

# TEVA/NEW YORK STATEWIDE OPIOID SETTLEMENT AGREEMENT

## I. OVERVIEW

This Teva New York Statewide Opioid Settlement Agreement (“Agreement”) sets forth the terms and conditions of a settlement agreement between and among the State of New York (for itself and certain other Releasors), the County of Nassau, the County of Suffolk, all New York Participating Subdivisions and Teva (collectively, “the Parties”) to resolve opioid-related Claims against Teva and the other Released Entities. This is a statewide opioid settlement agreement pursuant to and as defined in N.Y. Mental Hyg. Law § 25.18.

The Parties intend the terms of this Agreement to be consistent and concurrent with the terms of the Teva Global Opioid Settlement Agreement (“Global Settlement”) currently under negotiation. If the Global Settlement becomes effective by July 4, 2023 its terms will supersede the terms of this Agreement except for Sections III.A.1.a.ii (New York Settlement Product Cash Conversion Amount), III.A.1.b (Premium Payment), III.C (Schedule for Premium Payments), III.D. (Default; Waiver; Solvency; Successors); V (Dismissal of Claims), VI (Release), VIII.C (Costs of Administration), and IX through XIV (Enforcement and Dispute Resolution, No Waiver, Mutual Interpretation, Governing Law, Counterparts, and Miscellaneous). If the Global Settlement is not effective by the aforementioned date, this Agreement and any subsequent Consent Judgment giving effect to its terms will remain in full force and effect.

The Parties have agreed to the below terms for the sole purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Teva and the other Released Entities expressly deny. Neither Teva nor any other Released Entity admits that it caused or contributed to any public nuisance, and neither Teva nor any other Released Entity admits any wrongdoing that was or could have been alleged by any Releasor. No part of this Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Teva or any other Released Entity. No part of this Agreement is intended for use by any Third Party for any purpose, including submission to any court for any purpose.

## II. DEFINITIONS

- A. “*Actions*” means *The County of Suffolk, New York v. Purdue Pharma L. P.*, Case No. 400001/2017; *The County of Nassau, New York v. Purdue Pharma L. P.*, Case No. 400008/2017; and *The People of the State of New York v. Purdue Pharma L.P.*, Case No. 400016/2018.
- B. “*Agreement*” means this agreement together with the Exhibits thereto.
- C. “*Base Payment*” means the payments made pursuant to Section III.B.5.
- D. “*Claim(s)*” means any past, present, or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative or claim, request, assessment, charge, covenant, damage, debt, lien, loss, fine, penalty, restitution, reimbursement, disgorgement, expenses, judgment, right, obligation, dispute, suit,

contract, controversy, agreement, parens patriae claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, including, whether legal, equitable, statutory, regulatory, or administrative, whether arising under federal, state, or local common law, statute, regulation, guidance, ordinance, or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen, or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including, but not limited to, any request for declaratory, injunctive, or equitable relief, abatement, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs, or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever. Claim does not include any individuals' personal injury or wrongful death cause of action."

- E. "*Consent Judgment*" means a consent decree, order, judgment, or similar action.
- F. "*Court*" means the court to which the Agreement and the Consent Judgment are presented for approval and/or entry.
- G. "*Covered Conduct*" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement, or other activity of any kind whatsoever from the beginning of time through the date of execution of this Agreement (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement, or other activity) relating in any way to (1) the availability, discovery, research, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, relabeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to, any Product, or any system, plan, policy, or advocacy relating to any Product or class of Products, including, but not limited to, any unbranded promotion, marketing, programs, or campaigns relating to any Product or Class of Products, (2) the characteristics, properties, risks, or benefits of any Product; (3) the reporting, disclosure, non-reporting, or non-disclosure to federal, state, or other regulators of orders for any Product or class of Products; (4) the selective breeding, harvesting, extracting, purifying, exporting, importing, applying for quota for, procuring quota for, handling, promoting, manufacturing, processing, packaging, supplying, distributing, converting, or selling of, or otherwise engaging in any activity relating to, a precursor or component Products, including but not limited to natural, synthetic, semi-synthetic, or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug

substances, or any related intermediate of Product; (5) diversion control programs or suspicious order monitoring related to any Product; or, (6) litigation of the Actions. The foregoing is not intended to apply to claims alleging contamination of products.

- H. “*Claim-Over*” means a Claim asserted by a Non-Released Entity against a Released Entity on the basis of contribution, indemnity, or other claim-over on any theory relating to Claims arising out of or related to Covered Conduct.
- I. “*Divested Actavis Generic Entities*” includes Actavis LLC (“Actavis LLC”), Watson Laboratories, Inc. (“Watson”), and Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.) (“Actavis Pharma”).
- J. “*Effective Date*” means the date of entry of a final Consent Judgment in the Actions, which shall be filed no later than 30 days after the Participation Date.
- K. “*Incentive A*” means the incentive payment described in subsection III.B.8.
- L. “*Incentive B*” means the incentive payment described in subsection III.B.9.
- M. “*Incentive C*” means the incentive payment described in subsection III.B.10.
- N. “*Incentive D*” means the incentive payment described in subsection III.B.11.
- O. “*Incentive Payment*” means the payments made pursuant to Section III.B.8–11.
- P. “*Initial Year Payment*” means the first annual payment of the New York Abatement Amount payable into the New York Opioid Settlement Fund by Teva on the Payment Date on August 4, 2023.
- Q. “*Opioid Settlement Fund*” means the fund created by N.Y. Mental Hyg. Law § 25.18(a)(4).
- R. “*New York Abatement Amount.*” \$194,676,951, which is the Global Settlement Net Abatement Amount multiplied by the New York State Allocation Percentage.
- S. “*New York Global Payment.*” In the event the Global Settlement is not effective by July 4, 2023, \$236,656,206.05, which reflects the attorneys’ fees and costs in Section III.A.1.a.i–iii and New York’s estimated payments pursuant to the Global Settlement.
- T. “*New York Settlement Product Cash Conversion Amount*” means \$15,871,275.20 allocated to New York from the conversion of Settlement Product into cash pursuant to Section III.A.1.a.ii and Exhibit D of the Teva Global Opioid Settlement Agreement.

- U. “*New York Teva Opioid Settlement Fund*” means a fund established for purposes of receiving the New York Global Payment and the New York State portion of the Premium Payment.
- V. “*Participation Date*” means the date by which all Subdivisions and other Releasors must elect to participate in this Agreement and shall be 60 days after this Agreement is executed.
- W. “*Participating Subdivision(s)*” means a Subdivision that signs the Settlement Participation Form annexed hereto as Exhibit B and meets the requirements for becoming a Participating Subdivision under Section VIII.A.
- X. “*Payment Year*” means, except for the Initial Year Payment, the calendar year during which the applicable annual payment is due pursuant to subsection III.B.4. Payment Year 2 is 2024, Payment Year 3 is 2025 and so forth. References to payment “for a Payment Year” mean the annual payment due on July 15 of that year. References to eligibility “for a Payment Year” mean eligibility in connection with the annual payment due during that year.
- Y. “*Primary Subdivision*” means a Subdivision that has a population of 30,000 or more.
- Z. “*Product*” means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. It also includes: (1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and (2) a combination or “cocktail” of any stimulant or other chemical substance prescribed, sold, bought or dispensed, to be used together that includes opioids or opiates. For the avoidance of doubt, “Product” does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. “Product” includes but is not limited to any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, naloxone, naltrexone, oxycodone, oxymorphone, pentazocine, propoxyphene, tapentadol, tramadol, opium, heroin, carfentanil, any variant of these substances, or any similar substance. “Product” also includes any natural, synthetic, semi-synthetic, or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, and any related intermediate products used or created in the manufacturing process for any of the substances described in the preceding sentence.
- AA. “*Released Claims*” means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the Effective Date. Without limiting the foregoing, “Released Claims”

include any Claims that have been asserted against the Released Entities by the State or any of its Subdivisions or other Releasers in any federal, state, or local action or proceeding (whether judicial, arbitral, or administrative) based on, relating to, in whole or in part, the Covered Conduct, or any such Claims that could be or could have been asserted now or in the future in those actions or proceedings, or in any comparable action or proceeding brought by the State or any of its Subdivisions or other Releasers (whether or not such State, Subdivision, or other Releaser has brought such action or proceeding). Released Claims also include all Claims against Released Entities asserted in any proceeding to be dismissed pursuant to this Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that “Released Claims” be interpreted broadly. This Agreement does not release Claims by private individuals. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable New York law.

- BB.** “*Released Entities*” means: Teva; and (i) all of Teva’s respective past and present direct or indirect parents, subsidiaries, divisions, affiliates, joint ventures (but excluding joint venture partners), predecessors, successors, assigns (a list of current subsidiaries, affiliates, and joint ventures is included at Exhibit A); (ii) Teva’s insurers (solely in their role as insurers with respect to the Released Claims); and (iii) Teva’s past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, employees, agents, and attorneys (for actions that occurred during and related to their work for, or employment with, Teva). Any person or entity described in clauses (ii)-(iii) shall be a Released Entity solely in the capacity described in such clause. For the avoidance of doubt, any entity acquired, or joint venture entered into, by Teva after the Execution Date is not a Released Entity, regardless of whether they are listed on Exhibit A.
- CC.** “*Releasers*” means (1) the State of New York; (2) Nassau and Suffolk Counties; (3) each Participating Subdivision; and (4) without limitation and to the maximum extent of the power of the State of New York’s Attorney General to release Claims on behalf of all other Releasers including but not limited to the following: (a) the State of New York’s departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law enforcement districts, emergency services districts, school districts, hospital districts, and other special districts in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief, including, but not limited to, fines, penalties, or punitive damages, on behalf of or generally applicable to the general public with respect to the State of New York, the Subdivisions, or

other Releasers in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Subdivision. In addition to being a Releaser as provided herein, a Participating Subdivision shall also provide a Settlement Participation Form providing for a release to the fullest extent of the Participating Subdivision's authority, which is attached as Exhibit B to the Agreement. Without limiting the foregoing, the New York State Department of Financial Services is a Releaser within the terms of this Agreement, and the Parties intend the releases provided for herein to include the New York State Department of Financial Services and for the New York State Department of Financial Services to provide a Release.

- DD.** “*Settlement Fund Administrator*” means the entity that administers the New York Teva Opioid Settlement Fund.
- EE.** “*Special District*” means (1) formal and legally recognized sub-entities of a State recognized by the U.S. Census Bureau<sup>1</sup> and those listed on Exhibit C, and (2) any person, official, or entity thereof acting in an official capacity. Special Districts do not include sub-entities of a State that provide general governance for a defined area that would qualify as a Subdivision. Entities that include any of the following words or phrases in its name shall not be considered a Special District: mosquito, pest, insect, spray, vector, animal, air quality, air pollution, clean air, coastal water, tuberculosis, and sanitary.
- FF.** “*State*” means the State of New York.
- GG.** “*Subdivision(s)*” means any governmental subdivision within the boundaries of the state of New York, including, but not limited to, counties, municipalities, districts, towns and/or villages, and any of their subdivisions, special districts and school districts, and any department, agency, division, board, commission and/or instrumentality thereof, as defined by N.Y. Mental Hyg. Law § 25.18.
- HH.** “*Teva*” means (i) Teva Pharmaceutical Industries Ltd. and (ii) all of its respective past and present direct or indirect parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns, including but not limited to Teva Pharmaceuticals USA, Inc., the Divested Actavis Generic Entities, and Anda, Inc.
- II.** “*Teva Global Opioid Settlement Agreement*” means the settlement agreement between and among states, participating subdivisions, participating special districts, and Teva to resolve opioid-related Claims against Teva and other released entities, and all of its exhibits, as defined therein.

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<sup>1</sup> All such entities are found on the “Special District,” “School District,” and “DEP School District” tabs of the Census Bureau’s 2017 Government Units Listing spreadsheet available at [https://www2.census.gov/programs-surveys/gus/datasets/2017/govt\\_units\\_2017.ZIP](https://www2.census.gov/programs-surveys/gus/datasets/2017/govt_units_2017.ZIP).

**JJ.** “*Third Party(ies)*” means any person or entity other than Teva or a Releasor.

### **III. MONETARY RELIEF AND PAYMENTS**

#### **A. Payments**

1. Teva shall pay a total of \$550,000,000 (“Total Payment”), which shall consist of the following components.
  - a. \$236,656,206.05 of the Total Payment shall be considered the New York Global Payment and shall consist of:
    - i. \$194,676,951 reflecting the New York Abatement Amount set forth in the Teva Global Opioid Settlement Agreement and shall be paid over thirteen (13) years in accordance with Exhibit J (The Teva New York Payment Schedule) or Section VII and Exhibit M-1 of the Teva Global Opioid Settlement Agreement (Exhibit K), as applicable;
    - ii. \$15,871,275.20 reflecting the New York Settlement Product Cash Conversion Amount of the Teva Global Opioid Settlement Agreement pursuant to Section IX and Exhibit D of the Teva Global Opioid Settlement Agreement and shall be paid over twelve (12) years in accordance with Exhibit J (The Teva New York Payment Schedule) or Exhibit M-2 of the Teva Global Opioid Settlement Agreement (Exhibit K), as applicable; and,
    - iii. \$26,107,980.03 reflecting the portion of the Attorney Fee and Cost Payment attributable to counsel for New York and its Subdivisions, except for Nassau and Suffolk Counties, in accordance with Section XIV and Exhibits R, S, and T of the Teva Global Opioid Settlement Agreement and shall be paid over six (6) years in accordance with Exhibit J (The Teva New York Payment Schedule) or with Exhibit M-1 of the Teva Global Opioid Settlement Agreement (Exhibit K), as applicable. If the Global Settlement is consummated by July 4, 2023, attorneys’ fees and costs in this provision for the Subdivisions, except Nassau and Suffolk Counties, shall thereafter be addressed through the mechanisms in such national settlement and any accompanying agreement related to attorneys’ fees.
  - b. \$313,343,793.95 of the Total Payment shall be considered a “Premium Payment” to the trial plaintiffs, i.e., the State and the

Counties of Nassau and Suffolk, which shall be paid over a period of eighteen (18) years.

**B. New York Global Payment**

1. All payments under this Section III.B shall be made into the New York Teva Opioid Settlement Fund, except that where specified, they shall be made into the Settlement Fund Escrow. The Settlement Fund shall be allocated and used only as specified in Section III.E.
2. Teva shall pay into the New York Teva Opioid Settlement Fund (1) the New York Abatement Amount consisting of \$194,676,951 minus any unearned Incentive Payments under subsection III.B.8–11 below, and (2) the New York Settlement Product Cash Conversion Amount consisting of \$15,871,275.20.
3. The New York Abatement Amount of \$194,676,951 paid into the Settlement Fund shall be divided into Base Payments and Incentive Payments as provided in subsections III.B.5 and III.B.6 below and set out in Exhibit J (The Teva New York Payment Schedule) or Exhibit M-1 of the Teva Global Opioid Settlement Agreement (Exhibit K), as applicable.
4. Provided that the necessary W-9 form and wire instructions for the New York Teva Settlement Fund are supplied to Teva at least 21 days before payment is due, Teva shall make New York Global Payments under Section III.A.1.a.i–ii pursuant to the schedule established in the Global Settlement. In the absence of a Global Settlement, Teva shall make New York Global Payment to the New York Teva Settlement Fund under Section III.A.1.a.i, ii & iii on the following dates and in the following maximum amounts:

August 4, 2023	\$19,326,480.09
July 15, 2024	\$20,649,086.36
July 15, 2025	\$20,649,086.36
July 15, 2026	\$20,649,086.36
July 15, 2027	\$20,649,086.36
July 15, 2028	\$20,649,086.36
July 15, 2029	\$16,297,756.35
July 15, 2030	\$16,297,756.35



July 15, 2031	\$16,297,756.35
July 15, 2032	\$16,297,756.35
July 15, 2033	\$16,297,756.35
July 15, 2034	\$16,297,756.35
July 15, 2035	\$16,297,756.35

5. Teva shall make Base Payments into the Settlement Fund in an amount of \$87,604,627.95 (which is equal to 45% of the New York Abatement Amount of \$194,676,951). The maximum total for New York Abatement Amount excluding Sections III.A.1.a.ii–iii is \$194,676,951. The Base Payments will be paid in accordance with the schedule III.B.4.
  
6. Teva shall make potential Incentive Payments totaling up to a maximum of 107,072,323.05 (which is equal to 55% of the New York Abatement Amount of \$194,676,951), excluding Section III.A.1.a.iii, for New York with the actual amount depending on whether and the extent to which the criteria set forth below are met. The maximum total for Incentive Payments is \$107,072,323.05.
  - a. The maximum total Incentive Payment for the State shall be no more than the maximum total for Incentive Payments listed in Section III.B.7 times the State’s allocation. Incentive Payments are state-specific, with each Settling State receiving an Incentive Payment based on the incentives for which it is eligible for that year under the criteria set forth below and any offset specified in Section [XII].
  
  - b. The Incentive Payments shall be divided among four (4) categories, referred to as Incentives A–D. Incentives A–C will be due in installments over the twelve (12) Payment Years beginning with Payment Year 2, and Incentive D will be due in installments over eight (8) years beginning with Payment Year 6, as shown on Exhibit J. The total amount of Incentive Payments in an annual payment shall be the sum of the Incentive Payments for the State are eligible for that Payment Year under the criteria set forth below.
  
7. The maximum amount available for Incentive Payments, \$107,072,323.05, excluding Section III.A.1.a.iii, is divided into two pools. The maximum amount of Incentive Payments for Incentives A-C shall be \$93,444,936.48, which is 48% of the maximum New York Abatement Amount. The State may be eligible for its full

allocable share of this payment by either achieving Incentive A or by fully earning both Incentives B and C. The maximum amount of Incentive Payments for Incentive D shall be \$13,627,386.57, excluding Section III.A.1.a.iii which is 7% of the maximum New York Abatement Amount. The State qualifies to receive Incentive Payments in addition to Base Payments if it meets the incentive eligibility requirements specified below. The State may qualify for Incentive Payments in four ways. If the State qualifies for Incentive A, it will become entitled to receive the maximum Incentive A payment allocable to the State as stated in subsection VII.E.6. If the State does not qualify for Incentive A, it can alternatively qualify for Incentive B and/or Incentive C. The State can qualify for Incentive D regardless of whether it qualifies for another Incentive Payment.

8. *Incentive A: Full Participation or Fully Released Claims of Litigating Subdivisions, Litigating Special Districts, Non-Litigating Subdivisions with Population Greater Than 10,000, and Non-Litigating Covered Special Districts.*
  - a. The State's total potential Incentive A payment allocation is \$93,444,936.48 excluding Section III.A.1.a.iii.
  - b. The State qualifies for Incentive A by: (1) complete participation in the form of releases consistent with Section VIII above from all Litigating Subdivisions, Litigating Special Districts, and Subdivisions with a population of 10,000 or more, and Non-Litigating Covered Special Districts; (2) a Bar; or (3) a combination of approaches in clauses (1)-(2) that achieves the same level of resolution of Subdivision and Special District Claims (e.g., a law barring future litigation combined with full joinder by Litigating Subdivisions and Litigating Special Districts). For purposes of Incentive A, a Subdivision or Special District is considered a "Litigating Subdivision" or "Litigating Special District" if it has brought Released Claims against Released Entities on or before the Reference Date; all other Subdivisions and Special Districts are considered "Non-Litigating." For purposes of Incentive A, Non-Litigating Covered Special Districts shall not include a Special District with any of the following words or phrases in its name: mosquito, pest, insect, spray, vector, animal, air quality, air pollution, clean air, coastal water, tuberculosis, and sanitary.
  - c. If the State qualifies for Incentive A after receiving an Incentive Payment under Incentives B or C, described below, the State's payments under Incentive A will equal the remainder of its total potential Incentive A payments less any payments previously received under Incentives B or C. The State that receives all of its total potential Incentive A payment allocation shall not receive additional Incentive Payments under Incentives B or C.

d. The State is not eligible for Incentive A as of two (2) years after the Effective Date shall not be eligible for Incentive A for that Payment Year or any subsequent Payment Years.

9. *Incentive B: Early Participation or Released Claims by Litigating Subdivisions and Litigating Special Districts.*

a. If the State does not qualify for Incentive A, it may still qualify to receive up to 60% of its total potential Incentive A payment allocation under Incentive B.

b. The State can qualify for an Incentive B payment if Litigating Subdivisions and Litigating Special Districts collectively representing at least 75% of the State's litigating population are either Participating Subdivisions, Participating Special Districts, or have their claims resolved through Case-Specific Resolutions.

(i) The State's litigating population is the sum of the population of all Litigating Subdivisions and Litigating Special Districts. The State's litigating population shall include all Litigating Subdivisions and Litigating Special Districts whose populations overlap in whole or in part with other Litigating Subdivisions and Litigating Special Districts, for instance in the case of a Litigating Special District, city, or township contained within a county.

(ii) For example, if School District A is a Litigating Special District in City B with a population of 1, City B is itself a Litigating Subdivision with a population of 8, and City B is located within County C, and County C is a Litigating Subdivision with a population 10, then each of their individual populations shall be added together (i.e., 1 + 8 +10) to determine the total litigating population (i.e., 19).

c. The following time periods apply to Incentive B payments:

(i) Period 1: Zero to two hundred ten (210) days after the Effective Date.

(ii) Period 2: Two hundred eleven (211) days to one year after the Effective Date.

(iii) Period 3: One year and one day to two years after the Effective Date.

d. Within Period 1: If Litigating Subdivisions and Litigating Special Districts collectively representing at least 75% of the State's litigating population are Participating Subdivisions or Participating Special Districts, or have their

Claims resolved through Case-Specific Resolutions during Period 1, then a sliding scale will determine the share of the funds available under Incentive B, with a maximum of 60% of the State’s total potential Incentive Payment allocation available. Under that sliding scale, if Litigating Subdivisions and Litigating Special Districts collectively representing 75% of a State’s litigating population become Participating Subdivisions or Participating Special Districts, or achieve Case-Specific Resolution status by the end of Period 1, the State will receive 50% of the total amount available to it under Incentive B. If more Litigating Subdivisions and Litigating Special Districts become Participating Subdivisions or Participating Special Districts, or achieve Case-Specific Resolution status, the State shall receive an increased percentage of the total amount available to it under Incentive B as shown in the table below.

<b>Participation or Case-Specific Resolution Levels</b> (As percentage of litigating population)	<b>Incentive B Award</b> (As percentage of total amount available to the State) for Incentive B)
75%	50%
76%	52%
77%	54%
78%	56%
79%	58%
80%	60%
85%	70%
90%	80%
95%	90%
100%	100%

- e. Within Period 2: If the State did not qualify for an Incentive B payment in Period 1 but Litigating Subdivisions and Litigating Special Districts collectively representing at least 75% of the State’s litigating population become Participating Subdivisions or Participating Special Districts, or achieve Case-Specific Resolution status by the end of Period 2, then the State qualifies for 75% of the Incentive B payment it would have qualified for in Period 1.
- f. Within Period 3: If the State did not qualify for an Incentive B payment in Periods 1 or 2, but Litigating Subdivisions and Litigating Special Districts collectively representing at least 75% of the State’s litigating population become Participating Subdivisions or Participating Special Districts, or achieve Case-Specific Resolution status by the end of Period 3, then the State qualifies for 50% of the Incentive B payment it would have qualified for in Period 1.

- g. The State receives the Incentive B payment for Periods 1 and/or 2 can receive additional payments if it secures participation from additional Litigating Subdivisions and/or Litigating Special Districts (or Case-Specific Resolutions of their Claims) during Periods 2 and/or 3. Those additional payments would equal 75% (for additional participation or Case-Specific Resolutions during Period 2) and 50% (for additional participation or Case-Specific Resolutions during Period 3) of the amount by which the increased litigating population levels would have increased the State's Incentive B payment if they had been achieved in Period 1.
- h. The percentage of Incentive B for which the State is eligible by the end of Period 3 shall cap its eligibility for that Payment Year and all subsequent Payment Years. If Litigating Subdivisions and Litigating Special Districts that have become Participating Subdivisions or Participating Special Districts, or achieved Case-Specific Resolution status collectively represent less than 75% of the State's litigating population by the end of Period 3, the State shall not receive any Incentive B payment.
- i. If there are no Litigating Subdivisions or Litigating Special Districts in the State, and the State is otherwise eligible for Incentive B, the State will receive its full allocable share of Incentive B.
- j. Incentives earned under Incentive B shall accrue after each of Periods 1, 2, and 3. Calculations to increase Incentive Payments in later periods based on additional joinder shall not reduce any amount already vested at the end of a prior period.

10. *Incentive C: Participation or Release of Claims by Primary Subdivisions*

- a. If the State does not qualify for Incentive A, it may still qualify to receive up to 40% of its total potential Incentive A payment allocation under Incentive C, which has two parts.
- b. Part 1: Under Incentive C, Part 1, the State can receive up to 75% of its Incentive C allocation. The State can qualify for a payment under Incentive C, Part 1 only if Primary Subdivisions (whether Litigating Primary Subdivisions or Non-Litigating Primary Subdivisions as of the Reference Date) collectively representing at least 60% of the State's Primary Subdivision population become Participating Subdivisions or achieve Case-Specific Resolution status.
  - (i) The State's Primary Subdivision population is the sum of the population of all Primary Subdivisions (whether Litigating Primary Subdivisions or Non-Litigating Primary Subdivisions as of the Reference Date). The State's Primary Subdivision population shall include all Primary Subdivisions whose populations overlap in

whole or in part with other Primary Subdivisions, for instance in the case of a Primary Subdivision that is a city contained within a Primary Subdivision that is a county. Because Primary Subdivisions include Subdivisions whose populations overlap in whole or in part with other Subdivisions, the State’s Primary Subdivision population may be greater than the State’s total population. (Special Districts are not relevant for purposes of Incentive C calculations.)

- (ii) For example, if City A is a Primary Subdivision with a population of 1 within County B, and County B is a Primary Subdivision with a population of 10, then each of their individual populations shall be added together (i.e., 1+10) to determine the total Primary Subdivision population (i.e., 11).
- c. A sliding scale will determine the share of the funds available under Incentive C, Part 1 if the State meets the minimum 60% threshold. Under that sliding scale, if the State secures participation or Case-Specific Resolutions from Primary Subdivisions representing 60% of its total Primary Subdivision population, it will receive 40% of the total amount potentially available to it under Incentive C, Part 1. If the State secures participation or Case-Specific Resolutions from Primary Subdivisions representing more than 60% of its Primary Subdivision population, the State shall be entitled to receive a higher percentage of the total amount potentially available to it under Incentive C, Part 1, on the scale shown in the table below. If there are no Primary Subdivisions, and the State is otherwise eligible for Incentive C, the State will receive its full allocable share of Incentive C, Part 1.

<b>Participation or Case-Specific Resolution Levels</b> (As percentage of total Primary Subdivision population)	<b>Incentive C, Part 1 Award</b> (As percentage of total amount available to the State for Incentive C, Part 1)
60%	40%
70%	45%
80%	50%
85%	55%
90%	60%
91%	65%
92%	70%
93%	80%
94%	90%
95%	100%

- d. Part 2: If the State qualifies to receive an incentive under Incentive C, Part 1, the State can also qualify to receive an additional incentive amount equal to 25% of its total potential Incentive C allocation by securing 100% participation of the ten (10) largest Subdivisions by population in the State. (Special Districts are not relevant for purposes of this calculation.) If the State does not qualify for any amount under Incentive C, Part 1, it cannot qualify for Incentive C, Part 2.
  - e. Incentives earned under Incentive C shall accrue on an annual basis up to three years after the Effective Date. At one, two, and three years after the Effective Date, the Settlement Fund Administrator will conduct a lookback to assess which Subdivisions had agreed to participate or had their Claim resolved through a Case-Specific Resolution that year. Based on the lookback, the Settlement Fund Administrator will calculate the incentives accrued under Incentive C for the year. The percentage of Incentive C for which the State is eligible three years after the Effective Date shall cap its eligibility for that Payment Year and all subsequent Payment Years.
11. *Incentive D: No Qualifying Lawsuits Surviving Threshold Motions at Two Look-Back Dates.*
- a. The State's total potential Incentive D payment allocation is \$13,627,386.57.
  - b. If, at any time within five and one-half (5.5) years of the Preliminary Agreement Date, any Subdivision or Special District within the State files litigation pursuing Released Claims against any Released Entity (a "*Qualifying Lawsuit*"), then Teva shall, within thirty (30) days of Teva or any Released Entity being served or otherwise informed of the prosecution of such Released Claims, provide notice to the State in which such Released Claims are being pursued and shall give the State a reasonable opportunity to extinguish the Released Claims without any payment or any other obligations being imposed upon any Released Entities (apart from the Global Settlement Amount payable by Teva under the Agreement or the Injunctive Relief Terms incurred by it). The State and Teva shall confer and use reasonable efforts to promptly resolve a Qualifying Lawsuit so that it is dismissed with prejudice. Nothing in this subsection creates an obligation for the State to make a monetary payment or incur any other obligation to an entity filing a Qualifying Lawsuit.
  - c. Part 1: Under Incentive D, Part 1, the State shall receive 50% of its total potential Incentive D payment allocation if, at two years after the Effective Date (the "*First Look-Back Date*"), there are no pending Released Claims

from a Qualifying Lawsuit that survived a Threshold Motion within the State against any Released Entities.

(i) After the First Look-Back Date, the State can become re-eligible for Incentive Payment D, Part 1 if the lawsuit that survived a Threshold Motion is dismissed pursuant to a later motion on grounds included in the Threshold Motion, in which case the State shall become eligible for Incentive Payment D less any litigation fees and cost incurred by the Released Entity in the interim, except that if the dismissal motion occurs after the completion of opening statements in such action, the State shall not be eligible for Incentive Payment D.

d. Part 2: Under Incentive D, Part 2, the State shall receive 50% of its total potential Incentive D payment allocation if, at five and one-half (5.5) years after the Preliminary Agreement Date (the “*Second Look-Back Date*”), there are no pending Released Claims from a Qualifying Lawsuit that survived a Threshold Motion within the State against any Released Entities.

**C. Schedule for Premium Payments**

1. The Premium Payment of \$313,343,793.95 shall be paid as follows:

a. \$131,343,793.95 shall be paid to the New York Teva Opioid Settlement Fund in accordance with wire transfer instructions to be provided by the Office of the New York Attorney General, as follows:

i. Within 90 days following the Effective Date, but in no event later than March 1, 2023, provided that the necessary W-9 form and wire instructions for the New York Teva Opioid Settlement Fund are provided to Teva at least 21 days before payment is due, Teva shall pay the sum of \$19,701,569.05.

ii. On or before March 1 of each year from 2024 to and including 2040, Teva shall pay the following amounts:

March 1, 2024	\$19,701,569.05
March 1, 2025	\$3,031,010.78
March 1, 2026	\$3,031,010.78
March 1, 2027	\$3,031,010.78
March 1, 2028	\$3,031,010.78



March 1, 2029	\$3,031,010.78
March 1, 2030	\$3,031,010.78
March 1, 2031	\$3,031,010.78
March 1, 2032	\$3,031,010.78
March 1, 2033	\$3,031,010.78
March 1, 2034	\$3,031,010.78
March 1, 2035	\$3,031,010.78
March 1, 2036	\$3,031,010.78
March 1, 2037	\$3,031,010.78
March 1, 2038	\$17,512,506.06
March 1, 2039	\$17,512,506.06
March 1, 2040	\$17,512,503.52

b. \$91,000,000 shall be paid to Simmons Hanly Conroy LLC, as attorneys for Suffolk County, in accordance with wire transfer instructions to be provided by them, as follows:

i. Within 90 days following the Effective Date, but in no event later than March 1, 2023, provided that the necessary W-9 form and wire instructions by Simmons Hanly Conroy LLC are provided to Teva at least 21 days before payment is due, Teva shall pay the sum of \$13,649,999.97.

ii. On or before March 1 of each year from 2024 to and including 2040, Teva shall pay the following amounts in accordance with wiring instructions to be provided by counsel:

March 1, 2024	\$13,649,999.97
March 1, 2025	\$2,100,000.11
March 1, 2026	\$2,100,000.11
March 1, 2027	\$2,100,000.11

March 1, 2028	\$2,100,000.11
March 1, 2029	\$2,100,000.11
March 1, 2030	\$2,100,000.11
March 1, 2031	\$2,100,000.11
March 1, 2032	\$2,100,000.11
March 1, 2033	\$2,100,000.11
March 1, 2034	\$2,100,000.11
March 1, 2035	\$2,100,000.11
March 1, 2036	\$2,100,000.11
March 1, 2037	\$2,100,000.11
March 1, 2038	\$12,133,333.47
March 1, 2039	\$12,133,333.47
March 1, 2040	\$12,133,331.71

c. \$91,000,000 shall be paid to Napoli Shkolnik PLLC, as attorneys for Nassau County, in accordance with wire transfer instructions to be provided by them, as follows:

- i. Within 90 days following the Effective Date, but in no event later than March 1, 2023, provided that the necessary W-9 form and wire instructions by Napoli Shkolnik PLLC are provided to Teva at least 21 days before payment is due, Teva shall pay the sum of \$13,649,999.97.
- ii. On or before March 1 of each year from 2024 to and including 2040, Teva shall pay the following amounts in accordance with wiring instructions to be provided by counsel:

March 1, 2024	\$13,649,999.97
March 1, 2025	\$2,100,000.11
March 1, 2026	\$2,100,000.11

March 1, 2027	\$2,100,000.11
March 1, 2028	\$2,100,000.11
March 1, 2029	\$2,100,000.11
March 1, 2030	\$2,100,000.11
March 1, 2031	\$2,100,000.11
March 1, 2032	\$2,100,000.11
March 1, 2033	\$2,100,000.11
March 1, 2034	\$2,100,000.11
March 1, 2035	\$2,100,000.11
March 1, 2036	\$2,100,000.11
March 1, 2037	\$2,100,000.11
March 1, 2038	\$12,133,333.47
March 1, 2039	\$12,133,333.47
March 1, 2040	\$12,133,331.71

2. The Parties agree that, upon its execution and the formal approval of the Nassau and Suffolk Counties Legislatures, this Agreement shall retain all force and effect as to Nassau and Suffolk Counties and shall be given the full effect of the law. The total payments of \$182,000,000 provided for in Section III.C.1.b–c is the full and maximum extent of any monies owed by Teva (and/or the other Released Entities) to Nassau and Suffolk Counties, and includes attorneys’ fees, expenses, and cost payments, and nothing in this Agreement should be interpreted to mean anything to the contrary.
  
3. The Total Payment amount reflects the value the Parties to this Agreement deem a fair settlement value over and above the payments made or due to be paid under the Allergan New York Statewide Opioid Settlement Agreement for generic opioid drugs that are Opioid Products or Products distributed and/or sold before August 2, 2016 by Divested Actavis Generic Entities, as defined in that agreement, and/or other Divested Entities, as defined in that agreement, and/or relate to the operation of Divested Actavis Generic Entities and other Divested Entities related to those generic opioid drugs that are Opioids or Opioid Products before August 2, 2016.

**D. Default; Waiver; Solvency; Successors**

1. If Teva defaults in payment of any installment due under this Agreement and the default continues after the State, Nassau, or Suffolk gives Teva notice of the default and thirty (30) business days in which Teva may cure such default has lapsed during which time Teva has not cured the default, then the State, Nassau, or Suffolk may declare the unpaid balance immediately due. Teva waives all demands for payment, presentation for payment, notices of intentions to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest, to the extent permitted by law.
2. Interest on unpaid installments shall accrue at the federal post-judgment interest rate of interest, 28 U.S.C. 1961, from the date payment was due until the date of payment.
3. If any installment payment under this Agreement is not paid when due, Teva agrees to pay all costs of collection.
4. Teva, for good and valuable consideration the receipt of which is acknowledged, hereby (a) waives, foregoes and relinquishes all rights to utilize and/or seek relief under any of the following laws of the State of Texas for the restructuring of any of its business affairs: Tex. Bus. Orgs. Code § 10.003 (Contents of Plan of Merger: More Than One Successor) or any other statute of Subchapter A of Chapter 10 of Tex. Bus. Orgs. Code to the extent such statute relates to multi-successor mergers (and/or any other similar laws or statutes in any other state or territory); Tex. Bus. Orgs. Code §§ 11.01–11.414 (Winding Up and Termination of Domestic Entity); or Tex. Bus. & Com. Code §§ 23.01–23.33 (Assignments for the Benefit of Creditors) (collectively, the “Texas Statutes”), and (b) agrees, warrants and represents that it will not file, request or petition for relief under the Texas Statutes, in each case until such time as all of Teva’s obligations incurred hereunder are satisfied in full. The foregoing waiver and relinquishment includes, without limitation, until such time as all of Teva’s obligations hereunder are satisfied in full, Teva’s rights to execute a divisional merger or equivalent transaction or restructuring that in each case has the intent or foreseeable effect of (i) separating material assets from material liabilities and (ii) assigning or allocating all or a substantial portion of those liabilities to any subsidiary or affiliate that files for relief under chapter 11 of the Bankruptcy Code, or pursuant to which such subsidiary or affiliate that files for relief under chapter 11 of the Bankruptcy Code would be assuming or retaining all or a substantial portion of those liabilities.
5. Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. hereby warrant and represent that, as of the date of the execution of this Agreement, it is not insolvent as such term is defined and interpreted under

11 U.S.C. §§101 et seq. (“Code”) including, without limitation, Code §§ 547 and 548.

6. Teva shall not in one (1) transaction, or a series of related transactions, sell, or transfer assets (other than sales or transfers of inventories, or sales or transfers to an entity owed directly or indirectly by Teva) having a fair market value equal to twenty-five percent (25%) or more of the consolidated assets of Teva where the sale or transfer transaction is announced after the Effective Date, is not for fair consideration, and would foreseeably and unreasonably jeopardize Teva’s ability to make the payments under this Agreement that are due on or before the third Payment Date following the close of a sale or transfer transaction. The above restriction shall not apply if Teva obtains the acquiror’s agreement that it will be either a guarantor of or successor to the percentage of Teva’s remaining Payment Obligations under this Agreement equal to the percentage of Teva’s consolidated assets being sold or transferred in such transaction.

#### **E. Remediation and Restitution**

1. The Parties agree that, unless required by law, Teva’s Qualified Settlement Fund payment pursuant to Section III.A.2.a above shall be directed to remediation and restitution of harms allegedly caused by Teva. The Parties also agree that the purpose of the Qualified Settlement Fund will be to receive from Teva and pay over to the State, Participating Subdivisions, and other Releasers monies to remediate the harms allegedly caused by Teva or to provide restitution for such alleged harms that were previously incurred, none of which amount constitutes a fine or penalty. The State and each Participating Subdivision or other Releaser shall, prior to receipt of direct payments from the Qualified Settlement Fund, provide the Settlement Fund Administrator with a written statement certifying that: (1) the entity suffered harm allegedly caused by Teva; (2) the payments to be received by the entity from Teva represent an amount that is less than or equal to the actual monetary damage allegedly caused by Teva; and (3) the entity shall use such payments, after payment of attorney’s fees and costs, for the sole purpose of remediating the harm allegedly caused by Teva and/or to provide restitution for such alleged harms that were previously incurred. All costs incurred related to any request for a private letter ruling from the I.R.S. affirming the tax deductibility of the settlement payment, and/or the tax-exempt status of the Qualified Settlement Fund pursuant to IRC Section 115 shall be borne in their entirety by Teva and shall not be directly paid or reimbursed from the corpus of the fund, escrow, or trust. The Settlement Fund Administrator shall complete and file Form 1098-F with the Internal Revenue Service on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the order entering the Consent Judgment becomes binding. On the Form 1098-F, the Settlement

Fund Administrator shall identify such payments from Teva pursuant to Section III.A.2.a as remediation and restitution amounts. The Settlement Fund Administrator or the State, as applicable, shall also, on or before January 31 of the year following the calendar year in which the order entering the Consent Judgment becomes binding, furnish Copy B of such Form 1098-F (or an acceptable substitute statement) to Teva.

2. Nassau and Suffolk Counties represent that they shall use the payments received pursuant to this Agreement, after payment of attorney's fees and costs, solely for remediation and restitution consistent with "Approved Uses" as defined in the and Teva New York Global Payment Opioid Settlement Sharing Agreement, attached hereto as Exhibit C, and the Teva New York Premium Payment Opioid Settlement Sharing Agreement, attached hereto as Exhibit L. As soon as reasonably practicable following receipt of any payment owed to them under this Agreement, Nassau and Suffolk Counties shall inform Teva of precisely how much of the payments received pursuant to this Agreement each of them will use for remediation and restitution consistent with "Approved Uses." Nassau and Suffolk Counties shall each comply with their respective obligations to timely file with the Internal Revenue Service forms or reports as required by law relating to the funds they received hereunder. Nassau and Suffolk Counties shall each complete and file Form 1098-F with the Internal Revenue Service at the appropriate time and shall also furnish Copy B of such Form 1098-F (or an applicable substitute statement) to Teva.

#### **IV. INJUNCTIVE RELIEF**

- A. The State and Teva, including Anda, agree to the Injunctive Relief attached hereto as Exhibit G and H. Teva and Anda shall abide by the its Injunctive Relief obligations to New York until such time the Teva Global Opioid Settlement Agreement becomes effective.

#### **V. DISMISSAL OF CLAIMS**

- A. Upon the execution of this Agreement, while awaiting formal approval of the Agreement by the Nassau and Suffolk County Legislatures, the Parties agree to stay or extend all deadlines and proceedings in the Actions as to Teva. It is the Parties' intent that all litigation activities in the Actions relating to the State's and Nassau and Suffolk Counties' claims against Teva shall immediately cease as of the date of the execution of this Agreement and that the claims against Teva shall no longer be pursued in the remedies trial. Concurrently with the execution of this Agreement, Teva and Nassau and Suffolk Counties will execute a Stipulation of Discontinuance with Prejudice, in the form annexed hereto as Exhibit D. The Parties will hold Nassau and Suffolk Counties' Stipulation of Discontinuance with Prejudice in escrow until the formal approval of the Agreement by the Nassau and

Suffolk County Legislatures (by passing a resolution satisfying the approval process of the Agreement or otherwise). Once approval is given, Nassau and Suffolk Counties and/or Teva shall promptly submit the executed Stipulation of Discontinuance with Prejudice to the Court with a request that it be so ordered. In the event the Nassau and Suffolk Counties' Legislatures fail to approve the Agreement or the Court declines to so order the discontinuance of the Actions with prejudice as against Teva, Teva shall be entitled to terminate the Agreement, shall be excused from all obligations under it, and shall be entitled to a refund of all payments made pursuant to Section III.A.1.b-e of this Agreement from Nassau and Suffolk Counties and Counsel for Nassau and Suffolk Counties. Concurrently with the execution of this Agreement, Teva and the State will execute a separate Stipulation of Discontinuance with Prejudice, in the form annexed hereto as Exhibit E. The State's Stipulation of Discontinuance with Prejudice shall be submitted to the Court after the Effective Date with a request that it be so ordered concurrently with the entry of the Consent Judgment implementing this Agreement.

- B.** Within three (3) business days of the execution of this Agreement, the New York Department of Financial Services shall move for a stay of all proceedings it has brought against any Released Entities. Within three (3) business days of the execution of this Agreement, the Released Entities shall move for a stay of all pending proceedings brought against the New York Department of Financial Services, including the proceedings in *In the Matter of the Application of Allergan Finance, LLC, et al.*, Docket No. 2022-03219 (1st Dep't), which is an appeal of the denial of an Article 78 Petition with the Originating Court Index No. 157128/2021 (N.Y. Sup. N.Y. Co) (Nervo, J.) ("the Appeal"). It is the Parties' intent that all activities relating to the New York Department of Financial Services' Claims and charges brought against any Released Entities shall immediately cease as of the date of the execution of this Agreement. Within three (3) business days of the Effective Date, the New York Department of Financial Services shall voluntarily dismiss with prejudice all Claims and charges brought against any Released Entities. Within three (3) business days of the Effective Date, the Released Entities shall terminate the Appeal.

## **VI. RELEASE**

- A.** *Scope.* Effective upon the entry of Nassau and Suffolk Counties' Stipulation of Discontinuance with Prejudice, the Released Entities will be released and forever discharged from all of the Released Claims of Nassau and Suffolk Counties. As of the Effective Date, the Released Entities will be released and forever discharged from all of the Released Claims of the State of New York and all other Releasers. The State of New York (for itself and its Releasers) and each Participating Subdivision (for itself and its Releasers) will, on or before the Effective Date, absolutely, unconditionally, and irrevocably covenant not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released

Entity in any forum whatsoever. The releases provided for in this Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the State of New York, its Attorney General, each Participating Subdivision, and other Releasers to release any and all Released Claims. The release shall be a complete bar to any Released Claim.

- B.** *Indemnification and Contribution Prohibited.* No Released Entity shall seek to recover any portion of any payment made under this Agreement from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, Third Party vendor, trade association, distributor, consultant, contractor, or health care practitioner based on indemnification, contribution, or any other theory.
- C.** *Cooperation.* Releasers (1) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (2) will reasonably cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.
- D.** *Representation and Warranty.* The signatories of this Agreement on behalf of the State of New York and its Participating Subdivisions expressly represent and warrant that they will, on or before the Effective Date, have (or have obtained) the authority to settle and release, to the maximum extent of the State's power, all Released Claims of (1) the State of New York, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, (3) any of the State of New York's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license;<sup>2</sup> and (4) any Participating Subdivisions or other Releasers. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Also, for the purposes of clause (3), a release from the State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.
- E.** *Non-Party Settlement.* To the extent that, on or after the execution of the Agreement, any Releaser enters into a Non-Party Settlement, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releaser will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include), unless prohibited from doing so under applicable law, in the Non-Party

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<sup>2</sup> In New York, the department and agency that have the duties and powers in subclauses (2) and (3) are the Department of Health and the Department of Financial Services.



Settlement a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Teva in the first sentence of Section VI.B, or a release from such non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained herein) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

- F.** *Claim Over.* In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that in Section VI.E, or any Releasor files a Non-Party Covered Conduct Claim against Non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in Section VI.E, and such Non-Released Entity asserts a Claim Over against a Released Entity, that Releasor and Teva shall take the following actions to ensure that the Released Entities do not pay more with respect to Covered Conduct to Releasors or to Non-Released Entities than the amounts owed under this Agreement by Teva:
1. Teva shall notify that Releasor of the Claim-Over within sixty (60) days of the assertion of the Claim-Over or sixty (60) days of the Effective Date of this Agreement, whichever is later;
  2. Teva and that Releasor shall meet and confer concerning the means to hold Released Entities harmless and ensure that it is not required to pay more with respect to Covered Conduct than the amounts owed by Teva under this Agreement;
  3. That Releasor and Teva shall take steps sufficient and permissible under the law of the State of the Releasor to hold Released Entities harmless from the Claim-Over and ensure Released Entities are not required to pay more with respect to Covered Conduct than the amounts owed by Teva under this Agreement. Such steps may include, where permissible:
    - a. Filing of motions to dismiss or such other appropriate motion by Teva or Released Entities, and supported by Releasors, in response to any Claim filed in litigation or arbitration;
    - b. Reduction of that Releasor's Claim and any judgment it has obtained or may obtain against such Non-Released Entity by whatever amount or percentage is necessary to extinguish such Claim-Over under applicable law, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;
    - c. Placement into escrow of funds paid by the Non-Released Entities such that those funds are available to satisfy the Claim-Over;

- d. Return of monies paid by Teva to that Releasor under this Agreement to permit satisfaction of a judgment against or settlement with the Non-Released Entity to satisfy the Claim-Over;
  - e. Payment of monies to Teva by that Releasor to ensure it is held harmless from such Claim-Over, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;
  - f. Credit to Teva under this Agreement to reduce the overall amounts to be paid under the Agreement such that it is held harmless from the Claim-Over; and,
  - g. Such other actions as that Releasor and Teva may devise to hold Teva harmless from the Claim Over.
4. The actions of that Releasor and Teva taken pursuant to paragraph (3) must, in combination, ensure Teva is not required to pay more with respect to Covered Conduct than the amounts owed by Teva under this Agreement.
  5. In the event of any dispute over the sufficiency of the actions taken pursuant to paragraph (3), that Releasor and Teva may seek review by the National Arbitration Panel, provided that, if the Parties agree, such dispute may be heard by the state Court where the relevant Consent Judgment was filed. The National Arbitration Panel shall have authority to require Releasors to implement a remedy that includes one or more of the actions specified in paragraph (3) sufficient to hold Released Entities fully harmless. In the event that the panel's actions do not result in Released Entities being held fully harmless, Teva shall have a Claim for breach of this Agreement by Releasors, with the remedy being payment of sufficient funds to hold Teva harmless from the Claim Over. For the avoidance of doubt, the prior sentence does not limit or eliminate any other remedy that Teva may have.
  6. To the extent that the Claim Over is based on a contractual indemnity, the obligations under subsection VI.F shall extend solely to a Non-Party Covered Conduct Claim against a pharmacy, clinic, hospital or other purchaser or dispenser of Products, a manufacturer that sold Products, a consultant, and/or a pharmacy benefit manager or other third-party payor. Teva shall notify the State, to the extent permitted by applicable law, in the event that any of these types of Non-Released Entities asserts a Claim-Over arising out of contractual indemnity against it
- G.** *Effectiveness.* The releases provided for in this Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting,

seizing, or controlling the distribution or use of the Qualified Settlement Fund or any portion thereof, or by the enactment of future laws, or by any seizure of the Qualified Settlement Fund or any portion thereof.

- H.** *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release, or limit any criminal liability, Claims for any outstanding liability under any tax or securities or antitrust laws (including but not limited to): (1) *The State of New York, et al. v. Actavis Holdco US, Inc., et al.* (17cv3768); (2) *The State of New York, et al. v. Teva Pharmaceuticals USA, Inc., et al.* (19cv2407); (3) *The State of New York, et al. v. Sandoz, Inc., et al.* (20cv3539); (4) *County of Nassau, et al. v. Actavis Holdco US, Inc., et al.* (616029/2019; 20-00065); and (5) *County of Suffolk v. Actavis Holdco US, Inc., et al.* (2:20 cv-04009)(E.D.N.Y); 2:20cv-4893 (E.D.Pa.)), Claims against parties who are not Released Entities, Claims by private parties (except to the extent they seek punitive damages foreclosed by Section VIII), Claims for Medicaid rebates, or any Claims arising under the Agreement for enforcement of the Agreement.
- I.** In connection with the releases provided for in the Agreement, the State (for itself and its Releasers), Participating Subdivision and Participating Special District expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releaser may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasers), Participating Subdivision and Participating Special District hereby expressly waives and fully, finally, and forever settles, releases, and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasers do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement, the Participating Subdivisions' decision to participate in the Agreement, or the Participating Special District's decision to participate in the Agreement.

- J.** *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the res judicata or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

## **VII. PUNITIVE DAMAGES CLAIMS BROUGHT BY PRIVATE PARTIES**

- A.** The Parties agree that this Agreement is intended to bar any and all claims for punitive damages, accrued or unaccrued, by private parties (including, but not limited to, personal injury claimants, insurers or other third party payors, union trust, health benefit, or welfare funds, and private healthcare facilities), who are citizens or residents of New York or who assert a claim under New York law, against any of the Released Entities that directly or indirectly are based on, arise out of, or in any way relate to or concern Covered Conduct occurring prior to the Effective Date, including, but not limited to, under the doctrine of res judicata and/or collateral estoppel. Through this Section VII.A of the Agreement, the Parties intend to incorporate the principles discussed in *Fabiano v. Philip Morris Inc.*, 54 A.D.3d 146, 151 (1st Dep’t 2008), which explains, among other things, that “a claim by a private attorney general to vindicate what is an essentially public interest in imposing a punitive sanction cannot lie, where, as here, that interest has been previously and appropriately represented by the State Attorney General in an action addressed, on behalf of all of the people of the State, . . . to the identical misconduct.”

## **VIII. PARTICIPATION BY SUBDIVISIONS**

- A.** *Requirements for Becoming a Participating Subdivision.* A Subdivision in the State may become a Participating Subdivision by executing an Settlement Participation Form attached as Exhibit B and, as applicable, promptly dismissing its legal action.
- B.** *Participation of Subdivisions Barred by Law.* A Subdivision may participate by having its claims extinguished by operation of law pursuant to Section 25.18(d) of the New York Mental Hygiene Law and released by the New York State Attorney General’s Office in executing an Election and Release Form (with an Exhibit F identifying such Subdivisions).
- C.** *Costs of Administration.* The Costs of Administration both Implementation Costs and Settlement Fund Administrator Costs, shall be paid out of interest accrued on the Settlement Fund. Should such interest prove insufficient to fully cover the costs, the remaining cost amounts shall be paid one-half by Teva and one-half from the Settlement Fund.
- D.** *Required Case Management Order.* Within five (5) business days of execution of this Agreement, the Parties shall jointly present and recommend the Case Management Order annexed hereto as Exhibit I to the Court for immediate entry. The State of New York and Napoli Shkolnik PLLC and Simmons Hanly Conroy

LLC shall use their best and good faith efforts to persuade the Court to immediately enter Exhibit I without any material modifications. If the Court declines to do so, and if less than 100% of the Subdivisions listed in Exhibit F participate, and if Teva elects not to terminate the Agreement, then the payment due pursuant to Section III.A.1.a shall be reduced by four times the total amount(s) that would have been received pursuant to the Teva New York Global Payment Opioid Settlement Sharing Agreement attached hereto as Exhibit C, and the Teva New York Premium Payment Opioid Settlement Sharing Agreement attached hereto as Exhibit L by any Subdivision that does not become a Participating Subdivision by the Participation Date. If the Court agrees to entry, neither Napoli Shkolnik PLLC nor Simmons Hanly Conroy LLC will request any later modification to the resulting order.

- E. *Future Bellwether Actions.* Napoli Shkolnik PLLC and Simmons Hanly Conroy LLC are Plaintiff Co-Leads (“Plaintiff Co-Leads”) in the New York *In re Opioid Litigation* (the “Coordinated Litigation”). As Plaintiff Co-Leads, the two law firms have the ability to propose to the Court future bellwether Plaintiffs and Defendants in the Coordinated Litigation. Therefore, the Plaintiff Co-Leads agree not to propose or agree to a bellwether case in the Coordinated Litigation in which Teva or its Affiliated Companies is named as a defendant prior to December 15, 2023. Moreover, for any case involving Teva or its Affiliated Companies as a defendant, the Plaintiff Co-Leads shall permit Teva or its Affiliated Companies to select and propose a bellwether case and the Plaintiffs Co-Leads, using their best efforts, shall support said proposal before the Court, even if limited to a single plaintiff.

## **IX. ENFORCEMENT AND DISPUTE RESOLUTION**

- A. The terms of the Agreement and Consent Judgment applicable to the State, Nassau and Suffolk Counties, other Participating Subdivisions, and other Releasers will be enforceable solely by Teva, the State, Nassau County, and Suffolk County.
- B. Teva and Released Entities consent to the jurisdiction of the Court, in which the Consent Judgment is filed, solely for the enforcement of or resolution of disputes arising out of this Agreement, including, without limitation, disputes regarding the scope of the releases hereunder.
- C. The parties to a dispute hereunder shall promptly meet and confer in good faith to resolve any dispute prior to any filing or presentation to the Court.

## **X. NO WAIVER**

- A. This Agreement shall not be construed or used as a waiver or limitation of any defense otherwise available (including, but not limited to, jurisdictional defenses) to Teva or any other Released Entity in any action (including, but not limited to, the Actions) or any other proceeding. This Agreement shall not be construed or used as a waiver of any Released Entity’s right to defend itself from, or make any legal or factual arguments in, any other regulatory, governmental, private party, or

class claims or suits relating to the subject matter or terms of this Agreement. Nothing in this Agreement is intended to or shall be construed to prohibit any Released Entity in any way whatsoever from taking legal or factual positions with regard to any Products in defense of litigation or other legal proceedings.

#### **XI. MUTUAL INTERPRETATION**

- A. The Parties agree and stipulate that this Agreement was negotiated on an arm's-length basis between parties of equal bargaining power. This Agreement has been drafted jointly by counsel for each of the Parties. Accordingly, this Agreement shall be mutually interpreted and not construed in favor of or against any of the Parties.

#### **XII. GOVERNING LAW**

- A. The terms of this Agreement shall be governed by the laws of the State of New York.

#### **XIII. COUNTERPARTS**

- A. This Agreement may be executed in counterparts, and an email, facsimile, or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

#### **XIV. MISCELLANEOUS**

- A. *Compliance with Laws.* Nothing in this Agreement shall be construed to authorize or require any action by Teva in violation of applicable federal, state, or other laws, rules, regulations, or guidance.
- B. *Modification.* This Agreement may be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Teva may contact the New York Attorney General and Counsel for Nassau and Suffolk Counties for purposes of coordinating this process.
- C. *No Waiver.* Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement, except to the extent the other Party is prejudiced by the delayed notice of any such alleged failure to comply with any of the provisions of this Agreement.
- D. *No Private Right of Action.* No part of this Agreement shall create a private right of action for any Third Party or confer any right to any Third Party for violation of

any federal or state statute, not shall it be used as an admission of liability or wrongdoing in any subsequent proceeding.

- E.** *Entire Agreement.* This Agreement represents the full and complete terms of the settlement entered into by the Parties hereto. In any action undertaken by the Parties, no prior versions of this Agreement and no prior versions of any of its terms may be introduced for any purpose whatsoever.
- F.** *Notice.* All notices under this Agreement shall be provided to the following via email and Overnight Mail:

For Teva:

Eric W. Sitarchuk  
Rebecca J. Hillyer  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
Eric.sitarchuk@morganlewis.com  
Rebecca.hillyer@morganlewis.com

Frank Cavanagh  
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For the New York Attorney General:

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Senior Advisor & Special Counsel

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For Plaintiff Nassau County:

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Napoli Shkolnik PLLC  
400 Broadhollow Road  
Melville, NY 11747  
Phone: (212) 397-1000  
sbadala@napolilaw.com

For Plaintiff Suffolk County:

Jayne Conroy  
Simmons Hanly Conroy LLC  
112 Madison Ave 7th Floor  
New York, NY 10016  
Phone: (212) 257-8482  
jconroy@simmonsfirm.com

**[SIGNATURE PAGES BELOW]**



SEEN AND AGREED:

**TEVA**

By: \_\_\_\_\_

Name: Eric W. Sitarchuk  
Rebecca J. Hillyer  
Morgan Lewis & Bockius LLP  
Attorneys for Teva

*On behalf of Teva*

Date: \_\_\_\_\_

**STATE OF NEW YORK**

By: \_\_\_\_\_

Name: Muhammad Umair Khan  
Senior Advisor & Special Counsel  
Office of New York State  
Attorney General

*On behalf of the State of New York*

Date: \_\_\_\_\_

**NASSAU COUNTY**

By: \_\_\_\_\_

Name: Salvatore C. Badala  
NAPOLI SHKOLNIK PLLC  
Attorney for Nassau County

*Counsel for Nassau County*

Date: \_\_\_\_\_

THE COUNTY OF NASSAU, NEW YORK

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**SUFFOLK COUNTY**

By: \_\_\_\_\_

Name: Jayne Conroy  
SIMMONS HANLY CONROY LLC  
Attorney for Suffolk County

*Counsel for Suffolk County*

Date: \_\_\_\_\_

THE COUNTY OF SUFFOLK, NEW YORK

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_