

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

The parties to this Settlement Agreement and Release (“Agreement”) are (i) the State of Texas (“Texas” or “State”) and (ii) Ranbaxy Pharmaceuticals, Inc., Ranbaxy Laboratories, Inc., Ranbaxy USA, Inc., and Ranbaxy, Inc. (collectively, “the Defendants”). This Agreement is entered into as of the “Effective Date,” defined in paragraph 25 below, by and among Texas and the Defendants. Texas and the Defendants are collectively referred to as “Parties.”

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. The Defendants develop, manufacture, market, distribute, and sell pharmaceutical products in the United States bearing the Labeler Codes 10631, 51660, 54907, and 63304 (collectively referred to in this Agreement as the “Covered Drugs”).

B. On or about September 5, 2012, the State filed an Original Petition against the Defendants in the District Court of Travis County, Texas, 345th Judicial District, captioned *State of Texas v. Ranbaxy Pharmaceuticals, Inc., et al.*, Cause No. D-1-GV-12-001256. On or about October 11, 2013, the State filed a First Amended Petition. On or about November 22, 2013, the State filed a Second Amended Petition. The Original Petition and all amendments thereto are referred to collectively as the “Litigation.”

C. The State alleges in the Litigation that it has claims against the Defendants under the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code Ann. §§ 36.001, *et seq.* The State contends that between September 1, 1995 and the Effective Date, the Defendants submitted or caused to be submitted false statements and/or claims to the State and/or the Texas Vendor Drug Program (“VDP”) when they (i) knowingly set, reported, and/or maintained, or caused to

be set, reported, and/or maintained false, fraudulent, and/or inflated pricing information for certain of the Covered Drugs (including, without limitation, Average of Suggested Wholesale Price to Pharmacy, Average Wholesale Price, AWP, Average Manufacturer Price, AMP, Price to Wholesaler and/or Distributor, Direct Price to Pharmacy, Direct Price, Central Purchase Price to Chain, Warehouse Price, Institutional or Other Contract Price, Other Price, and/or other pricing information reported by one or more of the Defendants and/or published by third-party compendia), including pricing information reported directly to the State and/or the Texas Vendor Drug Program (“VDP”); (ii) knowingly concealed, failed to report, or improperly reported pricing information to the State and/or the VDP or otherwise failed to comply with State and/or VDP requirements as to the reporting of pricing information for certain of the Covered Drugs; and (iii) submitted or caused to be submitted false claims for the Covered Drugs. The Defendants’ alleged conduct, as described above and as set forth in the State’s Second Amended Petition, is hereinafter referred to as the “Covered Conduct.”

D. This Agreement is the result of a compromise of disputed issues of law and fact and is neither an admission of facts or liability by the Defendants, nor a concession by the State that the State’s claims are not well-founded.

E. The Defendants have a number of defenses to the State’s claims, and have denied and continue to deny the State’s allegations or any wrongdoing as may be alleged by the State.

F. As a result of a mutual desire to settle their disputes, and to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of the State’s claims, the Parties have reached a full and final settlement of the State’s claims, as set forth in this Agreement.

G. The State has concluded that this settlement is in the public interest.

III. AGREEMENT

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. The foregoing Preamble is incorporated herein.
2. In full and final settlement of the Litigation and in exchange for the State's Release (as defined below) and other consideration described herein, the Defendants shall make payment to the State pursuant to the following terms:

- a. The Defendants agree to pay the State THIRTY NINE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$39,750,000.00) (the "Settlement Amount") according to the schedule in Paragraph 2.a.ii.

- i. The Defendants shall pay the Settlement Amount in accordance with wiring instructions provided by Raymond Winter, Chief, Civil Medicaid Fraud Division, at the Office of the Attorney General of Texas.

- ii. The Defendants shall pay the Settlement Amount in four installments according the following schedule:

1. First Installment: On or within five (5) days of November 28, 2014, the Defendants shall pay TEN MILLION DOLLARS (\$10,000,000.00);

2. Second Installment: On or within five (5) days of February 27, 2015, the Defendants shall pay TEN MILLION DOLLARS (\$10,000,000.00);

3. Third Installment: On or within five (5) days of May 29, 2015, the Defendants shall pay TEN MILLION DOLLARS (\$10,000,000.00);

4. Fourth Installment: On or within five (5) days of August 31, 2015, the Defendants shall pay NINE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$9,750,000.00).

iii. The Defendants may, in their sole discretion, prepay amounts due under Paragraph 2.a.ii without penalty.

iv. Within five business days of payment of the Fourth Installment of the Settlement Amount, the Parties agree to move the Court to jointly dismiss the Litigation with prejudice, in the form attached as Exhibit A.

b. Payment of the Settlement Amount fully resolves the Litigation (including any claim for damages, penalties, attorneys' fees, and/or costs related to the Litigation or this Agreement), all as further explained in the paragraphs below governing Releases.

c. In the event the Defendants do not timely pay an installment of the Settlement Amount, the Defendants shall be in default of this Agreement. If the Defendants fail to cure such default within 15 business days of receiving written notice of default from the State, then the remaining balance of the Settlement Amount will immediately become due with 10% annual interest accruing on the entire unpaid balance from the date of the default.

d. To secure the Defendants' obligation to make payments pursuant to this Agreement, the Defendants agree to confess judgment in the amount of THIRTY NINE

MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$39,750,000.00) in the Confession of Judgment attached hereto as Exhibit B. The State agrees not to file the Confession of Judgment unless and until the Defendants default in their obligation to make payments under this Agreement and fail to cure the default within 15 business days after receiving written notice of such default from the State.

e. The Parties understand and agree that no portion of the Settlement Amount shall be allocated, attributed to, or characterized as the payment of fines, penalties, or other punitive assessments. In all other respects, the Defendants expressly acknowledge and agree that they are not entitled to direct or influence the manner in which the Settlement Amount is allocated by the State. The State will allocate and distribute to the United States Government a pro rata share of the Settlement Amount in accordance with state and federal law. This Agreement does not address whether Defendants possess or are entitled to rights to recover from the federal government amounts previously paid as settlement of the federal share of Texas Medicaid expenditures for certain of the Covered Drugs.

f. The State previously named William Winter, Ranbaxy's Vice President of Sales and Distribution, as a defendant in the Litigation. Prior to the execution of this Agreement, the Parties agreed that the State would nonsuit Mr. Winter from the Litigation, and an order dismissing Mr. Winter was signed by the Court on September 9, 2014. The State agrees that Mr. Winter shall not be responsible for payment of any portion of the Settlement Amount.

g. Defendants agree to submit to the jurisdiction of Texas courts in any proceeding to enforce this Agreement.

3. Subject to Paragraph 5 below and in exchange for the consideration described herein (including payment in full of the Settlement Amount), the State (on behalf of (i) itself, its past and present officers, agents, entities, divisions, agencies, commissions, and departments and (ii) any insurers and reinsurers of those identified in sub-clause (i)), as of the Effective Date, fully and finally, and to the greatest extent allowed by law, releases, discharges, and covenants not to sue the Defendants and each of their respective past and present holding companies, parents, subsidiaries, affiliates, entities, divisions, officers, directors, members, partners and/or limited partners, principals, assigns, representatives, employees, agents, servants, owners, shareholders, insurers, and attorneys, and the predecessors and successors of each of the foregoing (collectively, the “Released Parties”) for any civil, regulatory, and/or administrative claim, action, suit, demand, right, cause of action, liability, judgment, damage, or proceeding (including damages, attorneys’ fees, penalties, costs, and expenses of every kind and however denominated) the State has, may have, has asserted, or could assert in the future under any source of law, contract, in equity or other right, for or related to the Covered Conduct. In addition, the Parties agree that the payment of the Settlement Amount fully discharges the Released Parties from any obligation to the State to pay restitution, damages, penalties or fines to the State for the Covered Conduct. In addition, the State agrees that it will not initiate, prosecute, direct, recommend, or maintain any action or other proceeding, including by way of example and not limitation, civil investigative demands, against the Released Parties related to the Covered Conduct on behalf of itself or the United States. In addition, the State agrees that it will not initiate, prosecute, direct, recommend, or maintain any action or proceeding against the Released Parties seeking exclusion from the Texas Medicaid Program or any other administrative action or sanction related to the Covered Conduct. Excluding documents, data,

and information identified in paragraph 22 of this Agreement, this Agreement does not prevent the State from discussing, communicating, or sharing information with other states or federal agencies. This Agreement is not intended to release claims or causes of action unrelated to the Covered Conduct.

4. The Defendants agree to fully and finally release the State, its agents, agencies, employees, servants, attorneys, and departments from any claims based on events occurring prior to the Effective Date (including attorneys' fees, costs, and expenses of every kind and however denominated) which the Defendants have asserted, could assert, or may assert in the future against the State, its agents, agencies, divisions, employees, servants, attorneys, departments, past and present commissioners or officers, and insurers related to the Covered Conduct and the State's investigation and prosecution thereof. This Agreement is not intended to release claims or causes of action unrelated to the Covered Conduct.

5. Notwithstanding any other terms of this Agreement, including the Releases in Paragraphs 3 and 4 above, any and all of the following are specifically reserved and excluded from the scope and terms of this Agreement, and from the scope and terms of the Releases, as to any entity or person, including the Parties:

- a. Any claim based upon an obligation created by the Agreement;
- b. Any claim based upon an express or implied product or service warranty claims or for defective or deficient products or services, including quality of goods and services, provided by the Defendants;
- c. Any claim not related to the Covered Conduct based on liability that any person or entity has or may have to individual consumers involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

d. Any claim not related to the Covered Conduct for state or federal antitrust violations;

e. Any claim related to off-label marketing, product misbranding, or misrepresentations or concealment of information about the safety, efficacy, or appropriate use of the Defendants' drugs, including the Covered Drugs;

f. Any claim not related to the Covered Conduct that any person or entity, other than the State, has or may have regarding inducement of healthcare providers to prescribe any of the Covered Drugs;

g. The subrogation rights to claims for personal injury or property damage arising from usage of the Defendants' products by a participant in the Medicaid Program;

h. Any claim based on a failure to deliver products or services due;

i. Any claim arising from the Defendants' obligation to pay rebates to the State under any law or contract, including, but not limited to, under the provisions of the Omnibus Budget Reconciliation Act of 1990 ("OBRA 90"); and

j. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code) or any state tax or revenue law.

6. The State hereby agrees that this Agreement, and any and all negotiations, documents and discussions associated with this Agreement shall be without prejudice to the rights of any Party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by the Released Parties or of the truth or the infirmity of any of the claims or allegations of the State, and evidence thereof shall not be discoverable or used directly or indirectly by the State in any way (except that the provisions of this Agreement may be used by the Parties to enforce its terms), whether in Texas

or in any other forum. The State agrees it will not urge or seek to admit this Agreement as evidence of any fault or liability of the Released Parties in any investigation, administrative claim, action, suit or proceeding, or federal or state court or arbitration proceeding unless ordered to do so by a state court, federal court, or arbitration panel.

7. The State represents to the Defendants, subject only to the rights possessed by the United States, that no interest in any claim herein released has been assigned by it to any third party.

8. Nothing in this Agreement shall be construed to create a waiver of the State's Sovereign Immunity.

9. Any Party shall be entitled to enforce the terms of this Agreement in the District Courts of Travis County, Texas, which shall have exclusive jurisdiction and venue over any such action.

10. This Agreement, including all exhibits, constitutes the complete agreement between the Parties with regard to the settlement and dismissal of the Litigation as defined herein. This Agreement may not be amended or modified in any respect except by a writing signed by all Parties.

11. Each Party will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. This Agreement shall be governed by the laws of the State of Texas.

13. 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, which is to resolve completely the Litigation in exchange for the consideration set forth herein. Notwithstanding the foregoing, if either Paragraph 2 (payment) or Paragraphs 3 through 5 (Releases) 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.

14. None of the Parties to this Agreement shall be considered the drafter of this Agreement or of 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.

15. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress whatsoever.

16. Unless otherwise stated in writing subsequent to the Effective Date, all notifications and communications made pursuant to this Agreement shall be submitted to the persons or entities listed below:

- a. The State of Texas, for all purposes:

OFFICE OF THE ATTORNEY GENERAL
Civil Medicaid Fraud Division
P.O. Box 12548
Austin, Texas 78711-2548

- b. Ranbaxy Pharmaceuticals, Inc., Ranbaxy Laboratories, Inc., Ranbaxy USA, Inc., and Ranbaxy, Inc., for all purposes:

Jennifer G. Levy
Kirkland & Ellis LLP
655 Fifteenth Street N.W.
Washington, D.C. 20005-5793

17. The Parties have read the Agreement and accept and agree to the provisions contained herein and have caused this Agreement to be signed as of the day and date adjacent to their respective signatures. The individual signing this Agreement on behalf of the Defendants represents and warrants that he or she is authorized by the Defendants to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement and to compromise the claims of the State. The Texas Health and Human Services Commission (“HHSC”) Executive Commissioner concurs with the aspects of the agreement that are within his authority.

18. The Parties represent and acknowledge that in entering into this Agreement they are not relying on any promises or representations other than those expressly set forth in this Agreement and its exhibits.

19. The waiver of any rights conferred by this Agreement shall be effective only if made in writing by the waiving Party. The waiver of any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior to, subsequent to, or contemporaneously with this Agreement.

20. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Faxed and portable document format (“PDF”) signatures will suffice.

21. Each Party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

22. The Parties agree that within 90 days of payment of the Fourth Installment of the Settlement Amount, they shall return to the producing Party or destroy (and certify in writing the

destruction of) all documents, data, and other information produced in connection with the State's July 1, 2011 Civil Investigative Demand and/or the Litigation.

23. Should the Defendants enter into a Corporate Integrity Agreement with the Office of Inspector General of the United States Department of Health and Human Services ("OIG") relating to the Covered Conduct, the Defendants acknowledge that the OIG may share information provided under the Corporate Integrity Agreement with the State.

24. The Parties understand, acknowledge and, agree that (i) they have each performed an independent investigation of the facts and law surrounding this matter, and (ii) they each may hereafter discover facts in addition to, or different from, those that they now know or believe to be true. Nevertheless it is the Parties' intention to resolve this matter pursuant to this Agreement, which shall remain in full force and effect notwithstanding the discovery of additional facts or law, or changes in the law, and this Agreement shall not be subject to rescission or modification by reason of any such discovery or change.

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

**STATE of TEXAS
Office of the Attorney General**

By:

Date:

Raymond C. Winter
Chief, Civil Medicaid Fraud Division
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

**Ranbaxy Pharmaceuticals, Inc., Ranbaxy
Laboratories, Inc., and Ranbaxy, Inc.**

By:

Date: September 24, 2014

Lavesh Samtani
Vice President & Head Legal Americas

Ranbaxy USA, Inc.

By:

Date: September __, 2014

Irv Kagan
Authorized Representative

Texas Health & Human Services Commission

By:

Date:

Kyle L. Janek, M.D.
Executive Commissioner
Texas Health & Human Services Commission
Brown-Heatly Building
4900 N. Lamar Blvd.
Austin, Texas 78751-2316

**STATE of TEXAS
Office of the Attorney General**

By:

Date:

Raymond C. Winter
Chief, Civil Medicaid Fraud Division
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

**Ranbaxy Pharmaceuticals, Inc., Ranbaxy
Laboratories, Inc., and Ranbaxy, Inc.**

By:

Date: September __, 2014

Lavesh Samtani
Vice President & Head Legal Americas

Ranbaxy USA, Inc.

DocuSigned by:
By: 

Date: September 29, 2014

Irv Kagan
Authorized Representative

Texas Health & Human Services Commission

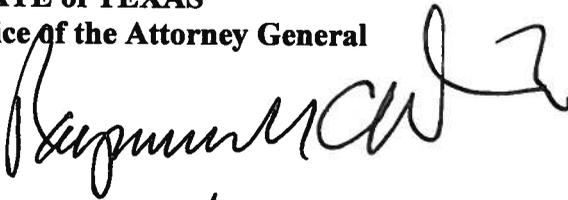
By:

Date:

Kyle L. Janek, M.D.
Executive Commissioner
Texas Health & Human Services Commission
Brown-Heatly Building
4900 N. Lamar Blvd.
Austin, Texas 78751-2316

**STATE of TEXAS
Office of the Attorney General**

By:



Date: 10.6.14

Raymond C. Winter
Chief, Civil Medicaid Fraud Division
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

**Ranbaxy Pharmaceuticals, Inc., Ranbaxy
Laboratories, Inc., Ranbaxy USA, Inc., and
Ranbaxy, Inc.**

By:

Date:

General Counsel

Texas Health & Human Services Commission

By:

Date:

Kyle L. Janek, M.D.
Executive Commissioner
Texas Health & Human Services Commission
Brown-Heatly Building
4900 N. Lamar Blvd.
Austin, Texas 78751-2316

**STATE of TEXAS
Office of the Attorney General**

**Ranbaxy Pharmaceuticals, Inc., Ranbaxy
Laboratories, Inc., Ranbaxy USA, Inc., and
Ranbaxy, Inc.**

By:

By:

Date:

Date:

Raymond C. Winter
Chief, Civil Medicaid Fraud Division
Assistant Attorney General
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

General Counsel

Texas Health & Human Services Commission

By: 

Date: 10.2.14

Kyle L. Janek, M.D.
Executive Commissioner
Texas Health & Human Services Commission
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