

SETTLEMENT AGREEMENT AND RELEASE

PREAMBLE

This Settlement Agreement and Release ("Agreement") is entered into between and among (i) the State of Iowa (the "State"), and (ii) Abbott Laboratories, Abbott Laboratories Inc.; Amgen Inc.; Baxter Healthcare Corporation; Baxter International Inc.; Ben Venue Laboratories, Inc.; Boehringer Ingelheim Roxane, Inc.; Boehringer Ingelheim Corporation; Boehringer Ingelheim Pharmaceuticals Inc.; Immunex Corporation; and Roxane Laboratories, Inc. (collectively, the "Settling Defendants"), by and through their authorized representatives. The State and Settling Defendants are referred to herein collectively as the "Parties."

A. WHEREAS, the State has alleged various violations of law with respect to Medicaid drug reimbursement and price reporting for the years 1991 to the present, as more particularly described in *State of Iowa v. Abbott Laboratories, Inc. et al*, Case No. 07-12141, consolidated in the United States District Court for the District of Massachusetts under Multi-District Litigation number 1456, Civil Action No. 01-12257 (PBS) (the "Litigation").

B. WHEREAS, the State asserts in the Litigation that from 1991 through the present the Settling Defendants reported or acquiesced to the reporting of allegedly erroneous pricing data for certain pharmaceuticals, whose labeler codes are included in Exhibit A ("Covered Drugs") to this Agreement, and that the State's Medicaid program used the allegedly erroneous prices in connection with Medicaid reimbursement pricing methodologies. The "Covered Conduct" that is addressed by this Agreement is encompassed by the State's allegations in the Litigation and includes the reporting or acquiescing to the reporting by the Settling Defendants of allegedly erroneous published prices including Average Wholesale Price ("AWP"), Wholesale

Acquisition Cost ("WAC"), Wholesale Acquisition Price ("WAP"), or Direct Price, or the marketing of any alleged spread between published prices and actual acquisition costs from 1991 through the present for the Covered Drugs.

C. WHEREAS, the State hereby intends only to release claims against Settling Defendants (and related persons and entities set forth in Paragraph 9 below) and not other entities that may have been involved with the marketing or promotion of products of the Settling Defendants.

D. WHEREAS, the State seeks various forms of relief against the Settling Defendants, including compensatory and punitive damages, penalties, injunctive relief, disgorgement, restitution, costs and attorneys' fees.

E. WHEREAS, the Settling Defendants deny the allegations of the Litigation, deny any wrongdoing, and deny that they have any liability relating to the Covered Conduct.

F. WHEREAS, to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final settlement as set forth below.

G. WHEREAS, the State has determined this Agreement to be in the public's interest.

NOW, THEREFORE, upon the foregoing premises, following terms and conditions, and other good and valuable consideration, the Parties hereby agree as follows:

## TERMS AND CONDITIONS

### A. Settlement Amount and Related Terms

1. In full and final settlement of the State's claims, the Settling Defendants shall pay, in the aggregate, \$2,500,000 (the "Settlement Amount"). This sum is intended to fully resolve all of the State's claims relating to the Covered Conduct, all as further explained in the section governing Releases below.

2. It is understood and agreed that no portion of the Settlement Amount shall be allocated or attributed to or characterized as the payment of fines, penalties, or other punitive assessments.

3. This Agreement shall have no effect on any dispute unrelated to the Covered Conduct that the Parties may have now or in the future concerning payment or overpayment of Federal or State Medicaid rebates under the Omnibus Budget Reconciliation Act of 1990, as amended, for the Covered Drugs. Moreover, neither the State nor any Settling Defendant may rely in any way on this Agreement or the Settlement Amount to justify any reassessment of rebates previously paid.

4. The Parties acknowledge that the United States is entitled to a portion of the Settlement Amount (the "Federal Share"), and that allocation shall be handled separately by and between the State and the United States. It is expressly understood and agreed that the State shall be solely responsible for allocating the Settlement Amount, including proper determination of the Federal Share, and that the Federal Share shall be paid from the Settlement Amount. The Settling Defendants are not parties to any such obligation, agreement or allocation, and take no

position on such obligation, agreement or allocation. The State hereby agrees to resolve any disputes regarding the Federal Share directly with the United States.

5. In full and final settlement of the State's claims, within fifteen (15) business days from the Effective Date of this Agreement, the Settling Defendants shall pay their respective shares of the Settlement Amount into an account specified by counsel for the State ("Account") at the Citibank Private Bank ("Citibank").

6. Citibank shall maintain and distribute funds from the Account pursuant to directions from the Parties.

7. Each Settling Defendant is liable solely for its respective share of the aggregate Settlement Amount (as set forth in the Final Settling Defendants' Document held by Peter W. Morgan at Dickstein Shapiro LLP). However, in the event that any Settling Defendant fails to satisfy its funding obligation under Paragraph 5, the State may, at its option, (a) declare the entire Agreement null and void or (b) dismiss with prejudice under Paragraph 8 of this Agreement only those Settling Defendants that have satisfied their funding obligations.

#### D. Dismissals/Releases

8. **Dismissal.** The State agrees that, within three (3) business days of the full Settlement Amount having been deposited into the Account, its counsel shall file a notice of dismissal with prejudice of the Settling Defendants from the Litigation.

9. **State's Release:** In exchange for the monetary and non-monetary consideration described herein, the State (on behalf of itself, Iowa Medicaid, the Iowa Department of Human Services, its officers, agents, agencies, political subdivisions, boards and commissions), as of the Effective Date, shall release the Settling Defendants and each of their respective past and present

parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, insurers, and the predecessors and successors of each of the foregoing, from any claim, action, suit, or proceeding, whether sealed or unsealed, whether civil or administrative (including attorneys' fees, penalties, punitive damages, costs, liabilities, obligations, injunctive relief, disgorgement, restitution and expenses of every kind and however denominated) the State has relating to the Covered Conduct. Payment of the Settlement Amount fully discharges the Settling Defendants (including each of their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, insurers, and the predecessors and successors of each of the foregoing) from any claims the State has asserted, may have asserted, or could have asserted relating to the Covered Conduct.

10. In consideration of the obligations of the Settling Defendants set forth in this Agreement, conditioned upon payment of the Settlement Amount, the State agrees to release and refrain from instituting, directing, or maintaining any action or other proceeding seeking permissive exclusion or suspension from the Iowa Medicaid Program against the Settling Defendants (and related persons and entities set forth in Paragraph 9 above) relating to the Covered Conduct.

11. **Limitations of the State Release.** Notwithstanding any *contra* provision herein, State does not release nor covenant not to sue any person or entity concerning any of the following claims or liabilities: (a) any criminal action; (b) any civil or administrative claims arising under any state or federal revenue codes not covered by any release contained herein; (c) any criminal, civil, or administrative liability that any Settling Defendant may have under any state statute, regulation, or rule not covered by any release contained herein; (d) any liability to

the State, its citizens, or any other governmental body for any conduct other than the Covered Conduct; (c) any claims based upon obligations created by this Settlement Agreement; (f) any express or implied warranty claims or other claims for defective or deficient products and services provided by the Settling Defendants; (g) any claims for personal injury or property damage or for other consequential damages not relating to the Covered Conduct; (h) any claims based on a failure to deliver items and services due; or (i) any consumer protection, consumer fraud, false advertising, or antitrust liability for any conduct other than the Covered Conduct.

12. The State does not waive any right it may have to participate in and receive a *pro rata* share of any settlement proceeds or other consideration from the Settling Defendants pursuant to any settlement agreement, memoranda of understanding, consent order, or any other form of resolution that any Settling Defendant may enter into with the National Association of Medicaid Fraud Control Units, the United States Department of Justice, or other entity for conduct other than the Covered Conduct.

### C. Miscellaneous

13. **No Admission.** This Agreement is neither an admission of facts or liability by the Settling Defendants, nor an admission by State that its claims are not well founded. This Agreement is the result of a compromise of disputed issues of law and fact, and the execution and delivery of this Agreement shall not constitute or be construed as an admission of fault, liability, or wrongdoing by any of the Settling Defendants, nor does it constitute evidence of any liability or unlawful conduct on the part of the Settling Defendants, and no party will urge or seek to admit this Agreement as evidence of any fault or liability of the Settling Defendants in

any investigation, administrative claim, action, suit, or proceeding, or federal or state court or arbitration proceeding.

14. **Authority.** The undersigned individuals signing this Agreement on behalf of the Settling Defendants represent and warrant that they are authorized by the Settling Defendants to execute this Agreement. The undersigned State signatories represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State.

15. **Incorporation of Representations.** The Preamble is incorporated herein.

16. **Complete Agreement.** This Agreement constitutes the complete agreement among the Parties with regard to the settlement and dismissal of the Settling Defendants from the Litigation.

17. **No Drafter.** None of the Parties to this Agreement shall be considered the drafter of this Agreement or any included provision for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter.

18. **Modification.** This Agreement shall not be modified in any respect except by a writing executed by all parties to this Agreement. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneous with this Agreement.

19. **Performance.** The Parties agree to perform any further acts and to execute and deliver any further documents reasonably necessary to carry out this Agreement.

20. **Third Parties.** Aside from the United States' interest in the Settlement Amount, there are no third-party beneficiaries to this Agreement. This Agreement is intended to benefit only the Parties hereto.

21. **Costs.** Except as otherwise provided herein, each Party shall bear its own legal and other costs incurred in connection with the Litigation, including the preparation and performance of this Agreement.

22. **Return or Destruction of Produced Material.** The Parties agree that within 60 days of payment of the Settlement Amount, they shall return to the producing party or destroy (and certify the destruction of) all documents, data and, other information produced by the Settling Defendants or the State (not including depositions and exhibits thereto) in connection with the Litigation in particular, or MDL 1456 in general (the "Produced Material"). Notwithstanding the foregoing, the Settling Defendants may retain Produced Material produced by the State only for use in the actions captioned *United States of America ex. Rel Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* (current Civil Action No. 06-11337-PBS); *United States of America ex. Rel Ven-A-Care of the Florida Keys, Inc., Zachary T. Bentley and T. Mark Jones v. Abbott Laboratories, Inc.* (current Civil Action No. 07-CV-11618-PBS); *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corporation, et al.*, Case No. 07-10248-PBS; *United States ex rel. Linette Sun et al. v. Baxter Hemoglobin Therapeutics et al.*, Master File No. 1:01-CV-12257-PBS, Sub-category Case No. 1:08-CV-11200-PBS pursuant to the protective orders in those actions. The Settling Defendants hereby agree that, within 30 days of resolution of those actions (whether by settlement, judgment or otherwise), the Settling

Defendants shall return to the State or destroy (and certify the destruction of) all documents, data and other information produced by the State.

23. **Governing Law & Jurisdiction.** The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the conflict of law provisions of Iowa law, except to the extent otherwise governed by federal law. The parties consent to venue to enforce the terms of this Agreement in the United States District Court for the Southern District of Iowa. In the event the foregoing does not have jurisdiction over any such dispute, then the Parties consent to venue in the Iowa District Court in Polk County, Iowa. In addition, the Parties consent to jurisdiction in the United States District Court for the District of Massachusetts for the sole purpose of enforcing the obligations of paragraph 8 of this Agreement.

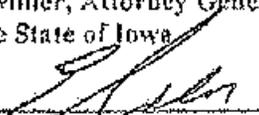
24. **Counterparts.** This document may be executed in counterparts, each of which shall constitute an original and all of which shall be deemed to constitute one and the same Agreement. Faxed and pdf signatures will suffice.

25. **Enforcement/Severability.** If any provision of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provision to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties. Notwithstanding the foregoing, if either the Payment or Release obligations contained in this Agreement are found to be unenforceable or invalid by a court of competent jurisdiction, then such invalidity or unenforceability shall be cause for

voiding the entire Agreement at the election of the Party whose interests are injured by the finding of invalidity or unenforceability.

26 Effective Date. The Effective Date of this Agreement shall be the date of signature of the last signatory to the Agreement.

Tom Miller, Attorney General  
for the State of Iowa

By:   
Eric Tabor  
Iowa Department of Justice  
1305 E. Walnut St.  
Hoover Bldg., 2<sup>nd</sup> Floor  
Des Moines, IA 50319  
Tel: (515) 281-4055

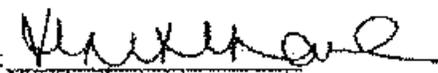
Date: Oct. 15, 2009

  
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Special Counsel for the State of Iowa

Date: Nov. 11, 2009

Abbott Laboratories and Abbott  
Laboratories, Inc.

By: 

Date: October 2, 2009

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Counsel for Abbott Laboratories and Abbott  
Laboratories, Inc.

**Baxter Healthcare Corporation and  
Baxter International Inc.**

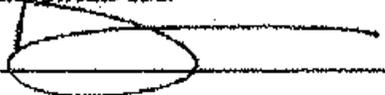
By: Peter W. Morgan

Date: October 2, 2009

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1825 Eye Street, N.W.  
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Counsel for Baxter Healthcare Corporation  
and Baxter International Inc.

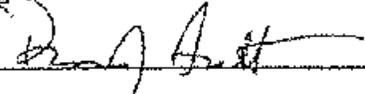
**Ben Venue Laboratories, Inc., Roxane  
Laboratories, Inc.; Boehringer Ingelheim  
Roxane, Inc.; Boehringer Ingelheim  
Corporation; Boehringer Ingelheim  
Pharmaceuticals Inc.**

By: 

Date: Oct 6, 2009

Marla S. Persky  
Senior Vice President, General Counsel  
& Secretary  
Boehringer Ingelheim USA Corporation  
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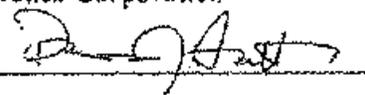
Amgen Inc.

By: 

Date: Oct. 7, 2009

David J. Scott  
Sr. Vice President,  
General Counsel & Secretary  
One Amgen Center Drive  
Thousand Oaks, CA 91320

Immunex Corporation

By: 

Date: Oct. 7, 2009

David J. Scott  
Sr. Vice President,  
General Counsel & Secretary  
One Amgen Center Drive  
Thousand Oaks, CA 91320

EXHIBIT A

**SETTLING DEFENDANTS' LABELER CODES**

The drugs that are the subject of this Settlement Agreement include all drugs that any Settling Defendant manufactured, marketed, co-marketed, co-promoted or sold under the following labeler codes at any time prior to this Agreement's Effective Date:

00300      00054  
00044      00597  
00048      55390  
00074      55513  
00524      58406  
00597      00005  
00703      00205  
00822      00295  
60598  
63459

00004      54643  
59911      49669  
54129      10019  
60977      00046  
61703      00338  
00641      00944  
62086  
64193  
67108  
66758  
00007  
00008  
00015  
00031  
00039