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## SETTLEMENT AGREEMENT AND RELEASE

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This Settlement Agreement and Release (the “Agreement”) is entered into this 6th day of April, 2023, by and between the State of Indiana (the “State”) and GlaxoSmithKline LLC, (“GSK”), acting through their authorized signatories below (all signatories to this Agreement are hereinafter referred to collectively as the “Parties”). The Parties STIPULATE, COVENANT, and AGREE as follows:

### Section I: Preamble

A. The State of Indiana, along with its agencies, divisions and instrumentalities, and the duly qualified Attorney General for the State, Todd Rokita, responsible for the enforcement and administration of Indiana law, shall be collectively referred to as the “State.”

B. At all relevant times, GSK manufactured and marketed Flonase® in the United States, including Indiana.

C. The State of Indiana has raised antitrust claims, unfair competition claims, or consumer protection claims against GSK related to delaying the entry of generic versions of Flonase®.

D. GSK expressly denies any wrongdoing and denies that any conduct challenged by the State caused any damage, and the State acknowledges that GSK has made these denials. This Agreement does not constitute an admission of fault or liability by GSK, nor does it constitute evidence of any liability or unlawful conduct on the part of GSK. Notwithstanding any other provision in this Agreement, this Agreement and the releases contained herein 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 released claims and may be filed, offered, and received into evidence and otherwise used for such defense.

E. Except as otherwise provided in this Agreement, the Parties acknowledge that this Agreement is intended to resolve all Released Claims, as defined in Section II, Paragraph 6, below.

F. The Agreement and the amount of the settlement cannot be cited by any party or non-party to the Agreement as evidence supporting any position.

G. As a result of a mutual desire to settle their disputes, the Parties have reached a full and final settlement as set forth in this Agreement.

H. The State represents that no interest in its Released Claims against GSK has been assigned by the State to any third party.

I. The Parties have had the opportunity to consult with legal counsel regarding this Agreement and agree to be bound by all provisions contained herein, waiving their rights to trial or appeal. The Signatory Attorney General has reviewed the terms of the Agreement and finds that such terms serve the public interest.

## **Section II: Terms and Conditions**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration, intending to be legally bound, the State and GSK agree to the following:

1. The foregoing Preamble is incorporated herein.
2. The "Covered Conduct" that is addressed by this Agreement refers to any conduct by GSK allegedly delaying the entry of generic versions of Flonase® that could fairly be characterized as a civil antitrust claim, unfair competition claim, or consumer protection claim that could have been alleged by the State (including but not limited to impacts on competition in the sale, distribution, marketing or advertising of Flonase or its generic equivalent), except any conduct that

is expressly excluded in this Agreement.

3. The Covered Conduct is expressly limited to conduct that occurred prior to the Effective Date of this Agreement.

### **The Settlement Payment**

4. GSK agrees to pay the State the total sum of One Million Two Hundred Seventy Thousand Nine Hundred Eighty-Six Dollars and Twenty-Four Cents (\$1,270,986.24) (the "Settlement Amount"), in full and final payment of all the Released Claims and any civil or administrative claim, action, suit, or proceeding the State asserted, could assert, or may assert in the future described in Section II, Paragraph 6, below. Within thirty (30) days from the Effective Date (as defined herein) and the completion by the State of GSK's wire transfer instructions, GSK shall pay the Settlement Amount and cause the payment to be transferred to the State pursuant to instructions provided in writing separately from this Agreement. GSK's payment shall not be considered untimely so long as paid by the date in the prior sentence, or within thirty (30) days of receiving written notice providing payment instructions from the State, whichever is later.

5. The Parties acknowledge that the United States may be entitled to a portion of the Settlement Amount (the "federal share"). It is understood and agreed that GSK shall have no obligation to make any payment to the United States as a result of this Agreement. Any allocation of the federal share shall be handled separately by and between the State and the United States. It is expressly understood and agreed that the State shall be solely responsible for allocating the Settlement Amount, including proper determination of the federal share, and that the federal share shall be paid from the Settlement Amount. The State agrees to hold GSK harmless for any assertion of any claim against GSK which may be asserted by the United States related to this Settlement.

6. To the extent any other third party, *qui tam* relator, private citizen, or private insurer,

claims entitlement to any portion of the Settlement Amount or to any other compensation based on the State's Flonase® antitrust claims, the State shall be solely responsible for the proper allocation of those funds from the Settlement Amount and shall hold GSK harmless against all claims related to any such entitlement.

7. GSK shall have no responsibility for, no rights in, and no authority over the allocation of the Settlement Amount.

### **The State's Release of GSK**

8. The State, as well as all past, present, and successor officers, attorneys, agents, agencies, departments, entities, divisions, instrumentalities, agencies, commissions, departments, administrators, employees, servants, any other state entity on whose behalf the Indiana Attorney General could legally assert a cause of action, and any other entity of the State with responsibility or authority for paying or arranging for payment of Flonase or its generic equivalent (collectively, the "Releasing Parties"), do hereby fully and finally release GSK, each of its present and former parent corporation(s), and their associated companies, which means any corporation, partnership, limited liability company or other entity or combination thereof that directly or indirectly owns or controls GSK, are owned or controlled by GSK or are under common ownership or control with GSK; as well as any present and former subsidiaries, divisions, partners, directors, officers, employees, sales representatives, attorneys, insurers, agents, shareholders, predecessors, successors, heirs, trustees, executors, assigns, transferees, or legal representatives of each of the foregoing (collectively, the "Released Parties") from any and all manner of claims, counterclaims, set-offs, demands, actions, rights, liabilities, costs, debts, expenses, attorneys' fees, and causes of action of any type, whether or not accrued in whole or in part, that were asserted or that could have been asserted, known or unknown, against the Released Parties, arising from any of the facts,

matters, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act based on the Covered Conduct, including, without limitation, past, present, and future competition claims arising under federal or state antitrust law, unfair competition or consumer protections laws, or state common or equitable law that seeks damages, unjust enrichment, restitution, penalties, or other monetary, declaratory, or injunctive relief, whether brought as direct claims, representative claims, or *parens patriae* claims on behalf of the State based on the Covered Conduct (the “Released Claims”).

9. The Indiana Attorney General has the authority to release claims held in Indiana’s sovereign capacity as chief law enforcement officer of the State; for claims based on purchases made by the State; and for claims it may have in a representative capacity, including any *parens patriae*, or other representative claims.

10. The payment of all amounts required by Paragraph 3 of this Agreement fully discharges the Released Parties from any obligation to pay additional monies to or for the benefit of the Releasing Parties, including the State, for the Covered Conduct, including for restitution, compensatory damages, interest, penalties, punitive damages, fines, disgorgement, costs, litigation expenses, or attorneys’ fees.

11. Notwithstanding any term in this Agreement, Released Claims specifically do not include the following claims:

- a. any civil or administrative liability under state revenue codes;
- b. any civil or administrative liability related to the State’s Medicaid program under any statute, regulation, or rule for any conduct other than the Covered Conduct, including, but not limited to, state or federal false claims act, anti-kickback, or off-label marketing violations associated with Flonase® or its generic equivalent; and

- c. any claim against any generic drug company concerning or relating to the price of any generic equivalent of Flonase®;
- d. any criminal liability;
- e. any liability based upon obligations created by this Agreement.

**GSK's Release of the State**

12. GSK fully and finally release the State, its agencies, employees, servants, attorneys and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that GSK has asserted or could have asserted against the State, its agencies, employees, servants, attorneys and agents, related to the State's Released Claims.

**Notice to Parties**

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

- a. For the State for all purposes:

Scott L. Barnhart  
Chief Counsel and Director  
Consumer Protection Division  
Indiana Attorney General's Office  
302 West Washington Street  
IGCS 5<sup>th</sup> Floor  
Indianapolis, IN 46204  
T: 317-232-6309  
E: scott.barnhart@atg.in.gov

- b. For GSK for all purposes:

GlaxoSmithKline LLC  
c/o Matthew Nickel  
DLA Piper (US) LLP  
1900 North Pearl St., Suite 2200  
Dallas, Texas 75201

T: 214-743-4553  
E: matt.nickel@dlapiper.com

### **Miscellaneous Provisions**

14. This Agreement is intended to be solely for the benefit of the Parties and persons and entities released, and, except as stated herein, the Parties do not by this Agreement release any claim against any other person or entity that purchases drugs or pharmaceutical products from GSK. Except as stated herein, no word, term, phrase or definition in this Agreement (including, without limitation, the Agreement itself or the Settlement Amount) is or may be used for the benefit of any person, private or governmental entity, or litigant who is not a signatory to, or released by, this Agreement.

15. This Agreement constitutes the entire, complete, and integrated statement of each and every term and provision of the agreement between the State and GSK and may not be amended except by a writing signed by the State and GSK. It is expressly agreed, intended, and understood by the Parties that this Agreement is a complete accord and satisfaction of any and all claims the State has or may have had against the GSK with respect to the Covered Conduct.

16. This Agreement shall be equally binding on the successors, transferees and assigns of GSK and the State.

17. The Parties agree that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever. Nothing in this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any person or entity of any liability or wrongdoing of any Party. No Party will urge or seek to admit this Agreement as evidence of any fault or liability of the GSK in any investigation, action, suit, or proceeding. Payments hereunder shall not be construed as punitive in purpose or effect.

18. Nothing in this Agreement shall relieve GSK or the State of other obligations under

applicable federal, state, and local law.

19. This Agreement has resulted from negotiation by the Parties' attorneys, and in the event of ambiguity or otherwise, it shall not be construed against or in favor of any Party on the grounds that its attorneys drafted the Agreement or any particular part of it.

20. Nothing in this Agreement shall be construed to create a waiver of the State of Indiana's sovereign immunity or any application of the 11<sup>th</sup> Amendment to the Constitution of the United States, except that the State hereby agrees that it shall not raise sovereign immunity as a defense to the enforcement of this Agreement.

21. Except as expressly stated herein, this Agreement shall neither create nor affect any rights of persons, or private or governmental entities or litigants, who are not Parties to, or released by, this Agreement.

22. Except as otherwise provided herein, each Party to this Agreement shall bear its own legal and other costs incurred in connection with the Covered Conduct, including the preparation and performance of this Agreement.

23. This Agreement shall be governed by the laws of the State of Indiana, except as to any law that may restrict enforcement of this Agreement.

24. The bold-faced paragraph captions, if any, in this Agreement are for convenience only and do not add to, detract from, or change the substantive language or terms of this Agreement.

25. The undersigned individual(s) signing this Agreement on behalf of GSK represent and warrant that they are duly authorized to execute this Agreement, and that no further authority or execution by any other person or entity is necessary to fully effectuate this Agreement.

26. The undersigned individual(s) signing this Agreement on behalf of the State represents that they are signing this Agreement in an official capacity and that they are duly authorized to



execute this Agreement, including on behalf of all Releasing Parties, and that no further authority or execution by any other person or entity is necessary to fully effectuate this Agreement.

27. The State and GSK agree that should any non-material portion or portions of this Agreement be found to be void, unenforceable, or otherwise invalid by any court of competent jurisdiction after the exhaustion of all rights to appeal, the entire Agreement shall not be nullified, such invalid portion or portions shall be severed from the remainder of the Agreement as if they had never been entered into, and the remainder of the Agreement shall be enforced. The Parties agree that the material portions of this Agreement include, but may not be limited to, portions concerning the release of claims and the payment of the Settlement Amount.

28. Waiver by either Party of any breach of any provision of this Agreement shall not constitute a waiver of any other breach of that or any other provision of this Agreement.

29. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall be deemed to constitute one and the same Agreement. Facsimile or PDF signatures shall constitute acceptable binding signatures for purposes of this Agreement.

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

IN WITNESS WHEREOF, the State and GSK set their signatures on the dates set forth

below:

STATE: The State of Indiana

By:

  
\_\_\_\_\_  
Scott Barnhart  
Chief Counsel and Director Consumer Protection

4-6-2023  
\_\_\_\_\_  
Date:

GlaxoSmithKline LLC.

By:

  
\_\_\_\_\_  
GlaxoSmithKline LLC

May 12, 2023  
\_\_\_\_\_  
Date: