

**ADDENDUM**

**The State of New York**

"The Parties" as defined in Paragraph I of the State Settlement Agreement have agreed to change the following language:

The Parties agree to strike Paragraph II B(8) from the State Settlement Agreement.

The Parties agree to change Paragraph III. 1 as follows: "Amgen agrees to pay to the United States and the Medicaid Participating States (as defined hereinafter), collectively, the sum of Six Hundred and Twelve Million, One Hundred Seventy-Four Thousand Thirty Dollars and thirty-two cents (\$612,174,030.32). In addition to this amount, Amgen shall pay to the United States and the Medicaid Participating States an amount of interest that has accrued on Five Hundred Ninety Eight Million One Hundred and Seventy-Four Thousand Thirty Dollars and thirty-two cents (\$598,174,030.32) at a rate of 1.625% per annum commencing on October 12, 2011 and continuing and including the day before payment is made under this Agreement and an amount of interest that has accrued on Fourteen Million (\$14,000,000) at a rate of 1.25% per annum commencing on September 21, 2012 and continuing and including the day before payment is made under this Agreement. Collectively, the Six Hundred and Twelve Million One Hundred Seventy-Four Thousand Thirty Dollars and thirty-two cents and the aforementioned interest constitute the 'Settlement Amount'." The remainder of Paragraph III. 1 remains unchanged.

"The Parties" as defined in Paragraph I of this Agreement have also agreed to remove the following language:

The Parties agree to remove in Paragraph II G (1) "Anemia in Zidovudine-Treated HIV patients, and for the reduction of transfusions prior to surgery,".

The Parties agree to remove in Paragraph II G (4) "for an off label dosing regimen,".

The Parties agree to remove in Paragraph II G (6)(a)(1)(b) "anemia in zidovudine-treated HIV patients, and reducing the need for allogeneic red blood cell transfusions in surgery patients,".

The Parties agree to remove in Paragraph II G (6)(c) "; and further, (2) during the period from January 31, 2002 to September 30, 2011, Amgen knowingly promoted the sale and use of Neulasta for an Off Label Regimen which was not covered by the State Medicaid Program, including through the use of journal articles that were insufficient to support the safety and efficacy of the Off Label Regimen".

The Parties agree to remove in Paragraph II G (7) "International Physicians Network, International Rheumatology Network," "U.S. Oncology and Health Dimensions, Inc.," "free equipment, free software," "services" from the phrase "free billing instruction and education services from a drug development services company" so that it now reads "free billing instruction and education from a drug development services company", and "practice management" from the phrase "free practice management consulting services" such that it now reads "free consulting services,".

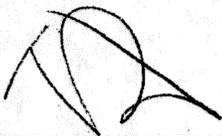
The Parties further agree to add the following new subparagraph language, such language shall be considered to be included in Paragraph II G (11):

(c) Allegations pertaining to Amgen alleged in the Third Amended Complaint filed in *United States et al. ex rel. Piacentile, et al. v. Amgen, Inc., et al.*, CV-04-3983 (E.D.N.Y) (the "Action") to the

extent the claims currently alleged in the Action (the "Allegations") are dismissed with prejudice as to the Relators Piacentile and Kilcoyne exclusively pursuant to 31 U.S.C. § 3730(c)(2)(A) and relevant state statutes. For the avoidance of doubt, this paragraph 11 (c) shall not apply as to any of the Covered Conduct that could be construed as having been alleged by Relators Piacentile and/or Kilcoyne but that is dismissed by a Court for any other reason, including pursuant to Rule 9(b) Fed. R. Civ. P. or 31 U.S.C. §§ 3730 (e)(4)(A) or (b)(5) or relevant state statutes.

Agreed to this 14<sup>th</sup> day of December, 2012:

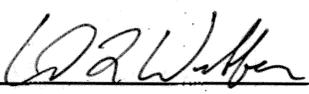
**STATE OF NEW YORK**

By: 

Dated: 12/15/12

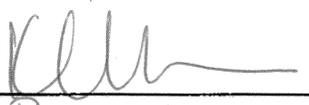
Monica Hickey-Martin  
Director Medicaid Fraud Control Unit  
OFFICE OF THE ATTORNEY GENERAL

**AMGEN INC.**

By: 

Dated: 12/17/12

[Name] WILLIAM L. WEBBER  
[Title] VP Law

By:   
Ropes + Gray LLP

Dated: 12/17/12

Counsel to AMGEN INC.

## STATE SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (“Agreement”) is entered into between the State of New York (“the State”) and Amgen Inc., hereinafter collectively referred to as “the Parties.”

### II. PREAMBLE

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

A. At all relevant times, Amgen, a Delaware corporation with its principal place of business in California, developed, manufactured, distributed, marketed and sold biologic products including biologics under the trade names Aranesp, Enbrel, Epogen, Neulasta, Neupogen and Sensipar (collectively the “Covered Drugs”).

B. The Relators listed herein have filed the following *qui tam* actions against Amgen:

- (1) United States *et al. ex rel.* Pamela Arriazola v. Amgen, Inc. *et al.*, CV-06-3232 (USDC for the Eastern District of New York);
- (2) United States *et al. ex rel.* Thomas Cantor v. Amgen, Inc. *et al.*, CV 04-2511 (USDC for the Eastern District of New York);
- (3) United States *et al. ex rel.* Michael Tucker v. Amgen, Inc., CV-09-0887 (USDC for the Eastern District of New York);
- (4) United States *et al. ex rel.* Marshall S. Horwitz, M.D. v. Amgen, Inc. *et al.*, C07-0248-BHS (USDC for the Western District of Washington);

- (5) United States *et al. ex rel.* Jill Osiecki v. Amgen, Inc. *et al.*, CV 05-5025 (USDC for the Eastern District of New York);
- (6) United States *et al. ex rel.* Elena Ferrante and Marc Engelman v. Amgen, Inc. *et al.*, CV-08-3931 (USDC for the Eastern District of New York);
- (7) United States and the state of New Mexico, *ex rel.* Kassie Westmoreland v. Amgen, Inc. *et al.*, 06-10972-WGY (USDC for the District of Massachusetts) (this action includes a complaint in intervention by the states of California, Illinois, Indiana, Massachusetts and New York);
- (8) United States *et al. ex rel.* Joseph Piacentile, M.D., and Kevin B. Kilcoyne v. Amgen, Inc. *et al.*, CV 04-3983 (USDC for the Eastern District of New York);
- (9) United States *et al. ex rel.* DJAE Partnership, *et al.*, v. Amgen, Inc., 11-11242-DJC (USDC for the District of Massachusetts);
- (10) United States *et al. ex rel.* Don Hanks v. Amgen, Inc. *et al.*, CV-08-3096 (USDC for the Eastern District New York).

C. The *qui tam* actions identified in Paragraph B (1) through (10), above, will be referred to collectively as the “Civil Actions.”

D. On such a date as may be determined by the Court, Amgen will enter a plea of guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) (the “Plea Agreement”) to an Information to be filed in United States v. Amgen (the “Federal Criminal Action”) that will allege a violation of Title 21, United States Code, Sections 331(a), 333(a)(1), and 352(f)(1), namely, the introduction into interstate commerce of a misbranded drug, Aranesp, in violation of the Food, Drug and Cosmetic Act (“FDCA”).

E. Amgen has entered into a separate civil settlement agreement (the “Federal Settlement Agreement”) with the United States (as that term is defined in the Federal Settlement Agreement).

F. The State contends that Amgen caused claims for payment to be submitted to the State’s Medicaid Program, 42 U.S.C. §§ 1396-1396(v), for the Covered Drugs.

G. The State contends that Amgen engaged in the conduct described in this Paragraph G, which shall constitute the “Covered Conduct.” The State further contends that it has certain civil and administrative causes of action against Amgen arising out of the Covered Conduct as a result of which Amgen knowingly caused false and fraudulent Medicaid claims to be submitted to the State’s Medicaid Program for the Covered Drugs.

(1) Amgen promoted the use of Aranesp for certain off-label indications including for Anemia of Cancer, Anemia of Chronic Disease, Myelodysplastic Syndrome, Anemia in Zidovudine-Treated HIV patients, and for the reduction of transfusions prior to surgery, including through the use of articles in which Amgen’s authorship role was not fully disclosed;

(2) Amgen promoted the use of Aranesp for certain off-label dosing regimens including bi-weekly and front loading dosing in oncology as well as every 3 week and monthly dosing in nephrology;

(3) Amgen promoted the use of the drug Enbrel for the off-label indication mild psoriasis and an off-label dosing regimen for psoriasis patients and made unsupported or insufficiently supported claims regarding Enbrel’s safety and superiority for the treatment of plaque psoriasis and/or promoted Enbrel for adjunctive use with systemic or topical therapy for treatment of patients with plaque psoriasis;

(4) Amgen promoted the use of the drug Neulasta in patients whose incidence of febrile neutropenia is under 38%, for an off-label dosing regimen, and by claiming that Neulasta is superior to Neupogen, including through the use of articles in which Amgen's authorship role was not fully disclosed; and

(5) Amgen provided kickbacks relating to the sale of the Covered Drugs, and inaccurately reported and manipulated the Average Sales Price, Best Price and Average Manufacturers Price for the Covered Drugs, including through promotion of self-administration of Aranesp and of overfill.

(6) The State more specifically contends that as a result of the conduct set forth in Paragraphs G (6) (a) to (c), below inclusive, Amgen knowingly caused the submission of claims to the State's Medicaid Program for Aranesp, Enbrel, and Neulasta for indications which were not medically accepted and for intervals, amounts, or regimens not reimbursable by the State Medicaid Program as follows:

(a) **Aranesp:** (1) During the period from September 17, 2001 to September 30, 2011, Amgen knowingly promoted the sale and use of Aranesp for indications which were (a) not approved by the Food and Drug Administration ("FDA") (hereinafter in this Settlement Agreement indications not approved by FDA shall be referred to as "Off Label Uses") and (b) not medically accepted indications, including anemia caused by cancer, anemia caused by chronic disease, chronic anemia, anemia caused by myelodysplastic syndrome, anemia in zidovudine-treated HIV patients, and reducing the need for allogeneic red blood cell transfusions in surgery patients, including through the use of journal articles that were insufficient to support the safety and efficacy of the Off Label Uses, and by improperly obtaining compendia listings to try to establish the Off

Label Uses as medically accepted indications and thereby seek coverage by the Medicaid Program for the Off Label Uses; and further, (2) during the period from September 17, 2001 to September 30, 2011, Amgen knowingly promoted the sale and use of Aranesp for dosing intervals, amounts, or regimens that were (a) not approved by the FDA (hereinafter in this Settlement Agreement dosing intervals, amounts, or regimens that were not approved by the FDA shall be referred to as "Off Label Regimens") and (b) not reasonable and necessary for the treatment of chemotherapy-induced anemia and anemia associated with chronic renal failure, also known as chronic kidney disease, including through the use of journal articles that were insufficient to support the safety and efficacy of the Off Label Regimens, and by improperly obtaining compendia listings to try to establish the Off Label Regimens as reasonable and necessary and thereby to seek coverage by the State Medicaid Program for the Off Label Regimens.

(b) **Enbrel:** During the period from January 1, 2003 to September 30, 2011, Amgen knowingly promoted the sale and use of Enbrel for patients with mild psoriasis, (a) an Off Label Use, and (b) not a medically accepted indication, for the purpose of coverage by the State Medicaid Program.

(c) **Neulasta:** (1) During the period from January 31, 2002 to September 16, 2005, Amgen knowingly promoted the sale and use of Neulasta for patients with an incidence of febrile neutropenia of less than 38%, (a) an Off Label Use and (b) not a medically accepted indication, for the purpose of coverage by the State Medicaid Program; and further, (2) during the period from January 31, 2002 to September 30, 2011, Amgen knowingly promoted the sale and use of Neulasta for an Off Label Regimen which was

not covered by the State Medicaid Program, including through the use of journal articles that were insufficient to support the safety and efficacy of the Off Label Regimen.

(7) During the period from January 1, 2001 to September 30, 2011, in violation of the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b and/or other similar state and federal statutes, including any state false claims acts, Amgen offered or paid, or caused to be paid directly and indirectly through Amerisource Bergen Specialty Group, Amerisource Bergen Corp., Cardinal Health Specialty Pharmaceutical Distribution, International Nephrology Network, International Oncology Network, International Physicians Network, International Rheumatology Network, Onmark, National Oncology Alliance, Oncology Supply, Inc., Oncology Therapeutics, Inc., U.S. Oncology and Health Dimensions, Inc., to Medicaid providers, including, Medicaid physicians, pharmacists, physician organizations, hospitals, managed care organizations, and group purchasing organizations and physician practice management organizations, remuneration, specifically in the form of cash, free product, free samples, product overfill, free equipment, free software, dinners, travel, hotels, consulting fees, education and research grants, free billing instruction and education services from a drug development services company, free practice management consulting services, free reimbursement support services to assist physicians to secure coverage for Amgen products, improper remuneration disguised as proper discounts and rebates, improperly bundled products, payments for phony data collection studies and information collection programs, honoraria and speaker fees, for the purpose of influencing health care providers' selection and utilization of Aranesp, Enbrel, Epogen, Neulasta, Neupogen, and Sensipar, for Medicaid recipients, regardless whether the product was administered to Medicaid

recipients, reimbursable by the Medicaid Program, or medically necessary for Medicaid recipients.(hereinafter, the “Paragraph G. (7) Conduct”).

(8) During the period from April 30, 2004 to January 1, 2008, Amgen knowingly reported inaccurate Average Sales Prices (“ASP”) for Aranesp, Epogen, Neulasta, and Neupogen by failing to account properly for price concessions, including group purchasing organization volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, rebates, and price concessions disguised as bona fide service fees, in the calculation of ASP. Amgen employees and agents were directed to explain the profitability of the inaccurate ASP;

(9) During the period from April 30, 2004 to September 30, 2011, Amgen knowingly reported inaccurate Average Sales Prices (“ASP”) for Aranesp, Epogen, Neulasta, and Neupogen by failing to account properly for price concessions including rebates, volume discounts and free goods that were contingent on any purchase requirement, referred to in the Civil Actions as “bundled pricing” and “overfill.” Amgen employees and agents were directed to explain the profitability of the inaccurate ASP.

(10) During the period from January 1, 2001 to September 30, 2011, Amgen knowingly reported inaccurate Best Prices and Average Manufacturer Prices for Aranesp, Enbrel, Epogen, Neulasta, Neupogen and Sensipar by failing to include remuneration, specifically in the forms outlined in the “Paragraph G. (7) Conduct”, that was paid to health care providers and that was conditioned on purchase of Amgen products in violation of the Medicaid Rebate Statute, 42 U.S.C. § 1396r-8.

**(11) Notwithstanding the foregoing, the “Covered Conduct,” shall not include:**

(a) Allegations pertaining to Amgen alleged in the Fourth Amended Complaint (Dkt. No. 76) filed in *United States et al. ex rel. Streck v. Allergan, Inc., et al.*, CA No. 08-5135 (E.D. Pa.); and

(b) Claims that Amgen unlawfully marketed the spread for its products; that is, that Amgen promoted the profit margins between the prices at which its products were sold to Amgen's customers and the higher Medicare and/or Medicaid reimbursement prices for those products, knowing that the prices it reported to drug pricing compendia (such as First Data Bank) – specifically, AWP and WAC – were higher than they should have been, that those reported higher prices would be used and/or relied upon by state Medicaid programs to set reimbursement rates, and that the difference between Amgen's reported prices and the actual sales prices to its customers created substantial profit margins for pharmacists and medical providers as a result of State Medicaid Programs' reimbursement methodologies; and

H. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of facts or liability by Amgen nor a concession by the State that its allegations are not well founded. Amgen expressly denies the allegations of the State as set forth herein and in the Civil Actions, and denies that it engaged in any wrongful conduct in connection with the Covered Conduct, except as to such admissions Amgen is required to make under the terms of the Plea Agreement into which Amgen is entering simultaneously with the execution of the Federal Settlement Agreement. Neither this Agreement, its execution, nor the performance of any obligation under it, including any payment, nor the fact of settlement, is intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression reflecting upon the merits of the

dispute by Amgen. The allegations that are described herein are not intended to constitute evidence admissible in a court of law.

I. To avoid the delay, expense, inconvenience, and uncertainty of protracted litigation of these causes of action, the Parties mutually desire to reach a full and final settlement as set forth below.

### **III. TERMS AND CONDITIONS**

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. Amgen agrees to pay to the United States and the Medicaid Participating States (as defined hereinafter), collectively, the sum of Six Hundred and Fourteen Million Dollars (\$614,000,000). In addition to this amount, Amgen shall pay to the United States and the Medicaid Participating States an amount of interest that has accrued on Six Hundred Million (\$600,000,000) at a rate of 1.625% per annum commencing on October 12, 2011 and continuing and including the day before payment is made under this Agreement and an amount of interest that has accrued on Fourteen Million (\$14,000,000) at a rate of 1.25% per annum commencing on September 21, 2012 and continuing and including the day before payment is made under this Agreement. Collectively, the Six Hundred and Fourteen Million and the aforementioned interest constitute the "Settlement Amount." The Settlement Amount shall constitute a debt immediately due and owing to the United States and the Medicaid Participating States on the Effective Date of the

Federal Agreement and subject to the terms of this Agreement. The debt shall forever be discharged by payments to the United States and the Medicaid Participating States, under the following terms and conditions:

(a) Amgen shall pay to the United States the sum of \$589,079,325.68. In addition to this amount, Amgen shall pay to the United States an amount of interest that has accrued on \$576,622,052.88 at a rate of 1.625% per annum commencing on October 12, 2011 and continuing and including the day before payment is made under this Agreement and an amount of interest that has accrued on \$12,457,272.80 at a rate of 1.25% per annum commencing on September 21, 2012 and continuing and including the day before payment is made under this Agreement. Collectively, \$589,079,325.68 and the interest amounts constitute the "Federal Settlement Amount." Amgen shall pay the Federal Settlement Amount by electronic funds transfer pursuant to written instructions from the United States Attorney's Office for the Eastern District of New York no later than the later of (i) seven (7) business days after the Federal Settlement Agreement is fully executed by the parties to that Agreement and delivered to counsel for Amgen or (ii) the Court accepts a Fed. R. Crim. P. 11(c)(1)(C) guilty plea in connection with the Criminal Action and imposes the agreed upon sentence, whichever occurs later.

(b) Amgen shall pay to the Medicaid Participating States the sum of \$24,920,674.32. In addition to this amount, Amgen shall pay to the Medicaid Participating States an amount of interest that has accrued on \$23,377,947.12 at a rate of 1.625% per annum commencing on October 12, 2011 and continuing and including the day before payment is made under this Agreement and an amount of interest that has accrued on \$1,542,727.20 at a rate of 1.25% per annum commencing on September 21,

2012 and continuing and including the day before payment is made under this Agreement. Collectively, \$24,920,674.32 and the interest amounts constitute the "Medicaid State Settlement Amount." Amgen shall pay the Medicaid State Settlement Amount, subject to the non-participating state deduction provision of Sub-paragraph (d) below, no later than the later of (i) seven (7) business days after the expiration of the 60 day opt-in period for Medicaid Participating States described in Sub-paragraph (c) below or (ii) the Court accepts a Fed. R. Crim. P. 11(c)(1)(C) guilty plea in connection with the Criminal Action and imposes the agreed upon sentence, whichever occurs later. Amgen shall pay the Medicaid State Settlement Amount by electronic funds transfer to the New York State Attorney General's National Global Settlement Account ("NY State Account") pursuant to written instructions from the State Negotiating Team ("State Team"), which written instructions shall be delivered to counsel for Amgen.

(c) Amgen shall execute a State Settlement Agreement with any State that executes such an Agreement in the form to which Amgen and the State Team have agreed or in a form otherwise agreed to by Amgen and an individual State. The State shall constitute a Medicaid Participating State in this Settlement Agreement provided this Settlement Agreement is fully executed by the State and delivered to Amgen's attorneys within the period of 60 days immediately following receipt of this Settlement Agreement. If this condition is not satisfied within 60 days, Amgen's offer to resolve this matter with the individual State shall become null and void absent written agreement between counsel for Amgen and the State Team to extend the 60 day period.

(d) The total portion of the Settlement Amount paid by Amgen in settlement for the Covered Conduct for the State is \$12,541,138.01, consisting of a portion paid to

the State under this Agreement and another portion paid to the Federal Government as part of the Federal Settlement Agreement. The individual portion of the Medicaid State Settlement Amount allocated to the State under this Agreement is the sum of \$7,117,829.22, plus applicable interest (the "State Amount"). If the State does not execute this Agreement within the period of 60 days immediately following receipt of this Settlement Agreement, the State Amount plus interest accrued shall be deducted from the Medicaid State Settlement Amount and shall not be paid by Amgen absent written agreement between counsel for Amgen and the State Team to extend the time period for executing this Agreement.

2. The State agrees to dismiss with prejudice any supplemental state law claims asserted in the Civil Actions on its behalf or any other state law claims which the State has the authority to dismiss currently pending against the Amgen Released Entities in State or Federal Court for the Covered Conduct, as defined above in Paragraph G.

(b) 3. If Amgen's agreed upon guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) in the Criminal Action described in Preamble Paragraph D is not accepted by the Court or the Court does not impose the agreed upon sentence for whatever reason, this Agreement shall be null and void at the option of either the State or Amgen. If either the State or Amgen exercises this option, which option shall be exercised by notifying all Parties, through counsel, in writing within ten (10) business days of the Court's decision, the Parties will not object and this Agreement will be rescinded. If this Agreement is rescinded, Amgen will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims, actions or proceedings arising from the Covered Conduct that are

brought by the State within 90 calendar days of rescission, except to the extent such defenses were available on the day on which the Complaints in the Civil Actions, listed in Preamble Paragraph B, above, were filed.

4. Subject to the exceptions in Paragraph 5 below, and in consideration of the obligations of Amgen set forth in this Agreement, conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount, the State agrees to release Amgen, its predecessors and current and former parents, divisions, subsidiaries, successors, transferees, heirs, and assigns, and their current and former directors, officers, employees, corporate entities and agents individually and collectively (collectively, the “Amgen Released Entities”), from any civil or administrative monetary cause of action that the State, its officers, agents, and agencies have for any claims submitted or caused to be submitted to the State Medicaid Program as a result of the Covered Conduct.

5. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

(a) any criminal, civil, or administrative liability arising under state revenue codes;

(b) any criminal liability not specifically released by this Agreement;

(c) any civil or administrative liability that any person or entity, including any Released Entities, has or may have to the State or to individual consumers or state program payors under any statute, regulation or rule not covered by the release in Paragraph 4 above, including but not limited to, any and all of the following claims: (i) State or federal antitrust violations; (ii) Claims involving unfair and/or deceptive acts and practices and/or violations of consumer protection laws;

- (d) any liability to the State for any conduct other than the Covered Conduct;
- (e) any liability which may be asserted on behalf of any other payors or insurers, including those that are paid by the State's Medicaid program on a capitated basis;
- (f) any liability based upon obligations created by this Agreement;
- (g) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the State's Medicaid program, except for mandatory exclusion based on the Covered Conduct;
- (h) any express or implied warranty claims or other liability for defective or deficient products and services provided by Amgen;
- (i) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or
- (j) any liability based on a failure to deliver items or services due.

6. This Agreement is expressly conditioned upon resolution of the Federal Criminal Action. In consideration of the acceptance of Amgen's plea of guilty in the Federal Criminal Action, the Attorney General and the State's Medicaid Fraud Control Unit ("MFCU") agrees that it shall not further criminally investigate, prosecute, or refer for prosecution or criminal investigation to any agency, Amgen, its present and former parents, divisions, and subsidiaries and their predecessors, successors and assigns, for the Covered Conduct.

7. In consideration of the obligations of Amgen set forth in this Agreement, and the Corporate Integrity Agreement ("CIA") that Amgen has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the

State of its share of the State Medicaid Settlement Amount, except as reserved in Paragraph 5 above the State agrees to release and refrain from instituting, recommending, directing, or maintaining any administrative action seeking exclusion from the State's Medicaid program against the Amgen Released Entities for the Covered Conduct or for the conviction in the Federal Criminal Action. Nothing in this Agreement precludes the State from taking action against Amgen in the event that Amgen is excluded by the federal government, or for conduct and practices other than the Covered Conduct or the conviction in the Federal Criminal Action.

8. Amgen waives and shall not assert any defenses it may have to criminal prosecution or administrative action for the Covered Conduct, which defenses may be based in whole or in part on a contention, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution or the Excessive Fines Clause of the Eighth Amendment to the Constitution, that this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. In consideration of the obligations of the State set forth in this Agreement, Amgen waives and discharges the State, its agencies, political subdivisions, employees, servants, and agents from any causes of actions (including attorneys' fees, costs, and expenses of every kind and however denominated) which Amgen has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants, and agents, arising from the State's investigation and prosecution of the Covered Conduct.

10. The amount that Amgen must pay to the State pursuant to Paragraph III (1) above will not be decreased as a result of the denial of claims for payment now being

withheld from payment by the State's Medicaid Program, or any other state payor, for the Covered Conduct; and, if applicable, Amgen agrees not to resubmit to the State's Medicaid Program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

11. Amgen shall not seek payment for any of the claims for reimbursement to Medicaid covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

12. Amgen expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Federal Settlement Amount and compliance with Paragraph 1 of the Federal Settlement Agreement. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Amgen within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

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

14. Amgen agrees to cooperate fully and truthfully with any State investigation of individuals or entities not released in this Agreement, stemming from the Covered Conduct. Upon reasonable notice, Amgen shall facilitate, and agrees not to impair, the cooperation of its directors, officers, employees or agents, for interviews and

testimony, consistent with the rights and privileges of such individuals and of Amgen. Upon request, Amgen agrees to furnish to the State complete and unredacted copies of all non-privileged documents including, but not limited to, reports, memoranda of interviews, and records in their possession, custody or control, concerning the Covered Conduct. Amgen shall be responsible for all costs it may incur in complying with this Paragraph.

15. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any liability against any person or entity, other than those released by Paragraph III(3) above.

17. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code.

18. In addition to all other payments and responsibilities under this Agreement, Amgen agrees to pay all reasonable expenses and travel costs of the State Team, including reasonable consultant fees. Amgen will pay this amount by separate check made payable to the National Association of Medicaid Fraud Control Units, after the Medicaid Participating States execute their respective Agreements, or as otherwise agreed by the Parties.

19. This Agreement is governed by the laws of the State, and venue for addressing and resolving any and all disputes relating to this Agreement shall be the state courts of appropriate jurisdiction of the State.

20. The undersigned Amgen signatories represent and warrant that they are authorized as a result of appropriate corporate action 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 on behalf of the State through their respective agencies and departments.

21. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

22. This Agreement shall be binding on all successors, transferees, heirs, and assigns of the Parties.

23. This Settlement Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.

24. 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.

**State of NEW YORK**

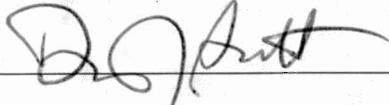
By:



Dated: September 28, 2012

Name: Monica J. Hickey-Martin  
Title: Special Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL

FOR AMGEN INC.

By:  Dated: 12/17/12

DAVID J. SCOTT  
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By:  Dated: 12/17/12

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*(May need multiple blocks)*