

**SETTLEMENT AGREEMENT BY AND AMONG PLAINTIFF STATES, STATE LAW
PLAINTIFFS, AVENTIS, CARDERM CAPITAL L.P., AND ANDRX**

This Settlement Agreement is made and entered into this 24th day of January, 2003 by and among the undersigned states and commonwealths, by and through their respective Attorneys General, and the District of Columbia, by and through its Corporation Counsel (collectively, the “**Plaintiff States**”); the State Law Plaintiffs (as defined below), on behalf of themselves and in their respective capacities as representatives of the Settlement Class (as defined below) (collectively with the Plaintiff States, “**Plaintiffs**”); and Aventis Pharmaceuticals Inc., Carderm Capital L.P., and Andrx Corporation, by and through their undersigned counsel.

W I T N E S S E T H:

WHEREAS, beginning on August 20, 1998, certain consumers and Third Party Payers (as defined below) filed several lawsuits in state courts around the country alleging that Defendants monopolized, attempted to monopolize, conspired to monopolize, and entered into agreements that unreasonably restrained trade in the United States (including Puerto Rico) market for Cardizem® CD and its generic bioequivalents. Various plaintiffs alleged in these actions that Defendants’ conduct violated the antitrust, unfair competition and/or consumer protection statutes and the common law of several states. On June 11, 1999, after the cases had been removed to federal courts, the Judicial Panel on Multidistrict Litigation consolidated these actions in the United States District Court for the Eastern District of Michigan; and

WHEREAS, the State Law Plaintiffs on October 22, 1999 filed their First Amended Coordinated Class Action Complaints against Defendants in the United States District Court for the Eastern District of Michigan alleging that Defendants monopolized, attempted to monopolize, conspired to monopolize, and entered into an agreement that unreasonably restrained trade in the market for Cardizem® CD and its generic bioequivalents in violation of various state trade practices laws and common laws prohibiting unjust enrichment, seeking declaratory judgments, restitution for unjust enrichment, damages, and other equitable relief; and

WHEREAS, on May 14, 2001, the Litigating States (as defined below) filed a complaint against Defendants in the United States District Court for the Eastern District of Michigan on their own behalf, on behalf of certain state agencies, and through their statutory, equitable or common law authority or as representative of or *parens patriae* on behalf of natural person citizens of those states, alleging monopolization, attempted monopolization, and agreement in restraint of trade in the market for Cardizem® CD and its generic bioequivalents, in violation of federal and state antitrust, unfair competition and/or consumer protection laws and seeking injunctive relief, civil penalties, damages, disgorgement, restitution and other equitable relief; and

WHEREAS, Plaintiffs have conducted extensive economic and factual investigation relating to the claims, underlying events, and transactions alleged in the Litigating States' Complaint and the State Law Plaintiffs' Coordinated Class Action Complaints (collectively, the "**Complaints**") and the State Actions (as defined below), in addition to conducting extensive legal research, and, as a result, the

Plaintiffs are thoroughly familiar with the liability and damages aspects of the claims they have asserted in the Complaints and the State Actions; and

WHEREAS, following motion practice, class and merits discovery, class certification of exemplar classes of certain Michigan consumers and third party payers, and briefing and argument of an appeal, extensive arm's-length negotiations have taken place between counsel for Plaintiffs and counsel for Defendants in reaching the terms of this Settlement Agreement with the assistance of a Court-appointed mediator and economic experts, and Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts and after carefully considering the circumstances of this litigation, including the claims asserted in the Complaints and the State Actions and the possible legal and factual defenses thereto, that it would be in the best interests of the Plaintiffs and the members of the Settlement Class to enter into this Settlement Agreement to avoid the uncertainties of this particularly complex litigation and to assure a benefit to those represented by the Plaintiffs and to the members of the Settlement Class, and further, that Plaintiffs' counsel consider the settlement set forth herein to be fair, reasonable, and adequate and in the best interests of the Plaintiffs and the members of the Settlement Class; and

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

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

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

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

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

I. DEFINITIONS

All terms defined in the preamble to this Settlement Agreement shall be so defined when used anywhere in this Settlement Agreement. Additionally, as used anywhere in this Settlement Agreement:

A. **“Aggregate Settlement Fund”** means the sum of Eighty Million and no/100 Dollars (\$80,000,000.00) that Defendants collectively will pay into an Escrow Account pursuant to the terms and conditions of the Escrow Agreement, in a proportion to which they have agreed and which shall be disclosed only to the Escrow Agent (in accordance with Sections IV.A.1., IV.A.2 and VII.A.2(d)))

and to no one else in a confidential side letter from Defendants, plus any interest, dividends and other distributions and payments earned on that sum.

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

C. “**Aventis**” means Defendants Aventis Pharmaceuticals Inc. (formerly known as Hoechst Marion Roussel, Inc.), Carderm Capital L.P., and their respective past, present and future directors, officers, employees, shareholders, affiliates, divisions, predecessors, parents (including, without limitation, Aventis S.A. and Hoechst AG), subsidiaries, other organizational units of any kind, general or limited partners, successors, and assigns; and the past, present and future agents, representatives, attorneys, heirs, executors, administrators, and other persons acting on behalf of any of them.

D. “**Cardizem® CD Products**” means **Cardizem® CD** and/or its AB3-rated equivalents.

E. “**Cardizem Protective Order**” means (1) the protective order entered in MDL No. 1278 (the “**Cardizem Confidentiality Order**”), and (2) paragraphs 12 and 13 of Case Management

Order number 5 (the “**Supplemental Confidentiality Order**”), true and correct copies of which are attached hereto as Attachment K.

F. “**Consumer Distribution Plan**” means the plan or method of allocation of the Consumer Settlement Fund, which shall be submitted to the Court for approval, and which is annexed hereto as Attachment E.

G. “**Consumer Settlement Fund**” means that portion of the Net Settlement Fund that will be set aside to pay the administrative costs of such fund and the claims of natural person members of the Settlement Class who paid United States (including Puerto Rico) pharmacies for **Cardizem® CD** Products and who file timely and valid proofs of claim.

G(a). “**Consumer Notice Administrator**” means the entity or entities appointed by the Court to administer the Notice Plan and to publish the Notices of Settlement and the Summary Notices of Settlement with respect to the consumer members of the Settlement Class.

H. “**Court**” means the United States District Court for the Eastern District of Michigan.

I. “**Defendant**” means either Andrx or Aventis. “**Defendants**” means both Andrx and Aventis.

J. “**Designated Governmental Agencies**” means the Medicaid agencies in any state and the other governmental agencies listed on Attachment A annexed hereto.

K. “**Effective Date**” means the date on which all of the following conditions shall have been satisfied, at which time this Settlement Agreement will be deemed to have become “**Effective**”:

1. Receipt by the Escrow Agent of the Aggregate Settlement Fund from Defendants pursuant to Section III.A of this Settlement Agreement;
2. Certification by the Court, for settlement purposes only, of the Settlement Class without any Material Change;
3. Entry by the Court of the Preliminary Approval Order without any Material Change;
4. Expiration of the Opt-Out Deadlines;
5. No termination of this Settlement Agreement by Defendants in any manner permitted and within the time contemplated by this Settlement Agreement and/or Rider A hereto;
6. Final approval by the Court of this Settlement Agreement without any Material Change;
7. Entry by the Court of the Final Judgment and Order without any Material Change;
8. Either:
 - (a) 30 days having elapsed following the entry by the Court of the Final Judgment and Order, if no notice of appeal with respect to the Final Judgment and Order has been timely filed with the Court; or

(b) if one or more notices of appeal are timely filed with the Court, dismissal of all such appeals or affirmance of the Final Judgment and Order and this Settlement Agreement in all respects subject to no further right of review; and

9. Dismissal of the State Actions with prejudice without further subsequent proceedings pursuant to Section V.F with such dismissal to occur within one hundred eighty (180) calendar days after the last to occur of the above-enumerated events.

L. **“Escrow Agent”** means the person or entity mutually agreed to and designated by the Parties in the Escrow Agreement.

M. **“Escrow Agreement”** means the escrow agreement, pursuant to which the Aggregate Settlement Fund shall be administered, without any Material Change to Attachment B annexed hereto.

N. **“Final Judgment and Order”** means the Court's final, appealable order, without any Material Change to Attachment G annexed hereto.

O. **“Government Compensation Plan”** means the plan or method of allocation of the State Settlement Fund, which shall be submitted to the Court for approval, and which is adopted and approved by the Court without any Material Change to Attachment D annexed hereto.

P. **“Legal Public Holiday”** means any day on which the offices of the Escrow Agent are closed for the transaction of public business or designated as a “legal holiday” pursuant to Fed. R. Civ. P. 6(a), as amended, or any successor to that rule.

Q. **“Litigating States”** means the States and Commonwealths of Alaska, Arizona, Arkansas, California, Connecticut, the District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Puerto Rico, Rhode Island, South Carolina, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

R. **“Material Change”** means (a) modification in any manner whatsoever to anything contained in any of the following sections of this Settlement Agreement: Sections I.A through I.VV, inclusive; Sections II.A through II.E, inclusive; Sections III.A, III.B, III.C, and III.D.3; Sections IV.A and IV.B; Sections V.B, V.C, V.D, and V.F; Sections VI.A, VI.D and VI.E; Sections VII.A. and VII.B; Sections VIII.A and VIII.B; Section IX; Sections X.A through X.D, inclusive; and Sections XI.B, XI.C, XI.H, XI.J and XI.K, Rider A and Attachments B, C, D, G, H, I, and K; or (b) any modification of anything else in this Settlement Agreement that affects the terms and scope of the releases, covenants not to sue and Released Claims set forth in Sections I.CC, I.FF I.MM, I.NN, II.A and II.B or the State Law Releasees’ ability to assert the releases; or (c) any modification of anything else in this Settlement Agreement that affects either the amount of money paid by the State Law Releasees pursuant to this Settlement Agreement or any Settlement Reduction set forth in Section IV.A

and Rider A or the amount of any Termination Refund in Section X; or (d) any material modification of anything else in this Settlement Agreement.

S. “**MDL No. 1278**” means the litigation captioned *In Re: Cardizem CD Antitrust Litigation*, Master File No. 99-MD-1278, plus any and all related cases and actions consolidated or coordinated with that litigation for discovery or other purposes

T. “**MMME Plaintiffs**” means Blue Cross Blue Shield of Michigan, Blue Cross Blue Shield of Minnesota, Blue Cross and Blue Shield of Massachusetts, Inc., and Excellus Health Plan, Inc., the entities that filed suit against Defendants in the United States District Court for the Eastern District of Michigan on July 26, 2001.

U. “**MMME Set-Off**” means the pro rata share of the Third Party Payer Settlement Fund to which any MMME Plaintiff that timely and validly opts out of the Settlement Class would have been entitled to receive if it had filed timely and valid proofs of claim.

V. “**Net Settlement Fund**” means the Aggregate Settlement Fund less: (1) attorneys’ fees, out-of-pocket expenses, and other amounts awarded by the Court to State Law Plaintiffs and/or their counsel; (2) Court-approved costs of notice; (3) settlement administration fees and costs with respect to the Aggregate Settlement Fund that are due and payable to the Escrow Agent pursuant to the Escrow Agreement; and (4) the State Settlement Fund. Administrative costs for each of the Settlement Funds will be allocated to the respective Settlement Fund and will not be deducted from the Aggregate Settlement Fund.

W. **“Notices of Exclusion”** means the documents annexed hereto as Attachment J.

X. **“Notices of Settlement”** means the documents annexed hereto as Attachment H.

Y. **“Notice Plan”** means the Court-approved process by which the Plaintiffs will publish the Notices of Settlement and Summary Notices of Settlement.

Z. **“Opt-Out Deadlines”** means both the Consumer Opt-Out Deadline and the Third Party Payer Opt-Out Deadline as defined below.

Z(a). **“Consumer Opt-Out Deadline”** means the date set by the Court as the deadline for consumer members of the Settlement Class to file Notices of Exclusion from the Settlement Class.

Z(b). **“Third Party Payer Opt-Out Deadline”** means the date set by the Court as the deadline for Third Party Payer members of the Settlement Class to file Notices of Exclusion from the Settlement Class.

AA. **“Parties”** means the State Law Plaintiffs, the Plaintiff States and the Defendants; and **“Party”** means any of them individually.

BB. **“Preliminary Approval Order”** means the Court's order preliminarily approving this Settlement Agreement and preliminarily certifying the Settlement Class, adopted and entered without any Material Change to Attachment C annexed hereto.

CC. **“Released Claims”** means all claims, debts, obligations, damages, liabilities, actions, proceedings, assertions, and causes of action (**“Claims”**), including but not limited to Claims arising under federal or state antitrust, unfair methods of competition, or consumer protection laws, under state

or federal deceptive practices acts, or under common law, whether known or unknown, whether accrued in whole or in part of any kind whatsoever, from the beginning of time through the date this Settlement Agreement is preliminarily approved by the Court, which any State Law Releasor had, has, or may in the future have against any State Law Releasee that were or could have been asserted by any State Law Releasor arising out of or concerning the allegations, or the facts and circumstances giving rise to the allegations (including without limitation that certain Stipulation and Agreement, dated September 24, 1997, between Hoechst Marion Roussel, Inc., Carderm Capital L.P. and Andrx Pharmaceuticals, Inc.), in the Complaints or in any other complaint filed in any action consolidated or coordinated with MDL No. 1278 or in any State Action, including without limitation all Claims asserted by any plaintiff in MDL No. 1278.

DD. **“Settlement Administrator of the Consumer Settlement Fund”** means that person or entity appointed by the Court to review, process, and approve the timely filed proofs of claim of consumers and to direct the Escrow Agent to pay those claims which are approved *pro rata* to consumers entitled to participate in the Consumer Settlement Fund.

EE. **“Settlement Administrator of the Third Party Payer Settlement Fund”** means that person or entity appointed by the Court to (i) review, process, and approve the timely filed proofs of claim of Third Party Payers and to direct the Escrow Agent to pay those claims which are approved *pro rata* to Third Party Payers entitled to participate in the Third Party Payer Settlement Fund and (ii)

administer the Notice Plan with respect to Third Party Payer members of the Settlement Class, and to publish the Notice of Settlement and the Summary Notice of Settlement for Third Party Payers

FF. **“Settlement Class”** means, for purposes of this Settlement Agreement only, all consumers and Third Party Payers (including any assignees of such consumers or Third Party Payers) who purchased and/or paid all or part of the purchase price of **Cardizem® CD** Products dispensed pursuant to prescriptions in the United States (including Puerto Rico) during the period January 1, 1998 through the date of the Preliminary Approval Order and all Designated Governmental Agencies. Excluded from the Settlement Class are Defendants and any of their officers and directors. Included in the Settlement Class are any and all members of any class or classes asserted in any of the State Actions.

GG. **“Settlement Fund”** means each of the Aggregate Settlement Fund, the Consumer Settlement Fund, the State Settlement Fund, and the Third Party Payer Settlement Fund; and **“Settlement Funds”** means all of these funds collectively.

HH. **“Settlement Reduction Factor”** means fifty percent (50%).

II. **“Settlement Reduction Limit”** means Three Million Two Hundred Thousand and no/100 Dollars (\$3,200,000.00).

JJ. **“State Actions”** means the actions currently pending in state courts under the following captions: *Pearl Bence Lowy v. Hoechst Aktiengesellschaft et al.*, Case No. 98-27437-CA (11th Judicial Circuit Miami-Dade County, Florida); *Aetna U.S. Healthcare of Florida, Inc. v. Hoechst*

Marion Roussel et al., Case No. 00-2461-CA (11th Judicial Circuit Miami-Dade County, Florida); *Aetna U.S. Healthcare, Inc. v. Hoechst Aktiengesellschaft et al.*, Case No. 99-000200 (District Court Johnson County, Kansas); and *Phillip Neal v. Hoechst Aktiengesellschaft et al.*, Case No. 99-C-2350 (District Court Johnson County, Kansas).

KK. “**State Law Plaintiffs**” means the plaintiffs in the following actions, all of which were coordinated under Case No. 99-MD-1278 (Edmunds, J.): *Billy Joe Lightner, et al. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-75070 (M.D. Ala. No. 2:99-T-754); *Betnor, Inc. et al. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73422 (N.D. Cal. No. 3:98-CV-3609); *Aetna U.S. Healthcare, Inc., et al. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73412 (N.D. Cal. No. 3:98-CV-4729); *Galloway, Inc., et al. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73871 (S.D. Cal. No. 99-CV-0645-TW); *Aetna U.S. Healthcare, Inc. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-74262 (D.D.C. No. 1:99-CV-193); *Jan Gabriel v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73667 (N.D. Ill. No. 1:98-CV-7147); *Charles Zuccarini, et al. v. Hoechst A.G., et al.*, E.D. Mich. No. 98-CV-74043; *Aetna U.S. Healthcare, Inc. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73239 (D. Minn. No. 0:99-CV-124); *Sunshine Pharmacy of New York, Inc. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73845 (E.D.N.Y. No. 99-CV-1641); *Joseph D’Esposito, et al. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73713 (S.D.N.Y. No. 99-CV-2088); *Shirlean Glover, et al. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-74377 (W.D.N.C. No. 3:99-CV-00169); *Eugenia Wynne Sams v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73190 (E.D. Tenn. No. 2:98-CV-

348); *Larry S. Sizemore v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73345 (M.D. Tenn. No. 3:99-CV-42); *Albert Eirich v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73981 (E.D. Wis. No. 2:98-CV-1027); *United Wisconsin Services, Inc., et al. v. Hoechst A.G., et al.*, E.D. Mich. No. 99-CV-73666 (E.D. Wis. No. 99-CV-389); *Marshall J. Ross v. Hoechst Marion Roussel, Inc., et al.*, E.D. Mich. No. 01-CV-70490 (D. Mass. No. 00-12312-JLT); and the plaintiffs in the State Actions.

LL. **“State Law Plaintiffs’ Lead Counsel”** means Lowey, Dannenberg, Bemporad & Selinger, P.C. and Berman DeValerio Pease Tabacco, Burt & Pucillo.

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

NN. **“State Law Releasers”** means:

1. The Plaintiff States, on behalf of themselves and, including without limitation:
 - a. departments, bureaus, and agencies of Plaintiff States as actual or alleged purchasers or reimbursers;
 - b. the Plaintiff States’ quasi-sovereign interests in fair competition and the health of their citizenry, and/or in the Plaintiff States’ sovereign capacities;

- c. Designated Governmental Agencies; and
 - d. Plaintiff States either in their *parens patriae* or functionally equivalent capacity, on behalf of natural person members of the Settlement Class who reside in their respective states, or as class representatives or in a functionally equivalent capacity, on behalf of natural person members of the Settlement Class who reside in their respective states, or as both;
- and

- 2. The State Law Plaintiffs, on behalf of themselves and members of the Settlement Class, and their respective past, present and future directors, officers, employees, shareholders, attorneys, heirs, executors, administrators, general or limited partners, affiliates, divisions, agents, representatives, predecessors, parents, subsidiaries, agencies, departments, institutions, successors and assigns.

OO. “**State Liaison Counsel**” means the Attorney General of the State of Michigan.

PP. “**State Settlement Fund**” means that portion of the Aggregate Settlement Fund that will be set aside to pay the claims of the Designated Governmental Agencies, and other remedies as allowed by state law (which may include civil penalties, restitution and disgorgement claims for purchases and/or reimbursements of **Cardizem® CD** Products). The State Settlement Fund will also be used to pay the fees and costs of the Litigating States, subject to Court approval. The amount set

aside for the State Settlement Fund shall be Seven Million and no/100 Dollars (\$7,000,000) plus interest earned on that amount.

QQ. **“Summary Notices of Settlement”** means the documents annexed hereto as Attachment I.

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

SS. **“Third Party Payer Distribution Plan”** means the plan or method of allocation of the Third Party Payer Settlement Fund which shall be submitted to the Court for approval in the form annexed hereto as Attachment F.

TT. **“Third Party Payer Fund Reduction Amount”** means the amount calculated by (1) subtracting the Third Party Payer Threshold Amount (as defined in Rider A to this Settlement Agreement) from the Total Third Party Payer Opt-Out Purchases, (2) dividing that remainder by the Total Third Party Payer Purchases (as defined in Rider A to this Settlement Agreement), (3) multiplying that quotient by the Aggregate Settlement Fund, and then (4) multiplying that product by the Settlement Reduction Factor.

UU. **“Third Party Payer Settlement Fund”** means that portion of the Net Settlement Fund that will be set aside to pay the administrative costs of such fund and the claims of Third Party

Payer members of the Settlement Class which file timely and valid proofs of claim. As described in Section IV of this Settlement Agreement, the Third Party Payer Settlement Fund shall be reduced by (1) any Third Party Payer Fund Reduction Amount, and (2) any MMME Set-Off .

VV. **“Total Third Party Payer Opt-Out Purchases”** means the total payments for prescriptions of **Cardizem® CD** filled at retail pharmacies in the United States (including Puerto Rico) during the period beginning July 1, 1998 and continuing through June 30, 1999, inclusive, by TPPs (not including the MMME Plaintiffs) that execute and file timely and valid Notices of Exclusion on or before the Third Party Payer Opt-Out Deadline. A Third Party Payer’s contribution to the Total Third Party Payer Opt-Out Purchases shall be referred to herein as such entity’s **“Opt-Out Purchases.”**

II. RELEASES AND COVENANTS

A. **Releases.** Upon the Effective Date of this Settlement Agreement, the State Law Releasers, on behalf of themselves and their respective entities and individuals, unconditionally, fully and finally release and discharge forever the State Law Releasees from the Released Claims and any liability arising therefrom. The only exception to the foregoing is that if any natural person State Law Plaintiff files a timely and valid Notice of Exclusion in his or her personal capacity, such State Law Plaintiff shall be deemed to not have released any Claims brought solely in his or her individual capacity without affecting in any manner the Released Claims brought on behalf of any purported class by such State Law Plaintiff, which will

nonetheless be released as described above. All Released Claims are released and discharged to the fullest extent of the law.

B. **Covenant Not to Sue**. Each of the State Law Releasers hereby covenants and agrees that it shall not hereafter seek to establish liability or assert Claims, on behalf of itself or any other person or entity, against any of the State Law Releasees, in whole or in part, for any of the Released Claims.

C. **Additional Release**. The State Law Releasers, on behalf of themselves and their respective entities and individuals, shall also be deemed to have expressly waived, released and forever discharged any and all provisions, rights and benefits that may be available under:

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

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

and

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

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

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

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

E. **FTC Reports.** Defendants shall provide to the State Liaison Counsel copies of all documents and reports required to be provided to the FTC pursuant to Sections V and VI of that certain consent order entered in *In the Matter of Hoechst Marion Roussel, Inc. et al.*, FTC Docket No. 9293 (May 8, 2001), within five (5) business days after such documents and reports are provided to the FTC. The documents and reports will be subject to the Cardizem Protective Order and shall be

deemed to have been designated by the Defendants as “Highly Confidential Information” within the meaning of the Cardizem Protective Order.

III. SETTLEMENT PAYMENTS

A. **Aggregate Settlement Fund; Payment Date.** Subject to the terms and conditions of this Settlement Agreement and pursuant to the terms of the Escrow Agreement already executed by the Parties, Defendants will deposit with the Escrow Agent the aggregate sum of Eighty Million and no/100 Dollars (\$80,000,000.00) plus interest deemed to have begun to accrue on January 2, 2003, at the rate first available to the Escrow Account in full and final settlement and in satisfaction of, and in consideration of the covenants contained herein and the release of the Released Claims.

B. **Payment into Escrow Account.** The Aggregate Settlement Fund will be paid, as set forth below, to the Escrow Agent, to be maintained in an account of a federally-insured financial institution (the “**Escrow Account**”).

C. **Full Satisfaction.** The Aggregate Settlement Fund is the total amount that Defendants will pay under this Settlement Agreement, or in connection with the Complaints and the State Actions, or in connection with any Released Claim, including, without limitation, attorneys’ fees and costs of the State Law Plaintiffs and the Plaintiff States, any Court-approved incentive awards to named Plaintiffs, and payment of any and all administrative and notice expenses associated with this litigation or settlement.

D. **Attorneys' Fees and Expenses.**

1. State Law Plaintiffs' Lead Counsel. State Law Plaintiffs' Lead Counsel, on behalf of all counsel for State Law Plaintiffs, agree to seek an award of attorneys' fees not exceeding 17% of the Aggregate Settlement Fund plus reimbursement of their itemized out-of-pocket expenses not to exceed Two Million and no/100 Dollars (\$2,000,000.00).
2. State Attorneys General. State Liaison Counsel, on behalf of all counsel for the Plaintiff States, agrees to seek an award of attorneys' fees and expenses not exceeding Two Million Five Hundred Thousand and no/100 Dollars (\$2,500,000.00), to be paid exclusively out of the State Settlement Fund.
3. Full Satisfaction of Claims for Attorneys' Fees. Plaintiffs, members of the Settlement Class and the Plaintiff States, and their respective counsel, shall not seek or demand payment of fees and/or costs beyond those provided for herein, nor shall they seek payment of such fees and/or costs from any source other than the Settlement Funds. All payments of attorneys' fees, costs and expenses contemplated by this Settlement Agreement shall be subject to judicial approval upon application to the Court and, upon such approval, shall constitute full and final satisfaction of any and all claims that any Plaintiff may have or assert for reimbursement of fees, costs and expenses.

E. **Incentive Payments.** State Law Plaintiffs' Lead Counsel, on behalf of State Law Plaintiffs, agree to seek an award of incentive payments for the role of State Law Plaintiffs in pursuing these actions on behalf of all Settlement Class members, that in aggregate are not in excess of Two Hundred and Fifty Thousand and no/100 Dollars (\$250,000.00).

F. **Allocation of Net Settlement Fund.** Plaintiffs have agreed to divide the Net Settlement Fund as follows:

1. **Consumer Settlement Fund.** Of the Net Settlement Fund, 45% shall be allocated to the Consumer Settlement Fund to pay valid and timely claims of natural person members of the Settlement Class who paid for **Cardizem® CD** Products.
2. **Third Party Payer Settlement Fund.** Of the Net Settlement Fund, 55% shall be allocated to the Third Party Payer Settlement Fund to pay valid and timely claims of Third Party Payer members of the Settlement Class that paid or reimbursed all or part of the cost of **Cardizem® CD** Products and to pay any Settlement Reduction as described in Section IV of this Settlement Agreement.

G. **Disposition of Surplus Funds in the Consumer Settlement Fund.** If, after distribution of the settlement proceeds to pay valid and timely claims, monies remain in the Consumer Settlement Fund, net of Court-approved costs of administration and costs of suit, including reasonable attorneys' fees, the remaining amount shall be distributed in a manner and on terms and conditions

determined by the Court in the exercise of its reasonable discretion. Such distribution may include, *inter alia*, a *cy pres* distribution to be administered by Plaintiff States to benefit the health care needs of users of **Cardizem® CD** Products. Defendants shall be given written notice of, and a reasonable opportunity to be heard with respect to, any application requesting the Court's exercise of discretion pursuant to this section.

IV. SETTLEMENT REDUCTION

A. **Settlement Reduction**. The Third Party Payer Settlement Fund shall be subject to the following potential reductions (each a "**Settlement Reduction**"):

1. **MMME Set-Off**. If any or all of the MMME Plaintiffs timely files valid Notices of Exclusion on or before the Third Party Payer Opt-Out Deadline, then, subject to the terms of this Settlement Agreement, the Escrow Agent shall pay to the Defendants the amount of the MMME Set-Off. Subject to Section IV.B of this Settlement Agreement, the MMME Set-Off shall be determined by the Settlement Administrator of the Third Party Payer Settlement Fund at the time of distribution of the Third Party Payer Settlement Fund, in accordance with the Third Party Payer Distribution Plan approved by the Court. State Law Plaintiffs and Defendants shall cooperate in taking discovery from the MMME Plaintiffs to ascertain the value of any Opt-Out Purchases attributable to them and the amount of the MMME Set-Off. The Escrow Agent shall pay to the Defendants

the amount of the MMME Set-Off, in the same proportion with which they contributed to the Aggregate Settlement Fund as described in Section I.A. of this Settlement Agreement, at the time of final distribution of the Third Party Payer Settlement Fund.

2. Third Party Payer Fund Reduction Amount. In the event that Total Third Party Payer Opt-Out Purchases exceed the Third Party Payer Threshold Amount (as that term is defined in Rider A to this Settlement Agreement), then the Third Party Payer Settlement Fund shall be reduced by the Third Party Payer Fund Reduction Amount, up to the Settlement Reduction Limit. Subject to Section IV.B of this Settlement Agreement and Rider A hereto, the Third Party Payer Fund Reduction Amount shall be paid to the Defendants in the same proportion with which they contributed to the Aggregate Settlement Fund as described in Section I.A. of this Settlement Agreement, at the time and in the manner provided in Section VII.B.2 of this Settlement Agreement.

B. Determination of Settlement Reductions.

1. State Law Plaintiffs' Lead Counsel and counsel for the Defendants shall attempt in good faith to reach agreement as to the Opt-Out Purchases of any Third Party Payer (including any MMME Plaintiff) and/or the amount of any Third Party Payer Fund Reduction Amount; and

2. If State Law Plaintiffs' Lead Counsel and counsel for the Defendants fail to reach agreement concerning any matter described in Section IV.B.1 within fifteen (15) calendar days after the Third Party Payer Opt-Out Deadline, counsel for the Defendants and State Law Plaintiffs' Lead Counsel shall jointly cause to be issued against, served on, and enforced against any Third Party Payer or MMME Plaintiff a subpoena pursuant to Federal Rule of Civil Procedure 45 requesting documents and/or testimony with respect to its Opt-Out Purchases and authority to opt-out, *provided, however*, that nothing herein shall prevent any of the Defendants or State Law Plaintiffs from issuing subpoenae or pursuing discovery from any Third Party Payer or MMME Plaintiff by any other means prior thereto; and
3. The Settlement Administrator of the Third Party Payer Settlement Fund shall calculate the amount of any MMME Set-Off based on the amount and value of the Opt-Out Purchases attributable to the MMME Plaintiffs determined in the manner contemplated by this Section IV, and shall promptly thereafter provide to the Defendants and the State Law Plaintiffs, in accordance with Section XI.F, written notice (the "**Set-Off Notice**") of the amount of the MMME Set-Off so calculated and the method and manner by which it was calculated. The State Law Plaintiffs and the Defendants, acting through their respective counsel,

shall provide to the Escrow Agent joint written notice specifying the amount of such MMME Set-Off and directing payment to the Defendants in the same proportion with which the Defendants contributed to the Aggregate Settlement Fund as described in Section I.A of this Settlement Agreement, at the time for the final distribution of the Third Party Payer Settlement Fund.

4. In the event of uncertainty of the amount of any Third Party Payer's Opt-Out Purchases, the Parties shall be bound by the amount of such purchases as reflected in the relevant business records of Aventis which, if different from those that have already been produced in MDL No. 1278, Aventis will provide to the Parties subject to the Cardizem Protective Order. In the event that the business records of Aventis are incomplete or do not contain sufficient data necessary to conclusively establish the amount of any Third Party Payer's Opt-Out Purchases, the Parties agree to be bound by the business records of such Opt-Out Entities, as such records are obtained voluntarily or through judicial process.

V. NOTICE AND SETTLEMENT HEARING

- A. **Motion for Preliminary Approval.** On or before January 24, 2003, State Liaison Counsel and State Law Plaintiffs' Lead Counsel shall file with the Court a motion for preliminary

approval of the Settlement Agreement and entry of the Preliminary Approval Order. This motion shall include this Settlement Agreement and all attachments hereto. Defendants shall have a reasonable opportunity to review and comment on the motion papers in advance of the filing.

B. **Motion To File Rider A Under Seal.** The Defendants and State Law Plaintiffs shall jointly file, contemporaneous with the filing of the motion for preliminary approval, a motion to file Rider A to this Settlement Agreement under seal, pending the expiration of the Third Party Payer Opt-Out Deadline plus thirty (30) days. The Parties agree that they shall maintain the confidentiality of Rider A to this Settlement Agreement and the information set forth therein at all times that Rider A is under seal. The Plaintiff States agree that they will take no position on the motion to file Rider A under seal.

C. **Stay of State Actions.** Within ten (10) business days after execution of this Settlement Agreement by the designated representatives of each of the Parties, counsel for the Defendants and State Law Plaintiffs shall jointly send motions to the judges presiding over the State Actions advising them of this Settlement Agreement and requesting that the State Actions be stayed pending approval of this Settlement Agreement and the settlement embodied herein.

D. **Implementation of Notice Plan.** Within thirty (30) calendar days after entry by the Court of the Preliminary Approval Order without any Material Change, State Liaison Counsel and State Law Plaintiffs' Lead Counsel shall effectuate the Notice Plan. The Parties will propose staggered notice periods whereby notice to Third Party Payer members of the Settlement Class will be made in advance of notice to consumer members of the Settlement Class. The Third Party Payer Opt-Out

Deadline will also be at least ninety (90) days prior to sending notice to consumer members of the Settlement Class. The Parties contemplate that the time between the beginning of the notice period for the Third Party Payer members of the Settlement Class and Consumer Opt-Out Deadline will not exceed two hundred thirty-seven (237) calendar days, or such other reasonable time period as may be set by the Court. The Parties will use their reasonable best efforts to have the determinations specified in Rider A and Section IV.A.2 completed prior to notice being given to consumer members of the Settlement Class.

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

F. **Dismissal of State Actions.** Within ten (10) business days following the entry by the Court of the Final Judgment and Order without any Material Change, the Defendants and State Law Plaintiffs shall jointly move the respective state courts in which the State Actions are pending to dismiss the State Actions with prejudice on the grounds that such State Actions have been rendered moot, the Claims therein have been settled, released and barred pursuant to the doctrine of *res judicata*, and/or any other applicable basis.

VI. SETTLEMENT ADMINISTRATION

A. **Investment Authority of Escrow Agent.** The Escrow Agent shall invest the Settlement Funds solely in obligations of, or obligations guaranteed by, the United States of America or any of its departments or agencies (which may be held either directly by the Escrow Agent or through one or more intermediate investment vehicles), and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. Immediately upon receipt of the payment set forth in Section III.A, the Escrow Agent shall segregate and invest separately the State Settlement Fund from the other Settlement Funds.

B. **Appointment of Settlement Administrator of the Consumer Settlement Fund, Consumer Notice Administrator, Settlement Administrator of the Third Party Payer Settlement Fund, and Distribution of Settlement Funds.** The Settlement Administrator of the Consumer Settlement Fund and the Consumer Notice Administrator shall be selected by the State Liaison Counsel and the Settlement Administrator of the Third Party Payer Settlement Fund shall be selected by the State Law Plaintiffs' Lead Counsel, both to be appointed by the Court pursuant to the Preliminary Approval Order. The State Settlement Fund shall be administered by the State Liaison Counsel. The Consumer Settlement Fund and the Third Party Payer Settlement Fund shall be administered according to the Consumer Distribution Plan and the Third Party Payer Distribution Plan, and further order of the Court.

C. **Court Jurisdiction Over Settlement Funds.** All funds held in the Aggregate Settlement Fund, the Consumer Settlement Fund, the Third Party Payer Settlement Fund and the State Settlement Fund shall be deemed to be *in custodia legis*, and shall remain subject to the jurisdiction of the Court, until such Settlement Funds are fully distributed or returned to Defendants, or upon further order(s) of the Court.

D. **Tax Treatment of Settlement Funds.**

1. The Settlement Funds shall be treated as being at all times “qualified settlement funds” within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent and, as required, the Parties, shall timely make such elections as necessary or advisable to carry out the provisions of this Section VI.D, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the sole responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.
2. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all

informational and other tax returns necessary or advisable with respect to the Settlement Funds (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)&(l). Such returns (as well as the election described in Section VI.D.1) shall be consistent with this Section VI.D and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Funds shall be paid out of the appropriate Settlement Fund as provided in Section VI.D.3.

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

4. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the settlement and shall be timely paid by the Escrow Agent out of the appropriate Settlement Fund with respect to which such Taxes and/or Tax Expenses have accrued, without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution out of the appropriate Settlement Fund any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)).
5. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section VI.D. For purposes of this Section VI.D, references to a Settlement Fund shall include such Settlement Fund and any earnings thereon.
6. Nothing in this Section shall be construed to mean that there are any Taxes or Tax Expenses which will be incurred by the State Settlement Fund.

E. **Limitation on Defendants' Liability for Transactions Involving Settlement**

Funds. The Parties expressly disclaim that Defendants have any responsibility or liability for any distributions of the Settlement Funds or interest earned thereon, or any reporting requirements that may

relate thereto. The Parties agree that no person shall have any claim against any of the Parties, their respective counsel, the Escrow Agent or any agent designated by the Escrow Agent based on the distributions made substantially in accordance with this Settlement Agreement and any orders of the Court.

VII. SETTLEMENT DISBURSEMENTS

A. **Payments By the Escrow Agent.** The Escrow Agent shall have the following responsibilities:

1. Depositing and investing the Aggregate Settlement Fund into the Escrow Account; and
2. Paying out of the Aggregate Settlement Fund, in accordance with Orders of the Court:
 - (a) Subject to Section VII.B.1 of this Settlement Agreement, to the Settlement Administrator of the Third Party Payer Settlement Fund, actual notice and administrative costs reasonably incurred for the purpose of undertaking the functions described in Section I.EE
 - (b) Subject to Section VII.B.2 of this Settlement Agreement, to the Consumer Notice Administrator, actual notice costs reasonably incurred for the purpose of providing the Notice of Settlement and the

Summary Notice of Settlement to consumer members of the Settlement Class in accordance with the Notice Plan;

- (c) Subject to Section VII.B.3 of this Settlement Agreement, to the Settlement Administrator of the Consumer Settlement Fund, the costs incurred in the administration of the Consumer Settlement Fund;
- (d) To Defendants, the amount of any Third Party Payer Fund Reduction Amount, in the same proportion with which they contributed to the Aggregate Settlement Fund as described in Section I.A. of this Settlement Agreement;
- (e) To State Law Plaintiffs' Lead Counsel, the amount of State Law Plaintiffs' attorneys' fees and expenses awarded by the Court;
- (f) To any State Law Plaintiff entitled thereto, any incentive payment awarded by the Court;
- (g) To Plaintiff States, the amount of the State Settlement Fund, pursuant to the direction of State Liaison Counsel;
- (h) To the members of the Settlement Class who or which file timely and valid proofs of claim, the approved amount of such claims;

- (i) To Defendants, the amount of any MMME Set-Off, in the same proportion with which they contributed to the Aggregate Settlement Fund as described in Section I.A of this Settlement Agreement
- 3. Paying any federal, state or local taxes due on the Settlement Funds; and
- 4. Paying to the Defendants the Termination Refund following the occurrence of an Event of Termination as those terms are defined in Section X of this Settlement Agreement.

B. **Timing of Payments By the Escrow Agent.** The Escrow Agent shall make the payments identified in Section VII.A and Section X at the following times:

- 1. After the Court's entry of the Preliminary Approval Order without any Material Change, the payments identified in Section VII.A.2(a) of this Settlement Agreement, as such notice and administrative costs become payable pursuant to Section 4(b)(i) of the Escrow Agreement. The aggregate amount of all such notice and administrative costs that shall be reimbursable with respect to the Third Party Payer Settlement Fund during the period beginning the day after the Court's entry of the Preliminary Approval Order without any Material Change and ending on the earlier to occur of (i) the Effective Date, and (ii) February 1, 2004 shall not exceed One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00). Beginning on the earlier to occur of (i) February 2, 2004 or (ii)

the day after the Effective Date, any such notice or administrative costs as shall be deemed reasonable by the Court shall not exceed the money then available in the Third Party Payer Settlement Fund (from which such payments shall be made). The first of such payments shall be made within five (5) business days following receipt by the Escrow Agent of joint written notice from the Plaintiffs and the Defendants, as provided for in Section 4(b)(i) of the Escrow Agreement.

2. After the Court's entry of the Preliminary Approval Order without any Material Change, and after May 1, 2003, the payments identified in Section VII.A.2(b) of this Settlement Agreement, as such notice costs become payable pursuant to Section 4(b)(ii) of the Escrow Agreement. The aggregate amount of all such notice costs that shall be reimbursable with respect to the Consumer Settlement Fund after May 1, 2003, shall not exceed One Million Six Hundred Thousand and no/100 Dollars (\$1,600,000.00)(the "Notice Payment"). The first of such payments shall be made within five (5) business days following receipt by the Escrow Agent of joint written notice from the Plaintiffs and the Defendants, as provided for in Section 4(b)(ii) of the Escrow Agreement.
3. After the Court's entry of the Preliminary Approval Order without any Material Change, and after June 1, 2003, the payments identified in Section VII.A.2(c)

of this Settlement Agreement, as such administrative costs become payable pursuant to Section 4(b)(iii) of the Escrow Agreement. The aggregate amount of all such administrative costs that shall be reimbursable with respect to the Consumer Settlement Fund between June 1, 2003 and the earlier to occur of (i) the Effective Date or (ii) February 1, 2004 shall be limited to One Million and no/100 Dollars (\$1,000,000) plus the amount of the Notice Payment not used for consumer notice costs. The aggregate amount of all administrative and notice costs authorized by Sections VII.A.2(a), VII.A.2(b), and VII.A.2(c) of this Settlement Agreement that shall be reimbursable prior to the earlier of (i) February 2, 2004 or (ii) the day after the Effective Date shall not exceed Two Million Seven Hundred Fifty Thousand and no/100 Dollars (\$2,750,000.00). Beginning on the earlier to occur of (i) February 2, 2004 or (ii) the day after the Effective Date, any such notice or administrative costs as shall be deemed reasonable by the Court shall not exceed the money then available in the Consumer Settlement Fund (from which such payments shall be made). The first of such payments for administrative costs shall be made after June 1, 2003 and within five (5) business days following receipt by the Escrow Agent of joint written notice from the Plaintiffs and the Defendants, as provided for in Section 4(b)(iii) of the Escrow Agreement.

4. In the event that Defendants shall become entitled to a refund of the Third Party Payer Fund Reduction Amount (as described in Section VII.A.2(d) of this Settlement Agreement), the Escrow Agent shall pay that amount to Defendants as soon as practicable following, but in no event later than five (5) business days after, receipt by the Escrow Agent of joint written notice from the State Law Plaintiffs and the Defendants, acting through their respective counsel, advising the Escrow Agent that the Third Party Payer Fund Reduction Amount has been determined to be due and payable and of the amount of the Third Party Payer Fund Reduction Amount finally determined to be due and payable pursuant to Section IV of this Settlement Agreement and directing the Escrow Agent to pay such amount to the Defendants.
5. In the event that Defendants shall become entitled to a Termination Refund (as described and defined in Sections VII.A.4 and X.C of this Settlement Agreement), the Escrow Agent shall pay that amount to Defendants at the time provided in Section X.C.
6. The payments identified in Sections VII.A.2(e) and VII.A.2(f), promptly following:
 - (a) the later to occur of: (i) the date on which all of the conditions specified in Section I.K shall have been satisfied, *provided* that, solely for

purposes of this Section VII.B.6(a), only an appeal initiated by either Defendant or both Defendants, written notice of which is provided to Plaintiffs within ten (10) business days after entry of the Final Judgment and Order without any Material Change, shall be deemed to constitute an appeal contemplated by or affecting the operation of the conditions stated in Section I.K.8 of this Settlement Agreement; and (ii) the Court order awarding these payments; and

- (b) receipt by the Escrow Agent of joint written notice (accompanied by a copy of the Court's order awarding payment thereof) from the Plaintiffs and the Defendants, acting through their respective counsel, advising the Escrow Agent that the conditions set forth in Section VII.B.6(a) have been satisfied and directing the Escrow Agent to pay the amounts ordered by the Court, to the extent, in the manner and to the persons described in the Court's order;

further provided that, if a final judgment by the Court approving this Settlement Agreement and the settlement embodied herein is reversed on appeal, State Law Plaintiffs' Lead Counsel shall, within five (5) business days after Defendants shall have provided them with written Notice of Termination in accordance with Section X.B, cause a refund to be made to the Aggregate

Settlement Fund in the amount of the disbursements previously made to State Law Plaintiffs' Lead Counsel and to any Plaintiff pursuant to Sections VII.A.2(e) and VII.A.2(f) and this Section VII.B.6 (plus interest that would have accrued on that amount had it remained in the Aggregate Settlement Fund) and shall cause such amount to be repaid to Defendants as part of the Termination Refund in accordance with Section X.C.

7. The payments identified in Sections VII.A.2(g) and VII.A.2(h), within thirty (30) calendar days following the Effective Date of this Settlement Agreement and the receipt by the Escrow Agent of joint written notice from the Plaintiffs and the Defendants, acting through their respective counsel, advising the Escrow Agent that the Settlement Agreement has become Effective and directing the Escrow Agent to make these payments.
8. In the event that Defendants shall become entitled to a refund of the MMME Set-Off (as described in Section VII.A.2(i) of this Settlement Agreement), the Escrow Agent shall pay that amount to Defendants at the time of final distribution of the Third Party Payer Settlement Fund consistent with Section VII.B(7) of this Settlement Agreement and following receipt by the Escrow Agent of joint written notice from the State Law Plaintiffs and the Defendants, acting through their respective counsel, advising the Escrow Agent that the

MMME Set-Off has been determined to be due and payable and of the amount of the MMME Set-Off finally determined to be due and payable pursuant to Section IV of this Settlement Agreement and directing the Escrow Agent to pay such amount to the Defendants in the same proportion with which they contributed to the Aggregate Settlement Fund as described in Section I.A. of this Settlement Agreement..

VIII. COOPERATION AND IMPLEMENTATION

A. **Reasonable Best Efforts.** Counsel for the undersigned agree to recommend approval of this Settlement Agreement by the Court and to undertake their reasonable best efforts, including all steps and efforts detailed in this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to expeditiously carry out the terms of this Settlement Agreement. The Parties shall have a reasonable opportunity to review any motion papers in advance of filing.

B. **Stay of Discovery.** The Parties agree that all discovery relating to the Released Claims is stayed.

C. **Public Statements.** The date and timing of the initial press releases will be set by mutual agreement of the Parties.

IX. BENEFIT AND BINDING EFFECT

The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of, the Parties and their successors and assigns. The Parties expressly disclaim any intention to create rights under this Settlement Agreement that may be enforced by any other person under any circumstances whatsoever, except as provided in this Settlement Agreement.

X. TERMINATION

A. **Events of Termination.** Defendants (jointly but not severally) shall have the right and the option in their sole discretion to terminate this Settlement Agreement in the event that any of the following events (each an “**Event of Termination**”) shall have occurred:

1. Any condition enumerated in Section I.K of this Settlement Agreement shall have failed to occur and this Settlement Agreement shall have failed to become Effective unless it shall have failed to become Effective because of the condition enumerated in Section I.K.1 because of events directly and solely controlled by the Defendants; or
2. A Plaintiff State, State Attorney General or any other person or entity successfully, validly and timely opts out of the Settlement Class (i) in a representative capacity on behalf of (a) the consumers residing in a state or (b) any class of persons or entities; or (ii) is allowed to proceed with any claim, relief or remedy, including

without limitation disgorgement, on behalf of any others not immediate family members or persons in direct privity of contract or a guardian or executor, executrix, or administrator of an estate having pre-existing legal authority; or

3. A Plaintiff State that has executed this Settlement Agreement subsequently is permitted to (a) rescind its execution of, (b) renounce, or (c) withdraw from this Settlement Agreement; or
4. A Voidable Event (as that term is defined in Rider A to this Settlement Agreement) shall have occurred.

B. **Exercise of Right of Termination.** Following an Event of Termination, Defendants may terminate this Settlement Agreement by providing written notice (“**Notice of Termination**”) to State Law Plaintiffs’ Lead Counsel and State Liaison Counsel (in accordance with Section XI.F) and to the Escrow Agent (to the address provided in the Escrow Agreement) within thirty (30) calendar days following the Defendants’ receipt of actual notice of such Event of Termination (the “**Exercise Period**”). Notice of Termination will be deemed to have been timely provided to the recipients named herein upon any of the following actions occurring within the Exercise Period:

1. service of Notice of Termination upon such recipient (if given personally); or
2. deposit by Defendants of Notice of Termination with the courier (if given by express courier); or

3. transmission of Notice of Termination to such recipient by facsimile transmission (if given by facsimile transmission followed by postage prepaid mail).

The Exercise Period shall be subject to extension (a) by the Court for good cause shown or (b) to the next business day following the end of the Exercise Period (as it may be extended in accordance with the immediately preceding clause) in the event that the last day of such period falls on a Saturday, a Sunday or a Legal Public Holiday or (c) by written agreement among the Parties.

C. **Termination Refund.** Within ten (10) business days following the date on which Defendants provide Notice of Termination in accordance with Section X.B, the Escrow Agent shall repay to the Defendants the Aggregate Settlement Fund (including interest accrued thereon), less the sum of: (i) actual notice and administrative costs paid or due and payable limited as described in Section VII, plus (ii) amounts paid, or due and payable, to the Escrow Agent pursuant to the Escrow Agreement up to the date of the Event of Termination, plus (iii) any accrued tax liability as defined in Section VI.D.2 (the amount so calculated being the “**Termination Refund**”). If, prior to the end of the ten (10) day period specified in this Section X.C., Plaintiffs (jointly but not severally) notify by fax the Escrow Agent and Defendants that they dispute the Defendants’ right to terminate this Settlement Agreement for any reason other than the amount of a Third Party Payer’s Opt-Out Purchases as provided in Section IV.B.4 of this Settlement Agreement (“Termination Dispute Notice”), the Escrow Agent shall not release the Termination Refund to Defendants until thirty days following the receipt of notification by Plaintiffs. The Parties agree to attempt to resolve their dispute in good faith during such

time. In the event that the Parties can not resolve their dispute, the Escrow Agent shall return such funds to the Defendants, as Defendants have the sole and exclusive right to terminate this Settlement Agreement pursuant to this Section of the Settlement Agreement without any right on the part of the Plaintiffs to challenge, dispute, or appeal such termination.

D. **Effect of Exercise of Termination Rights on Litigation.** Upon the timely and valid exercise by Defendants of the right to terminate this Settlement Agreement as provided in this Section X, this Settlement Agreement shall become null and void, shall have no further force and effect, and the Plaintiff States and State Law Plaintiffs shall retain full rights to assert any and all Claims against State Law Releasees, and State Law Releasees shall retain any and all defenses thereto. These actions shall thereupon revert to their respective procedural and substantive status prior to the date of execution hereof and shall proceed as if this Settlement Agreement, and all other related orders and papers, had not been executed. In such event, the Parties shall jointly request that any order contemplated hereby, which shall have been entered, be vacated and that the Court enter an order authorizing the Parties to resume and complete discovery in these actions.

XI. MISCELLANEOUS

A. **Entire Agreement.** This Settlement Agreement, the attachments hereto and Rider A to the Settlement Agreement (collectively, the “**Settlement Documents**”) contain the entire agreement and understanding of the Parties. There are no additional promises, understandings or terms of the

Settlement Agreement other than those contained herein. The Settlement Documents supersede and render of no effect all other oral or written communications concerning the subject matter hereof.

B. Modification; Waiver.

1. **Generally.** Subject to Section XI.B.2 hereof, the terms or provisions of this Settlement Agreement may not be changed, waived, modified, or varied in any manner whatsoever unless in a writing duly signed by all Parties with the consent of the Court. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions hereof, and that Party, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Settlement Agreement to be performed by the other Party.
2. **Adjustments to Dates Certain.** In the event that the Third Party Payer Opt-Out Deadline shall be scheduled to occur on any date after March 14, 2003, the dates occurring after March 14, 2003 specified in Sections VII.B.1, VII.B.2 and VII.B.3 shall automatically, and without further action of the Parties or the Court, be extended by a number of calendar days equal to the number of calendar days by which the Third Party Payer Opt-Out Deadline differs from March 14, 2003. In the event that the Consumer Opt-Out Deadline shall be set

to occur on any date after September 22, 2003, the dates occurring after September 22, 2003 specified in Sections VII.B.1, VII.B.2 and VII.B.3 shall automatically, and without further action of the Parties or the Court, be extended by a number of calendar days equal to the number of calendar days by which the Consumer Opt-Out Deadline differs from September 22, 2003.

C. **Authority.** The undersigned counsel for each of the Parties hereby represents and warrants that he or she is authorized to enter into this Settlement Agreement on behalf of that Party. Each of the Plaintiffs represents and warrants that it has not assigned, and that it shall not assign at any time on or before the Opt-Out Deadlines, nor shall it attempt or purport to assign after the Opt-Out Deadlines, any Released Claim or any right, title or interest in any Released Claim, to any person or entity who is not included among the State Law Releasers. State Liaison Counsel represents and warrants that its signature on behalf of a Plaintiff State reflects the authority of State Liaison Counsel to bind such Plaintiff State.

D. **No Party is the Drafter.** The Settlement Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

E. **Execution in Counterparts.** The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court. This

Settlement Agreement may be validly executed and delivered by fax or other electronic transmission, *provided* that any such facsimile or electronic signature shall be followed promptly thereafter by delivery of corresponding originally executed signature pages to the Court.

F. **Notice.** Any and all notices, requests, consents, directives, or communications by any party intended for any other party shall be in writing and shall, unless expressly provided otherwise herein, be given personally, by express courier, or by postage prepaid mail, or by facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

To Plaintiff States:

Paul Novak, Esq.
Assistant Attorney General
State of Michigan
Consumer Protection Division, Antitrust Section
G. Mennen Williams Building
525 West Ottawa Street
Lansing, MI 48913
Tel: 517-241-2060
Fax: 517-335-1935

To State Law Plaintiffs:

Stephen Lowey, Esq. or Richard Cohen, Esq.
Lowey Dannenberg Bemporad & Selinger, P.C.
The Gateway, 11th Floor
One North Lexington Avenue
White Plains, NY 10601
Tel: 914-997-0500
Fax: 914-997-0035

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Tel: 816-474-6550
Fax: 816-421-5547

Any one of the Parties may, from time to time, change the address to which such notices, requests, consents, directives, or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner herein above provided, ten (10) calendar days before the change is effective.

G. **Governing Law; Consent to Jurisdiction.** This Settlement Agreement, including, but not limited to, the releases contained herein, shall be governed by, and construed in accordance with, the laws of the State of Michigan without regard to its conflict of laws principles. The Parties to this Settlement Agreement agree that the Final Judgment and Order shall provide that the Court shall retain jurisdiction to enforce all provisions and terms of this Settlement Agreement. This Settlement Agreement shall be enforced in the United States District Court for the Eastern District of Michigan. The Parties, on behalf of themselves and the settling members of the Settlement Class, waive any objection that each of them may now have or hereafter have to the venue of any such suit, action or proceeding and irrevocably consent to the jurisdiction of the Court and agree to accept and acknowledge service in any such suit, action or proceeding.

H. **No Admission.** Neither this Settlement Agreement nor any proceedings undertaken in accordance with the terms set forth herein, shall be construed as or deemed to be evidence of or an admission or concession by Defendants as to the validity of any claim that has been or could have been asserted against them or as to any liability by them, which liability is hereby expressly denied and disclaimed by Defendants. Neither this Settlement Agreement, nor any of its provisions, nor any statement or document made or filed in connection herewith, shall be filed, offered, received in evidence or otherwise used in any action or proceeding or in any arbitration, except in connection with the Parties' application for approval or enforcement of this Settlement Agreement and all proceedings incident thereto.

I. **Return or Destruction of Discovery Materials; Resisting Disclosure Requests.**

Except as otherwise provided in Section II.E of this Settlement Agreement or as permitted by the Court upon good cause shown (with appropriate provisions to preserve the confidentiality of any documents not returned to any Party):

1. within sixty (60) calendar days after the Effective Date, the Plaintiffs shall destroy or return all materials and documents produced in these actions by any party or non-party to the person or entity that produced those documents. Defendants may at their discretion extend this period of time if, within fifty-five (55) calendar days after the Effective Date, a Plaintiff seeks such an extension in writing stating the reasons for the delay and the time within which the return or destruction of the documents will be completed. In the event that any Plaintiff State is served with a freedom of information act request, or with any subpoena or other legal process, requesting or requiring it to provide information relating to this matter, that Plaintiff State shall act in accordance with paragraph 13 of the Cardizem Confidentiality Order and paragraph 13 of the Supplemental Confidentiality Order, each as if incorporated herein and in effect.
2. within sixty (60) calendar days after the later of (a) the Effective Date or (b) the termination with no right of appeal of any litigation consolidated or coordinated with MDL No. 1278 and the State Actions, the Defendants shall destroy or return all

materials and documents produced in these actions by any party or non-party to the person or entity that produced those documents.

The Parties acknowledge and agree that, pursuant to the Cardizem Protective Order, nothing in this Settlement Agreement nor in the settlement contemplated hereby shall relieve them of their ongoing obligation to maintain both the confidentiality and the restrictions on use of anything disclosed pursuant to or in reliance upon the Cardizem Protective Order.

J. **Enforcement of Settlement Agreement and Releases.** Once Effective, this Settlement Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Released Claims. The Parties agree that for any such proceeding, the Court or any court of competent jurisdiction may enter an injunction restraining prosecution of such proceeding. The Parties further agree that this Settlement Agreement may be pleaded as necessary for the purpose of enforcing the Settlement Agreement.

K. **No Penalty or Fine.** The Parties agree and acknowledge that nothing paid in respect of the Aggregate Settlement Fund nor any other part of this Settlement Agreement (including Rider A hereto) constitutes or shall in any way be deemed a payment of a penalty or a fine of any kind.

L. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement in any manner.

IN WITNESS WHEREOF, the Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement, the attachments hereto, Rider A to this Settlement Agreement, and the settlement embodied herein and therein, on the date first above herein written.

STATE LAW CLASS PLAINTIFFS

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*Counsel for Defendant Carderm
Capital L.P.*

ATTACHMENTS

Attachment A:	Listing of Designated Governmental Entities
Attachment B:	Escrow Agreement
Attachment C:	Proposed Preliminary Approval Order
Attachment D:	Government Compensation Plan
Attachment E:	Consumer Distribution Plan
Attachment F:	Third Party Payer Distribution Plan
Attachment G:	Proposed Final Judgment and Order
Attachment H:	Notices of Settlement
Attachment I:	Summary Notices of Settlement
Attachment J:	Notice of Exclusion Form
Attachment K:	Cardizem Protective Order