

**Settlement Document**  
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**State of Georgia and Local Governments: Memorandum of Understanding  
Concerning National Settlement with The Kroger Co.**

**Foreword**

This Memorandum of Understanding between the State of Georgia *ex rel.* Chris Carr, Attorney General (the “State”), and certain Georgia Local Government entities (“LGs”) concerns the harms visited upon Georgia’s citizens and the State itself by certain manufacturers, distributors, and pharmacies (“Opioid Defendants”) of prescription opioids.

To address these harms, the State and certain LGs separately initiated litigation meant to hold Opioid Defendants accountable.

On December 31, 2021, the State entered into settlements with Opioid Defendants McKesson Corporation, AmerisourceBergen Corporation, Cardinal Health, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (together, the “National Distributor and J&J Settlements”).

Thereafter, the State and participating LGs entered into a Memorandum of Understanding to memorialize an agreement that would enable them to maximize the monetary help received from the National Distributor and J&J Settlements to address harms visited upon Georgia’s citizens and the State itself in the opioid crisis (the “2022 MOU”).

On March 22, 2024, The Kroger Co. (“Kroger”) agreed to a national settlement framework (the “Opioid Settlement”) that the State of Georgia and LGs are eligible to join.

During April 2024, the State entered into the Opioid Settlement. The LGs have until August 12, 2024 to opt in to the Opioid Settlement.

This Memorandum of Understanding (“Memorandum” or “2024 MOU”) aims to memorialize an agreement between the State and certain LGs that will enable them to maximize the monetary funds received from the Opioid Settlement to remediate the harms caused by the opioid crisis. The processes outlined in this Memorandum in large part replicate processes required under the 2022 MOU. Except where the terms are different, the processes used in administration of the 2022 MOU shall be utilized for administration as required under this Memorandum.

**Settlement Document**  
**Binding on State of Georgia When Executed by Georgia AG / Governor**

I. Definitions

Capitalized terms shall have the same definitions as in the 2022 MOU with the exception of:

- a. “Legislative Bar” means O.C.G.A. § 10-13B-1 *et seq.*
- b. “Local Government Opioid Funds” means the funds allocated to local governments pursuant to Section II of this Memorandum.
- c. “Opioid Funds” means the total monetary amounts obtained through the Opioid Settlement as defined in this 2024 MOU which are allocated to Georgia and its Participating Local Governments under the Opioid Settlement.
- d. “Opioid Settlement” means the Kroger Opioid Settlement dated March 22, 2024.
- e. “Parties” shall mean the State and the Participating Local Governments.
- f. “Participating Local Governments” shall mean:
  - (i.) all litigating subdivisions listed on Exhibit “C” of the Opioid Settlement, and
  - (ii.) nonlitigating subdivisions listed on Exhibit “G” of the Opioid Settlementthat choose to sign on to the Opioid Settlement and this Memorandum.
- g. “Released Entities” means the entities defined as such in the Opioid Settlement.
- h. “State Opioid Funds” means the funds allocated to the State pursuant to Section II of this Memorandum.
- i. “Trust” means the Georgia Opioid Crisis Abatement Trust, approved by the Gwinnett County Superior Court on February 16, 2023.

## **Settlement Document**

### **Binding on State of Georgia When Executed by Georgia AG / Governor**

- j. “Trustee” means the Trustee of the Georgia Opioid Crisis Abatement Trust.

#### **II. Allocation between State and Local Governments**

- a. The Participating Local Governments shall collectively receive 25% of the Opioid Funds as their full allocation of Local Government Opioid Funds for all claims past and future of the Participating Local Governments. Local Government Opioid Funds shall be paid to a Settlement Fund Administrator as defined in the Opioid Settlement and distributed pursuant to the Opioid Settlement, with the following additional conditions:
  - (i) If a county which is a Participating Local Government under this Memorandum has a sheriff who is a Litigating Subdivision listed in the Opioid Settlement, at least 9.45% of the Opioid Funds paid to that county under the terms of the Opioid Settlement in which the sheriff agreed to participate shall be allocated to that county’s sheriff to be used for Approved Purposes;
  - (ii) If a county which is a Participating Local Government under this Memorandum has a hospital which is a Litigating Subdivision listed in the Opioid Settlement, at least 2% of the Opioid Funds paid to that county under the terms of the Opioid Settlement in which the hospital agreed to participate shall be allocated to the hospital to be used for Approved Purposes; and
  - (iii.) If a county which is a Participating Local Government under this Memorandum has a school district which is a Litigating Subdivision listed in the Opioid Settlement, at least 1% of the Opioid Funds paid to that county under the terms of the Opioid Settlement in which the school district agreed to participate shall be allocated to the school district to be used for Approved Purposes.
- b. The State shall receive 75% of the Opioid Funds as its full allocation of State Opioid Funds.

## **Settlement Document**

### **Binding on State of Georgia When Executed by Georgia AG / Governor**

- c. Of the State's 75% share, after the payment of litigation fees and costs owed to the State's outside counsel pursuant to the agreement entered into on September 10, 2018 or as may be amended, 60% of the remaining funds shall be transferred by the receiving state agency through the Office of Planning and Budget to the State Treasury and spent at the direction of the State Legislature for Approved Purposes by appropriation and in compliance with the terms of the Opioid Settlement and this Memorandum. The remaining 40% after payment of fees and costs shall be transferred to the Trust by the receiving state agency and shall be expended by the Trustee on a regional basis ("Regional Distribution") as set forth in the Declaration of Trust, the 2022 MOU, and this 2024 MOU.
  - (i.) For purposes of the Regional Distribution under the Opioid Settlements, the Regions shall be the same as established pursuant to the 2022 MOU, including Qualifying Block Grantees.
  - (ii.) Each Qualifying Block Grantee shall receive its allocation of the Regional Distribution via a direct block grant so long as it certifies that it has sufficient infrastructure to provide opioid abatement services.
  - (iii.) The Trustee shall use the same allocation model as used under the 2022 MOU for the Regional Distribution.
  - (iv.) The Regional Advisory Councils established pursuant to the 2022 MOU shall have the same duties and responsibilities in connection with the funds allocated to the Trust pursuant to this 2024 MOU as under the 2022 MOU, including reporting requirements and making themselves available to consult with the Government Participation Mechanism and with Participating Local Governments to best determine how funds will be spent for opioid remediation within the established Regions. In every instance the Trustee shall retain final authority over Regional Distributions.

### **III. Funds to be used for Approved Purposes; Clawback and Recoupment**

## **Settlement Document**

### **Binding on State of Georgia When Executed by Georgia AG / Governor**

- a. With the exception of administrative expenses as allowed under the Opioid Settlement, funds set aside for attorneys' fees and costs for State of Georgia outside counsel, and funds set aside for attorneys' fees for Local Government outside counsel pursuant to Section VI of this Memorandum, State Opioid Funds and Local Government Opioid Funds shall be used for Approved Purposes.
- b. Funds are to primarily (no less than 70 percent) be used for future abatement purposes. Funds used to reimburse the Parties for past abatement expenses may not be used to reimburse past Medicaid expenses or any other expense that would be subject to a federal clawback, recoupment, or similar mechanism.
- c. The State and Participating Local Governments shall work cooperatively to ensure the funds are spent within the spirit of this Memorandum and the Opioid Settlement, and shall further work cooperatively to actively defend the funds from federal clawback and/or recoupment, including, but not limited to, actively participating in any administrative procedure or other case or process related to defense of the funds from federal clawback and/or recoupment. In the event the federal government initiates and successfully claws back any Opioid Funds related to the Settlement, such amounts shall first be deducted from the total disbursements to be made to both the State and Local Governments in the calendar year the clawback claim is successfully made and shall thereafter be deducted from the total disbursements to be made in any subsequent calendar year if necessary. After such deduction, the allocation between the State and Participating Local Governments described in Section II of this Memorandum shall be applied to the remaining funds for the current calendar year or any subsequent calendar year if applicable. Deduction of amounts from the total disbursements shall include reimbursement of any amounts paid by the State or withheld from amounts due to the State as the result of a clawback and/or recoupment.

#### **IV. Compliance and Reporting**

- a. The Trustee shall provide an up-to-date accounting of payments into or out of the Trust and/or its subaccounts upon written request of the State

## Settlement Document

### Binding on State of Georgia When Executed by Georgia AG / Governor

or a Participating Local Government. The State, together with the Trustee, shall provide an annual report detailing: (1) the amounts received by the State and deposited into the State Treasury and the amounts remitted to the Trust; (2) the allocation of any awards approved, listing the recipient, amount awarded, programs funded, and disbursement terms; and (3) the amounts actually disbursed. The State and Trustee shall also include an assessment of how well resources have been used by the State and the Participating Local Governments to abate opioid addiction, overdose deaths, and the other consequences of the opioid crisis. The State shall publish its annual report and all Regional Advisory Council annual reports on its website.

- b. Expenses of the Trustee shall be deducted first from interest earned on funds held by the Georgia Opioid Crisis Abatement Trust, and then, if necessary, may be deducted from the corpus of Trust funds. Administrative expenses of the State shall be paid from or reimbursed out of State Opioid Funds as allowed under the terms of the Opioid Settlement.
- c. The Trustee and the State shall endeavor to keep such expenses reasonable in order to maximize the funding available for opioid abatement.
- d. Each Regional Advisory Council shall provide a report annually to the Trustee and Government Participation Mechanism detailing: (1) the amount received by each local government within the Region; (2) the allocation of any awards approved, listing the recipient, amount awarded, programs funded, and disbursement terms; and (3) the amounts actually disbursed and approved allocations. Each Participating Local Government within each Region shall provide any information necessary to facilitate such reporting to a single regional delegate selected by the Region to provide its annual report.
- e. If the State believes that any Participating Local Government has used funds for a non-approved purpose, it may request in writing the documentation underlying such alleged improper use of funds. If any ten (10) Participating Local Governments believe the State has used

## **Settlement Document**

### **Binding on State of Georgia When Executed by Georgia AG / Governor**

funds for a non-approved purpose, they may request jointly in writing the documentation underlying such alleged improper use of funds.

- f. The State and Participating Local Governments may object in writing to the Trustee to an allocation or expenditure on the basis that the allocation or Trust expenditure is inconsistent with Section III of this Memorandum or violates Section IV.c of this Memorandum regarding reasonable expenses of the Trustee.
- g. Any party to this Memorandum who receives a written request sent pursuant to IV.f or IV.e shall have 21 days to respond to such request, which may be extended by mutual consent.
- h. A party who makes a written request pursuant to IV.f may file an action in the Superior Court of Gwinnett County within one year of its objection seeking a determination as to the validity of the objection.
- i. If, after a written objection made pursuant to IV.e, it appears to the State that a Participating Local Government has spent funds on non-approved purposes, the State may seek and obtain an injunction in the Superior Court of Gwinnett County prohibiting the Participating Local Government from spending further funds on non-approved purposes, and ordering the return of monies spent on non-approved purposes. So long as any such action is pending, distribution of any funds to the relevant Participating Local Government shall be suspended and held in trust by the Trustee or national Settlement Fund Administrator and shall only resume after the action is resolved. Once the action is resolved, suspended payments to the Participating Local Government shall resume, less any amounts ordered returned that have not yet been returned as of the date of the resumption of suspended payments.
- j. Attorney's fees and costs are not recoverable in actions brought under this Section.

#### **V. Litigation Bar**

- a. All Parties expressly acknowledge that this 2024 MOU qualifies under O.C.G.A. § 10-13B-2(a)(4)(E) and that the Opioid Settlement is a state-

**Settlement Document**  
**Binding on State of Georgia When Executed by Georgia AG / Governor**

wide opioid settlement as that term is defined in O.C.G.A. § 10-13B-2(4).

VI. Attorney's Fees; Costs and Expenses

- a. Section VII of the 2022 MOU is incorporated by reference as though fully set forth herein.

VII. Future Agreements and Negotiations

- a. Nothing in this Memorandum shall bind the Parties concerning any future opioid settlements other than the ones expressly contemplated in (1) this Memorandum or (2) any amendments to this Memorandum made pursuant to Section VIII.b. Other than those Released Entities who are parties to the Opioid Settlement, the Parties are free to engage in settlement negotiations with any Opioid Defendants without prior consent or participation of any other party to this Memorandum.
- b. The Parties shall endeavor, insofar as is reasonably practicable, to keep each other apprised of future negotiations concerning future opioid settlements. Nothing in this provision shall require the parties to violate any duty, obligation, or promise of confidentiality, non-disclosure agreement, common interest agreement, court order concerning non-disclosure, or similar non-disclosure obligation concerning negotiations regarding future opioid settlements. For the avoidance of doubt, LGs shall not be required to disclose, among other things, any information relating to negotiations between groups of local governments and Opioid Defendants, and the State shall not be required to disclose, among other things, any information relating to negotiations between states or groups of states and Opioid Defendants.

VIII. Miscellaneous

- a. This Memorandum shall be governed by Georgia law.
- b. The Parties may make amendments to this Memorandum as necessary. Amendments shall be in writing and shall require the consent of all Parties to this Memorandum. Proposed amendments shall be circulated to all Parties through designated contacts provided in their

**Settlement Document**

**Binding on State of Georgia When Executed by Georgia AG / Governor**

Acknowledgement, after which Parties shall have 30 days to agree or object to the proposed amendment. Parties who do not respond shall be deemed to have consented to the amendment for purposes of this Section VIII.b.

- c. Jurisdiction and venue regarding any disputes between or among the Parties concerning this Memorandum or the interpretation thereof shall lie in the Superior Court of Gwinnett County, Georgia.
- d. This Memorandum terminates automatically with respect to the Opioid Settlement in the event the Opioid Settlement is terminated by the parties to it.
- e. By entering into this Memorandum, a local government agrees to participate in the Opioid Settlement.
- f. If less than 65% of the litigating LGs participate in the Opioid Settlement, this Memorandum is voidable by the State.

\* \* \* \* \*

**Settlement Document**  
**Binding on State of Georgia When Executed by Georgia AG / Governor**

ATTACHED EXHIBITS:

EXHIBIT 1: ACKNOWLEDGEMENT AND AGREEMENT TO BE  
BOUND TO MEMORANDUM OF UNDERSTANDING

**Settlement Document  
Binding on State of Georgia When Executed by Georgia AG / Governor**

**EXHIBIT 1  
ACKNOWLEDGEMENT AND AGREEMENT  
TO BE BOUND BY MEMORANDUM OF UNDERSTANDING**

WHEREFORE, the undersigned, as a duly-appointed representative of the below- referenced entity, acknowledges the following:

- [SUBDIVISION NAME] has received the **State of Georgia and Local Governments: Memorandum of Understanding Concerning National Settlement with The Kroger Co.**
- The undersigned is a duly-appointed representative of [SUBDIVISION NAME], and has the authority to execute this document and bind [SUBDIVISION NAME] to the Memorandum.
- [SUBDIVISION NAME] is either represented by legal counsel, or has the ability to obtain advice from legal counsel, concerning the contents and implication of the Memorandum.
- The undersigned, on behalf [SUBDIVISION NAME], understands and acknowledges the terms of the Memorandum, and [SUBDIVISION NAME] agrees to be bound by its terms.
- No party is under duress or undue influence.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Entity: \_\_\_\_\_

**Designated Contact for Purposes of Section VIII.b:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_