaintiff States in the form specified in Attachment C hereto without any material change (the “**Injunction**”). The Parties acknowledge and agree that the Injunction provides full, adequate and complete injunctive relief sufficient to address the Released Claims, and that the Defendants’ entry into the Injunction is for settlement purposes only and does not constitute an admission or a determination by Defendants or any other person or entity that the law has been violated. The Injunction shall not become final or effective until this Settlement Agreement becomes Effective.

### III. SETTLEMENT PAYMENTS

A. **Notice Fund.** Subject to the terms and conditions of this Settlement Agreement and the Escrow Agreement, within five (5) business days after (1) receipt by Defendants of fully executed copies of this Settlement Agreement and the Escrow Agreement pursuant to Sections IX.A.1 and IX.A.2 of this Settlement Agreement and (2) entry by the Court of the Preliminary Approval Order, Defendants will deposit with the Escrow Agent, by wire transfer to the Notice Fund Escrow Account, the aggregate sum of Two Million and no/100 Dollars (\$2,000,000.00) (the “**Notice Payment**”) to be used exclusively for the payment of such Settlement Administration Costs as shall be reimbursable in accordance with this Settlement Agreement and with the Escrow Agreement. The Notice Fund shall be maintained in an account of a federally-insured financial institution. If, after payment of all such Settlement Administration Costs as shall be reimbursable in accordance with this Settlement Agreement and the Escrow Agreement, any amount of the Notice Fund (including interest accrued thereon) shall remain unused, the Escrow Agent shall promptly refund to the Defendants the then-existing amount of the unused Notice Fund (including interest accrued thereon) on (i) the date of final distribution of the Settlement Fund pursuant to Section III.G or (ii) any other date as the Representatives may specify in a joint written notice to the Escrow Agent signed by all of the Representatives.

B. **Fees and Expenses.**

1. **Plaintiff States.** Subject to the procedures and limitations in this Section III.B, Defendants agree to reimburse Plaintiff States for their reasonable attorneys’ fees and expenses (i) previously incurred in connection with their investigations of Defendants relating to this matter

and (ii) as they shall incur in connection with the approval and administration of this Settlement Agreement and the settlement embodied herein. Within ten (10) business days following the Effective Date, State Liaison Counsel, on behalf of all counsel for the Plaintiff States, shall provide Defendants with a report (the “**State Fee Report**”) documenting Plaintiff States’ attorneys’ fees and expenses satisfying the requirements of this Section III.B; *provided* that the aggregate amount of all such attorneys’ fees and expenses of all Plaintiff States that shall be reimbursable shall not exceed One Million and no/100 Dollars (\$1,000,000.00) (the “**Fee Payment**”). Subject to the terms and conditions of this Settlement Agreement, within ten (10) business days after the latest to occur of (1) Defendants’ receipt of the State Fee Report and (2) entry by the Court of any order approving the Fee Payment complying with this Section III.B.1 and (3) the Effective Date, Defendants will pay to State Liaison Counsel the amount of the Fee Payment by wire transfer to an account to be designated by State Liaison Counsel in accordance with the wire transfer instructions to be provided by State Liaison Counsel. Plaintiff States and their respective counsel shall not seek or demand payment of fees and/or costs beyond those provided for herein, nor shall they seek or demand payment of such fees and/or costs from any source other than the Fee Payment.

2. **End-Payor Plaintiffs.** End-Payor Plaintiffs and members of the Settlement Class, and their respective counsel, shall seek any payment of

fees and/or costs and/or incentive awards solely from the Settlement Fund, and shall not seek or demand payment of any fees and/or costs and/or incentive awards from any source other than the Settlement Fund.

3. **All Plaintiffs.** All payments of Plaintiffs' attorneys' fees, costs and expenses, and incentive awards contemplated by this Settlement Agreement shall be subject to judicial approval by the Court and, upon such approval, shall constitute full and final satisfaction of any and all claims that any Plaintiff and any Settlement Class member, and their respective counsel, may have or assert for reimbursement of fees, costs and expenses, and incentive awards.

C. **Settlement Payment.** Subject to the terms and conditions of this Settlement Agreement and the Escrow Agreement, within five (5) business days after (1) receipt by Defendants of fully executed copies of this Settlement Agreement and the Escrow Agreement pursuant to Sections IX.A.1 and IX.A.2 of this Settlement Agreement and (2) entry by the Court of the Preliminary Approval Order, Defendants will deposit with the Escrow Agent, by wire transfer to the Settlement Fund Escrow Account, the aggregate sum of Thirty-Three Million and no/100 Dollars (\$33,000,000.00) in payment of the Settlement Payment. The Settlement Fund shall be maintained in an account of a federally-insured financial institution. Following the Effective Date, the Settlement Fund may be used for purposes of distribution to the members of the Settlement Class and the Plaintiff States, payment of any further notice or administrative costs in excess of the amount of the Notice Fund, and payment of End-Payor Plaintiffs' fees and/or costs and/or incentive awards, subject to Court order. Except (1) in the event that this Settlement Agreement and the settlement embodied herein are terminated in accordance with

Articles IX and/or X of this Settlement Agreement and (2) for investments permitted by and complying with the terms of Section V.A of this Settlement Agreement and (3) to the extent permitted by Section III.D of this Settlement Agreement to pay certain Excess Costs and (4) to the extent permitted by Sections V.C.3, VI.A.4 and VI.B.4 to pay Taxes and Tax Expenses with respect to the Settlement Fund, the Notice Fund and the Escrow Accounts, in no event shall any portion of the Settlement Fund be expended, paid, loaned, removed, reduced, distributed, invested or dissipated in any way to any person for any purpose prior to the Effective Date. Except (1) in the event that this Settlement Agreement and the settlement embodied herein are terminated in accordance with Article X of this Settlement Agreement and (2) for amounts withheld pursuant to Section V.C.4 of this Settlement Agreement, in no event shall any portion of the Settlement Fund revert or be paid to the Defendants following the Effective Date.

D. **Excess Settlement Administration Costs.** Subject to the terms and limitations of this Section III.D and Section VI.B.2, beginning forty-five (45) calendar days after the Opt-Out Deadline (such date being the “**Excess Commencement Date**”), in the event that the Notice Fund shall be insufficient to pay reimbursable Settlement Administration Costs in accordance with this Settlement Agreement, such excess Settlement Administration Costs (“**Excess Costs**”) may be paid out of the Settlement Fund to the extent that they exceed the amount then available in the Notice Fund; *provided* that the aggregate amount of all such Excess Costs that shall be reimbursable under this Section III.D from the Settlement Fund during the period beginning on the Excess Commencement Date and ending on the Effective Date shall not exceed Five Hundred Thousand and no/100 Dollars (\$500,000.00).

E. **Full Satisfaction.** Defendants shall pay the Settlement Consideration in full and final settlement and in satisfaction of, and in consideration of, the covenants contained herein

and the release of the Released Claims. The Settlement Consideration is the total amount that Defendants will pay under this Settlement Agreement, or in connection with the Complaints, or in connection with any Released Claim, including, without limitation, attorneys' fees and costs of, and incentive awards to, any Plaintiff or any Settlement Class member and payment of any and all administrative and notice expenses associated with this litigation or settlement.

F. **Allocation of Settlement Fund.** Either before or after final approval by the Court of this Settlement Agreement and the settlement embodied herein, Plaintiffs' Co-Lead Counsel and State Liaison Counsel shall jointly propose a plan of distribution to the Court that shall be consistent with the terms of Section XI.K of this Settlement Agreement and the other provisions of this Settlement Agreement and that in their opinion will fairly and adequately address the issues of settlement administration, claims procedures, and allocation among members of the Settlement Class and the Plaintiff States; *provided* that in the event the Court shall deem such proposed plan of distribution to be reasonably necessary to the preliminary or final approval of this Settlement Agreement, then Plaintiffs' Co-Lead Counsel and State Liaison Counsel shall submit such proposed plan of distribution in connection with their motion for preliminary or final approval, as the case may be. Except to the extent permitted by Sections IV.A and IV.D of this Settlement Agreement, Defendants shall not directly or indirectly take any position with respect to (1) any proposed plan of distribution, (2) any amount of distribution to any Plaintiff, including but not limited to any member of the Settlement Class, or (3) the amount of any incentive awards, fees or expenses of End-Payor Plaintiffs or their counsel, complying with the terms and limitations of this Settlement Agreement. The plan of distribution shall be subject to Court approval after providing Settlement Class members with notice and an opportunity to be heard. The Notice of Settlement to the Settlement Class shall state that, unless

otherwise directed by the Court, submission of the proposed plan of distribution will occur after the Court's preliminary approval of the Settlement Agreement upon further notice to those members of the Settlement Class who have submitted requests to receive further notices and claim forms. After (i) deposit by Defendants of the Notice Payment and the Settlement Payment with the Escrow Agent in accordance with Sections III.A and III.C of this Settlement Agreement, (ii) final approval by the Court of this Settlement Agreement and the settlement embodied herein without material change, and (iii) the Settlement Agreement and the settlement become Effective, the Settlement Fund shall be distributed as ordered by the Court and in accordance with this Settlement Agreement. In no event shall Defendants have any liability or (except to the extent provided in Sections VI.B.1 and VI.B.2 of this Settlement Agreement) responsibility with respect to the distribution and administration of the Settlement Consideration, including, but not limited to, the costs and expenses of such distribution and administration and (except as provided by Sections III.A and III.D of this Settlement Agreement) the costs and expenses of notice to Settlement Class members.

G. **Disposition of Surplus Settlement Fund.** If, after distribution of the Settlement Fund to pay valid and timely claims, monies remain in the Settlement Fund, net of Court-approved fees and costs of notice and administration and Court-approved fees, expenses and incentive awards, the remaining amount shall be distributed in a manner and on terms and conditions determined by the Court in the exercise of its reasonable discretion. Any monies remaining in the Settlement Fund (after any supplemental distribution to Settlement Class members and/or any supplemental fees and costs, including but not limited to administrative fees and costs, as may be awarded by the Court) shall be distributed to charitable organizations or state agencies that provide health or legal services to Settlement Class members, as



recommended by Plaintiffs' Co-Lead Counsel and/or State Liaison Counsel and approved by the Court.

#### IV. NOTICE AND SETTLEMENT HEARING

A. **Motion for Preliminary Approval.** Within ten (10) business days following satisfaction of the conditions described in Sections IX.A.1 and IX.A.2 of this Settlement Agreement, Plaintiffs' Co-Lead Counsel and State Liaison Counsel shall jointly file with the Court a motion for preliminary approval of the Settlement Agreement and a plan of notice to Settlement Class members (the "**Notice Plan**") and for entry of the Preliminary Approval Order. This motion shall include this Settlement Agreement and all attachments hereto. Defendants shall have a reasonable opportunity to review and comment on the motion papers in advance of the filing.

B. **Motion To File Rider A Under Seal.** The Representatives shall jointly file, contemporaneously with the filing of the motion for preliminary approval, a motion to file Rider A to this Settlement Agreement under seal, pending the expiration of the Opt-Out Deadline. The Parties agree that they shall maintain the confidentiality of Rider A to this Settlement Agreement and the information set forth therein at all times that Rider A is under seal.

C. **Implementation of Notice Plan.** Within ninety (90) calendar days after entry by the Court of the Preliminary Approval Order, Plaintiffs' Co-Lead Counsel and State Liaison Counsel shall begin implementing the Notice Plan. The Parties contemplate that, subject to Court approval, the Notice of Settlement provided to Settlement Class members will provide a period of forty-five (45) calendar days from the date of first mailing and/or publication of the Notice of Settlement in which Settlement Class members may request exclusion from the

Settlement Class or submit objections to final approval of the Settlement Agreement (the “Notice Period”).

D. **Final Approval Hearing.** At or before the time set by the Court in the Preliminary Approval Order for the settlement hearing to consider the final approval of this Settlement Agreement and the settlement embodied herein, Plaintiffs shall submit papers in support of the Court’s final approval of this Settlement Agreement and the settlement embodied herein as fair, reasonable and adequate, and shall seek entry by the Court of the Final Judgment and Order. Each Representative shall have a reasonable opportunity to review and comment on any Party’s settlement approval papers in advance of the filing.

#### V. SETTLEMENT ADMINISTRATION

A. **Investment Authority of Escrow Agent.** The Escrow Agent shall invest the Notice Fund, if at all, solely in short-term obligations of, or short-term obligations guaranteed by, the federal government of the United States of America or any of its departments or agencies, that may be readily liquidated without financial penalty if necessary to pay such Settlement Administration Costs as shall be reimbursable in accordance with this Settlement Agreement and with the Escrow Agreement; and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. The Escrow Agent shall invest the Settlement Fund solely in obligations of, or obligations guaranteed by, the federal government of the United States of America or any of its departments or agencies, that may be readily liquidated without financial penalty if necessary to pay valid and timely claims of Settlement Class members, any further Court-approved notice or administrative costs in excess of the amount of the Notice Fund, and End-Payor Plaintiffs’ fees and/or costs and/or incentive awards

approved by the Court; and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates.

B. **Court Jurisdiction Over Settlement Consideration.** The Settlement Consideration shall be deemed to be *in custodia legis* and shall remain subject to the jurisdiction of the Court until the Settlement Consideration is fully paid and distributed or returned to Defendants, or upon further order(s) of the Court.

C. **Tax Treatment of Notice and Settlement Funds and Escrow Accounts.**

1. To the fullest extent allowable under applicable law, the Escrow Accounts shall be treated, on a combined basis, as being at all times a “qualified settlement fund” (or “qualified settlement funds”) within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent and, as required, the Parties, shall timely make such elections as are necessary or advisable to carry out the provisions of this Section V.C, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the sole responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.
2. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with

respect to the Escrow Accounts and the amounts held in the Escrow Accounts (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)&(l)). Such returns (as well as the election described in Section V.C.1) shall be consistent with this Section V.C and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties, or tax detriments) on the income earned by the Escrow Accounts shall be paid out of the Escrow Accounts, in accordance with Section V.C.3.

3. All (i) federal, state or local taxes (including any estimated taxes, interest or penalties, or tax detriments) arising with respect to the income earned on or by the Settlement Fund, the Notice Fund or the Escrow Accounts, including any taxes, interest or penalties, or tax detriments, that may be imposed upon Defendants with respect to any income earned on or by the Settlement Fund, the Notice Fund or the Escrow Accounts for any period during which the Escrow Accounts (or any portion thereof) do not qualify as a “qualified settlement fund” for federal or state income tax purposes (“**Taxes**”), and (ii) expenses and costs incurred in connection with the administration of tax matters for the Settlement Fund, the Notice Fund and the Escrow Accounts and the operation and implementation of this Section V.C (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Section V.C) (“**Tax Expenses**”), shall be paid first out of the Notice Fund.

