

# Settlement Document

## State of Georgia and Local Governments: Memorandum of Understanding Concerning National Distributor and Johnson & Johnson Opioid Settlements

### Foreword

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

To address these harms, the State and certain of its local government entities separately initiated litigation meant to hold the Opioid Defendants accountable.

Some Distributor Opioid Defendants, namely McKesson Corporation, AmerisourceBergen Corporation, and Cardinal Health, Inc. (each a “Settling Distributor”) and Janssen (“J&J”)<sup>1</sup> have separately reached settlement frameworks (referenced as “National Distributor Settlement” and “J&J Settlement”) with certain states and local government entities that the State of Georgia and LGs have the option to join.

This Memorandum aims to memorialize an agreement between the State and certain LGs that would enable the State and certain LGs to join the National Distributor and J&J Settlements and maximize the monetary help that the State and its LGs receive.

#### I. Definitions

- a. “Approved Purposes” shall mean those uses identified in the List of Opioid Remediation Uses, attached as Exhibit E to the National Distributor Settlement, and those uses identified as “Approved Opioid Abatement Uses” in Schedules A and B to Exhibit G to the Notice of Filing of Eighth Plan Supplement Pursuant to the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors, In re: Purdue Pharma L.P., et al., Case No. 19-23649-RDD, Dkt. 3121 (Bankr. S.D. N.Y. July 8, 2021).
- b. “Government Participation Mechanism” means the mechanism formed to make recommendations regarding the allocation of State Opioid

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<sup>1</sup> “Janssen” means Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceuticals, Inc.

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Funds consistent with the Findings of Facts, Conclusions of Law, and Order Confirming the Twelfth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and Its Affiliated Debtors, In re: Purdue Pharma L.P. et al., Case No. 19-23649-RDD (Bankr. S.D. N.Y. Sept. 17, 2021), ECF No. 3787.. “Local Government Opioid Funds” means the funds allocated to local governments pursuant to Section III of this Memorandum.

- c. “Local Government Opioid Funds” means the funds allocated to local governments pursuant to Section III of this Memorandum.
- d. “Opioid Funds” means monetary amounts obtained through an Opioid Settlement as defined in this Memorandum of Understanding.
- e. “Opioid Settlement” means the National Distributor Settlement and the J&J Settlement, both dated July 21, 2021.
- f. “Parties” shall mean the State and the Participating Local Governments.
- g. “Participating Local Governments” shall mean:
  - (i) all litigating subdivisions listed on Exhibit C to the National Distributor Settlement and/or Exhibit C to the J&J Settlement and in the signature block to this Memorandum prepared by the LGs and
  - (ii) nonlitigating subdivisions listed on Exhibit G to the National Distributor Settlement or Exhibit G to the J&J settlement

that choose to sign on to the National Distributor Settlement and J&J Settlement during the notice or sign-on period.

- h. “Region” – Region shall mean each of the Regions described Section III.a of this Memorandum.
- i. “Released Entities” means the entities defined in definition HHH of the National Distributor Settlement and definition 61 of the J&J Settlement
- j. “State Opioid Funds” means the funds allocated to the State pursuant to Section III of this Memorandum.

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- k. “Trustee” shall be the Commissioner of an agency of the Executive Branch of the State, or his or her designee or other designee of the Executive Branch of the State, to oversee the implementation of the settlement, make decisions regarding expenditures of State Opioid funds after consulting with the Government Participation Mechanism, ensure compliance with the reporting requirements set forth in Section V and in any Opioid Settlement, and who is responsible for the ministerial task of releasing Opioid Funds that are in trust as authorized herein and accounting for all payments into or out of the trust.

### II. Creation of a Qualified Settlement Trust for State Opioid Funds; Government Participation Mechanism.

- a. The Parties shall file a Petition in the Superior Court of Gwinnett County, Georgia, seeking to establish a Qualified Settlement Fund within the meaning of 26 C.F.R. § 1.468B-1, titled the “Georgia Opioid Crisis Abatement Trust”
  - i. The Georgia Opioid Crisis Abatement Trust shall receive (1) the State Opioid Funds set forth under this Memorandum of Understanding; (2) funds from public or private sources, including gifts, grants, donations, rebates, or other settlements received by the State and designated to the Trust; and (3) any interest earned by these amounts.
- b. The Commissioner of an agency of the Executive Branch of the State,<sup>2</sup> or his or her designee or other designee of the Executive Branch of the State, shall act as Trustee.
- c. The Parties shall work to establish a Government Participation Mechanism as described in the Notice of Filing of Eighth Plan Supplement Pursuant to the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors, In re: Purdue Pharma L.P., et al., Case No. 19-23649-RDD, Dkt. 3121 (Bankr. S.D. N.Y. July 8, 2021), Exhibit G at 11.

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<sup>2</sup> The agency or department shall be selected by the Governor, after consultation with the Attorney General.

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- d. The Trustee shall make disbursements of State Opioid Funds for (1) Approved Purposes, after consultation with the Government Participation Mechanism; (2) for administrative expenses as described in Section V of this Memorandum; and (3) for attorneys' fees and costs as identified in Section VII of this Memorandum. The Trustee shall retain final decision-making authority over expenditures of State Opioid Funds for Approved Purposes.
- e. Appointees to the Government Participation Mechanism shall have a background in opioid use disorder, addiction treatment or policy, public health policy, mental health treatment or policy, or opioid-related law enforcement. Members shall serve for three years and shall be paid the per diem of a Member of the General Assembly for their service. Any member who is appointed shall be subject to removal by the appointing authority. The Government Participation Mechanism shall have at least 1 member who is appointed by the Georgia Association of Community Service Boards. The Government Participation Mechanism shall meet at least quarterly and make recommendations, upon a majority vote, regarding allocation of State Opioid Funds. The Trustee shall retain final authority over allocation of State Opioid Funds.

### III. Allocation between State and Local Governments

- a. The Participating Local Governments shall collectively receive 25% of the National Distributor and J&J Settlements 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 the national Settlement Administrator(s) as that term is defined in the National Distributor and J&J Settlements and distributed pursuant to Section V.D.4.C of the National Distributor Settlement and Section VI of the J&J Settlement, with the following additional conditions:
  - i. If a county who is a Participating Local Government under this Memorandum has a sheriff who is a Litigating Subdivision listed in Exhibit C of the National Distributor Settlement, at least 9.45% of the Opioid Funds paid to that county shall be allocated to that county's sheriff to be used for Approved Purposes; and

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- ii. If a county who is a Participating Local Government under this Memorandum has a hospital which is a Litigating Subdivision listed in Exhibit C of the National Distributor Settlement, at least 2% of the Opioid Funds paid to that county shall be allocated to the hospital to be used for Approved Purposes.
  - iii. If a county who is a Participating Local Government under this Memorandum has a school district which is a Litigating Subdivision listed in Exhibit C of the National Distributor Settlement, at least 1% of the Opioid Funds paid to that county shall be allocated to the school district to be used for Approved Purposes.
- b. The State shall receive 75% of the National Distributor and J&J Settlements as its full allocation of State Opioid Funds.
- c. Of the State's 75% share, the State shall expend at least 40% of those funds on a regional basis ("Regional Distribution"). Expenditures related to (1) "Core Strategies" identified in Schedule A or (2) strategies identified in Schedule B, Subsection A of Exhibit E to the National Distributor Settlement are expressly recognized as a non-exhaustive list of expenditures that shall be considered as Regional Distributions.
  - i. The State of Georgia shall be divided into Regions to be determined by the State in consultation with LGs at a future date. Each county with a population of at least 400,000 persons ("Qualifying Block Grantee") shall be counted as a separate Region.
  - ii. Each Qualifying Block Grantee shall receive State Regional expenditures via a direct block grant so long as it certifies that it has sufficient infrastructure to provide Opioid Abatement services.
  - iii. Where a municipality located wholly within a Qualifying Block Grantee or wholly within abutting Qualifying Block Grantees would independently qualify as a block grant recipient (an "Independently Qualifying Municipality"), the Independently Qualifying Municipality will receive a Block Grant directly

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payable to the Independently Qualifying Municipality according to the percentages in the allocation model available at [www.opioidnegotiationclass.info](http://www.opioidnegotiationclass.info) implemented in In re: National Prescription Opiates Litigation, MDL No. 2804 (N.D. Ohio) (the “Negotiation Class Allocation Model”).

- iv. The State shall assign initial regional allocation percentages to the Regions based on the allocation model available at [www.opioidnegotiationclass.info](http://www.opioidnegotiationclass.info) implemented in In re: National Prescription Opiates Litigation, MDL No. 2804 (N.D. Ohio) (the “Negotiation Class Allocation Model”). Every three years, the Trustee shall recalculate the regional allocation percentages to the Regions based upon the following severity metrics: (1) the number of fatal opioid overdoses within the Region; (2) non-addiction treatment morphine milligram equivalents (MME) shipped into the Region; and (3) addiction treatment MME shipped into the Region.
- v. For each Region comprised of multiple Participating Local Governments, Participating Local Governments shall form a Regional Advisory Council of three to seven members, not all of whom may reside in the same County. The Advisory Council shall include at least 1 member of a county board of health from one of the Participating Local Governments in the Region, 1 member of the executive team of a Community Service Board located in the Region, and 1 sheriff (or representative designated by the sheriff) located in the Region.
- vi. The Regional Advisory Councils shall be 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 disbursement of the State Opioid Funds.

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

- a. With the exception of administrative expenses identified in Section V.b, funds set aside for attorneys’ fees and costs for State of Georgia outside counsel, and funds set aside for attorneys’ fees for Local

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Government outside counsel pursuant to Section VII 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 Local Governments shall work cooperatively to ensure the funds are spent within the spirit of this Agreement and the Settlements reached with the Distributors and J&J, 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 Settlements, 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 Local Governments described in Section IV 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.

### V. 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 or a Participating Local Government. The State, through the Trustee, shall provide an annual report detailing: (1) the amounts received by the Trust; (2) the allocation of any awards approved, listing the

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recipient, amount awarded, programs funded, and disbursement terms; and (3) the amounts actually disbursed. The Trustee shall also include an assessment of how well resources have been used by the State and the Local Governments and Regions 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 State Opioid Funds.
- c. The State shall endeavor to keep such Trustee 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 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 expenditure is inconsistent with Section IV of this Memorandum or violates Section V.c of this Memorandum regarding reasonable expenses of the Trustee.

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- g. Any party to this Memorandum who receives a written request sent pursuant to V.f or V.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 V.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 V.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 to return the 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 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.

### VI. Litigation Bar

- a. This Memorandum of Understanding is designed to maximize the funds that the State and LGs receive to address an extraordinary crisis. It is the expectation of the Parties that once this Memorandum is executed and the Opioid Settlements are finalized, the Parties will proceed to execute releases of existing claims against the Released Entities. In the event the State of Georgia and the Participating Local Governments proceed forward, execute said releases, and release the Released Parties from all future liability, their entitlement to funds under the terms of the Opioid Settlements could be significantly delayed or subject to suspension or offsets if a currently litigating or later-litigating local government maintains or assert claims against the Released Entities. This would be detrimental to the State of Georgia's and the LG's opioid

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abatement efforts, and delay or reduce the help provided to Georgia's citizens.

- b. Therefore, it is understood between the parties to this agreement that upon execution of the Settlements with the Released Entities, that legislative action will be necessary, as it constitutes the most efficient and effective means to ensure the maximum amount of funds are made available to abate the opioid epidemic in Georgia without unnecessary delay.
- c. The Parties shall, as soon as practicable, submit draft legislation to the General Assembly that shall impose a Litigation Bar. A Litigation Bar is a law that either (1) imposes a direct bar preventing Subdivisions from maintaining Released Claims against Released entities or (2) gives the State the exclusive authority to bring, maintain and resolve Released Claims (as defined in Section I.GGG of the Distributors Settlement Agreement or Section I.60 of the Janssen Settlement Agreement) against Released Entities (as that term is defined by Section I.HHH of the Distributors Settlement Agreement or Section I.61 of the Janssen Settlement Agreement) on behalf of any Subdivision and which has the effect of barring all Released Claims by such Subdivision. The Litigation Bar shall include a requirement that any Released Claims brought by such Subdivision are dismissed by the court in which the claims(s) was (were) brought. The term "Subdivision" shall be defined so as to meet the requirements of the term "Bar" as it is defined both in Definition I of the National Distributor Settlement and Definition 9 of the J&J Agreement.
- d. Participating Local Governments shall make active efforts to pass a Litigation Bar. To that end, within 30 days of this Memorandum, Participating Local Governments shall form a Legislative Advocacy Committee consisting of 8 total members. The committee shall be comprised of:
  - i. Four members appointed by the Georgia Municipal Association, two of whom shall be members of the Republican Party and two of whom shall be members of the Democratic Party;

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- ii. Four members appointed by the Association of County Commissioners of Georgia, two of whom shall be members of the Republican Party and two of whom shall be members of the Democratic Party.
- iii. Members of the Legislative Advocacy Committee shall have the skills, time, expertise, and willingness to affirmatively plan, support and participate in all manner of advocacy in support of passage of a Litigation Bar.
- iv. “Active efforts to pass a Litigation Bar” shall at a minimum include attending committee hearings on proposed Litigation Bar legislation; testifying in favor of such legislation at any hearings; engaging in press appearances in favor of Litigation Bar; attending biweekly meetings of the Legislative Advocacy Committee during each month for which the General Assembly is in session (special or regular); and lobbying members of the General Assembly and of local government entities or organizations to encourage passage of the Litigation Bar.
- e. The LGs specifically agree to comply with and support all reasonable requests directed toward obtaining passage of the Litigation Bar from the Attorney General or any other party.
- f. This Memorandum is specifically conditioned on the passage of a Litigation Bar by the General Assembly and its approval by the Governor.
- g. The Litigation Bar shall be both retroactive and prospective, and shall cut off all current and future litigation against the Released Entities. The Litigation Bar shall only apply to Released Entities and Released Claims, and shall not apply in any way to claims or entities not otherwise released in the Opioid Settlements. For the avoidance of doubt, the Litigation Bar shall not apply to any remaining claims or causes of action pending in *In re Opiate Litigation* MDL 2804 against non-settling Defendants, or to any remaining claims or causes of action

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pending in State of Georgia v. Teva Pharmaceutical Industries, LTD, et al., Case No. 19-A-00060-2 against non-settling Defendants.

- h. The Parties shall jointly endeavor to take all other steps necessary to release all outstanding Released Claims against the Released Parties and to obtain the Litigation Bar described in Section VI above and Exhibit 2 below concerning the parties to the National Distributor and J&J Settlements so long as this Memorandum of Understanding is in effect.
- i. The Parties shall endeavor and use their best affirmative efforts to obtain passage of the Litigation Bar in the next chronological session of the General Assembly, whether a special session or general session, and shall continue to endeavor and use their best affirmative efforts to obtain passage of the Litigation Bar until the General Assembly passes the same and it is approved by the Governor. In the event a Litigation Bar is not enacted into law by July 15, 2023, this Memorandum is null and void.
- j. It is understood by the parties to this Memorandum that the use of a Litigation Bar as contemplated in this section should not be deemed as precedent setting for future settlements in this litigation or in future litigations.
- k. Within 14 days of sign on by LG Counsel, the State shall provide proposed language for a Litigation Bar to the LGs, including language to implement the terms outlined herein and to otherwise satisfy the legislative requirements under the Georgia Constitution. The LGs shall have 15 days thereafter to provide a unified response to the State's proposed language, and the State may respond thereto. The Parties shall then work to attempt to reach final proposed language for a Litigation Bar. If such agreement is reached, it shall be incorporated herein to this Memorandum as Exhibit 2. In the event the LGs do not provide a response to the State's proposed language as provided, then the proposed language of the State shall become the language of the Litigation Bar and shall be incorporated herein to this Memorandum as Exhibit 2. In the event the parties do not reach agreement as to final language for a Litigation Bar by November 4, 2021, this Memorandum becomes null and void. The Parties' obligations under this

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Memorandum concerning a Litigation Bar, including but not limited to their obligations to make active efforts to pass the Litigation Bar, shall attach to any language incorporated herein to this Memorandum as Exhibit 2.

### VII. Attorney's Fees; Costs and Expenses

- a. Consistent with Exhibit R, section I(R) of the Distributor Settlement Agreement, a Local Government Cost and Fee Fund ("LGCFF") will be created to resolve Local Government attorney fee and litigation expense obligations with contingency fee counsel who filed opioid lawsuits by September 1, 2020 and who:
  - i. Represent Participating Local Governments who are eligible for direct payments under Section III.a. of this Memorandum; or
  - ii. by agreement amongst Participating General Purpose Governments (as that term is defined in the Distributor Settlement) are determined to be eligible for reimbursement of fees and costs. Any such agreements under this Section shall be documented between counsel for Participating General Purpose Governments and the counsel who are determined to be eligible.
- b. Any contingency-fee counsel retained by Participating Local Governments who are eligible for direct payments under Section III.a. of this Memorandum must seek recovery from the Contingency Fee Fund established in the National Settlement.
- c. The amount of the LGCFF shall be equal to 15% of Participating Local Governments' 25% share under this Memorandum. No portion of the State's share shall be used for the LGCFF or in any other way to fund any Participating Local Government's attorney's fees and costs.
- d. Under no circumstances may counsel collect more for its work on behalf of a Participating Local Government than it would under its contingency agreement with that Participating Local Government.
- e. The amount and timing for the payments to counsel under this Memorandum shall be consistent with the percentages and timing set

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forth in Exhibit R § (II) (A) (1) of the Distributor Settlement Agreement and Exhibit R § (II) (A) (1) of the Janssen Settlement Agreement.

- f. Any funds remaining in the LGCFF beyond what is required to pay contingency counsels' fees and expenses for Local Governments who are eligible for direct payments under Section III.a. of this Memorandum shall revert to the Participating Local Government fund to be used for Approved Purposes as set forth in this agreement.
- g. State outside counsel shall be compensated pursuant to separate agreement between the State and its outside counsel.

### VIII. Future Agreements and Negotiations

- a. Nothing in this Memorandum of Understanding shall bind the parties concerning any future Opioid Settlements other than the ones expressly contemplated in (1) this Agreement or (2) any amendments to this Agreement made pursuant to Section IX.B. Other than those Released Entities who are parties to the above-referenced Settlement Agreements, the parties are free to engage in settlement negotiations with any Opioid Defendants without prior consent or participation of any other party to this agreement.
- 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.

### IX. Miscellaneous

- a. This Memorandum of Understanding shall be governed by Georgia law.

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- b. The parties may make amendments to this agreement as necessary. Amendments shall be in writing and shall require the written consent of all parties to this Memorandum of Understanding.
- c. Jurisdiction and venue regarding any disputes between or among the parties to this Memorandum of Understanding concerning this agreement or the interpretation thereof shall lie in the Superior Court of Gwinnett County, Georgia.
- d. This Memorandum of Understanding terminates with respect to the National Distributor or J&J Settlements, or both, in the event the State elects not to join such Settlements.
- e. This Memorandum of Understanding terminates automatically with respect to National Distributor or J&J Settlements, or both, in the event such Settlement(s) is / are terminated by the parties to them.
- f. By entering into this Memorandum, a local government agrees to participate in both the National Distributor and J&J Settlements.
- g. If any Local Government identified in the attached list of clients elects not to enter into in this Memorandum, or not to participate in the National Distributor Settlement and J&J Settlements, this Memorandum is voidable by the State.

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### ATTACHED EXHIBITS:

- EXHIBIT 1: ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND TO MEMORANDUM OF UNDERSTANDING
- EXHIBIT 2: AGREED LITIGATION BAR LANGUAGE
- EXHIBIT 3: OUTSIDE COUNSEL RECOMMENDATION
- EXHIBIT 4: DISTRIBUTOR PARTICIPATION AGREEMENT

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### EXHIBIT 5: J&J PARTICIPATION AGREEMENT

#### 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:

- \_\_\_\_\_ [NAME OF ENTITY] has received the State of Georgia and Local Governments: Memorandum of Understanding Concerning National Distributor and Johnson & Johnson Opioid Settlements.
- The undersigned is a duly-appointed representative of \_\_\_\_\_ [NAME OF ENTITY], and has the authority to execute this document and bind \_\_\_\_\_ [NAME OF ENTITY] to the Memorandum of Understanding.
- \_\_\_\_\_ [NAME OF ENTITY] is either represented by legal counsel, or has the ability to obtain advice from legal counsel,

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concerning the contents and implication of the Memorandum of Understanding.

- The undersigned, on behalf of \_\_\_\_\_ [NAME OF ENTITY], understands and acknowledges the terms of the Memorandum of Understanding, and \_\_\_\_\_ [NAME OF ENTITY] agrees to be bound by its terms.
- No party is under duress or undue influence.

/s/ \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Entity \_\_\_\_\_

### EXHIBIT 2

#### AGREED LITIGATION BAR LANGUAGE

A BILL TO BE ENTITLED

AN ACT

To authorize, under certain circumstances, a litigation bar of certain Statewide Opioid Litigation or claims for damages as a result of the Opioid Crisis on behalf of the State of Georgia, its Departments, Agencies, and Instrumentalities, any political subdivision of the State, municipal corporations, authorities, sheriffs, county and municipal officers, or any other governmental or municipal entity which has or may make a claim for damages as a result of the Opioid Crisis; and for other purposes.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

### SECTION 1.

Chapter 13 of Title 10 of the Official Code of Georgia Annotated is amended by creating a new Code Chapter which shall read as follows:

#### CHAPTER 13B

#### STATEWIDE OPIOID SETTLEMENT

### SECTION 2.

#### § 10-13B-1 Legislative findings and purpose

The General Assembly finds as follows:

- (1) There is an opioid epidemic occurring in the United States, and Georgia has been greatly impacted;
- (2) Statewide coordination surrounding and managing opioid addiction and related disorders is critical to the health and safety of all Georgians;
- (3) Funding is needed in Georgia for, among other things, prevention and treatment of opioid addiction and related disorders; providing resources to law enforcement agencies to address the opioid crisis; increasing the number of professionals who provide treatment for opioid addiction; educating medical professionals regarding the safe and effective prescribing of, and then tapering off of, opioids; and treatment and prevention of opioid use disorder in incarcerated populations;
- (4) It is imperative Georgia receive the full amount of any opioid settlement, and in order to do so the State of Georgia must be able to release claims for all public bodies and instrumentalities in the State of Georgia;
- (5) While local governments generally have the authority to pursue and litigate claims against business and individuals to protect their own interests, in certain limited circumstances involving particular industries, the interests of the State as a whole are best served by having a unified settlement structure that benefits both the State and its local governments and brings full and complete closure to the claims that were asserted or could have been asserted and maximizes the State and local governments' potential recovery to address this extraordinary crisis.

### SECTION 3

#### § 10-13B-2 Definitions

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As used in this Chapter the following definitions shall apply:

(1) "Governmental Entity" means:

(A) this state and each of its departments, agencies, divisions, boards, commissions, authorities, instrumentalities; and

(B) a political subdivision or creation of this state, including a county, municipality, special district, school district, community service board, authority, any county or state officeholder and any other public officeholder or public entity which has asserted or could assert a claim for damages as a result of the manufacture, marketing, sale, dispensing, or distribution of opioids.

(2) "Released Claim" means a claim by a Governmental Entity that has been or could have been released under a statewide opioid settlement agreement.

(3) "Released Entity" means an entity against which a claim has been released under a statewide opioid settlement agreement.

(4) "Statewide Opioid Settlement Agreement" means:

(A) any settlement agreement and related documents entered into by this State through the Attorney General with opioid manufacturers, distributors, retailers, labelers, marketers, pharmacies or other entities concerning the use or prescription of opioid products; and

(B) which relates to illegal or tortious conduct in the manufacturing, marketing, promotion, sale, distribution, or dispensing of opioids; and

(C) which was entered into by the State on or after March 31, 2021; and

(D) which provides a mechanism which permits Governmental Entities to join into such settlement agreement; and

(E) which is the subject of a memorandum of understanding or similar agreement entered into by both the Attorney General and at least sixty five percent (65%) of the Governmental Entities which have active and pending litigation against the Released Entity or Entities identified in the settlement agreement as of the date when Governmental Entities are first permitted to join such settlement agreement.

## SECTION 4

§ 10-13B-3 Entry into a Statewide Opioid Settlement Agreement With Sufficient Georgia Governmental Entity Support Shall Serve to Resolve All Past, Present and Future Opioid Legal Claims of All Georgia Governmental Entities

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Entry into a Statewide Opioid Settlement Agreement shall serve to bar any and all past, present or future claims on behalf of any Governmental Entity seeking to recover against any business or person that is a Released Entity under the terms of the relevant settlement. Such bar shall apply to any and all Released Claims or suits by any Governmental Entity created by or pursuant to an Act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive or any other relief. No such claim barred by this code section shall be brought, threatened, asserted or pursued in any way in any court and any such claim shall be dismissed by the court in which the claim is brought.

The bar shall become active and effective upon the filing of a Consent Order by the State of Georgia which attests to and shows that a Statewide Opioid Settlement Agreement has been reached, and that the parameters of this Act have been met.

### **EXHIBIT 3**

#### **OUTSIDE COUNSEL RECOMMENDATION**

#### **[INSERT EXECUTED PORTION OF THE BELOW]**

\* \* \* \* \*

WHEREFORE, PREMISES CONSIDERED, each of the undersigned has attached a complete list of all LG entities that they represent. As counsel for their respective clients, the undersigned acknowledge that they were active participants in the formation of this Memorandum, were not subject to duress or undue influence, and acknowledge and agree that the execution of this Memorandum, and participation in the National Distributor Settlement and the J&J Settlement is in the best interest of their clients.

Therefore, in compliance with all ethical obligations owed to their clients, the undersigned agree to recommend execution of this Memorandum and full participation in the National Distributor and J&J Settlements to each of their

## **Settlement Document**

respective clients and move immediately to obtain from their respective clients execution of this Memorandum.

\_\_\_\_\_  
\_\_\_\_\_[Counsel Name]  
\_\_\_\_\_[Counsel Firm]

### **COUNSEL FOR:**

[Name of Government Entity(ies)]

## **EXHIBIT 4 DISTRIBUTOR PARTICIPATION AGREEMENT**

**EXHIBIT 5**  
**J&J PARTICIPATION AGREEMENT**