

New National Opioids Settlement: Kroger
Opioids Implementation Administrator
opioidsparticipation@rubris.com

Dalton city, GA
Reference Number: CL-790882

TO LOCAL POLITICAL SUBDIVISIONS:

THIS PACKAGE CONTAINS DOCUMENTATION TO PARTICIPATE IN THE NEW NATIONAL OPIOIDS SETTLEMENT. YOU MUST TAKE ACTION IN ORDER TO PARTICIPATE.

Deadline: August 12, 2024

A new proposed national opioids settlement (“*New National Opioids Settlement*”) has been reached with Kroger (“*Settling Defendant*”). This *Participation Package* is a follow-up communication to the *Notice of National Opioids Settlement* recently received electronically by your subdivision or special district (“subdivision”).

You are receiving this *Participation Package* because Georgia is participating in the Kroger settlement.

If a state does not participate in a particular Settlement, the subdivisions in that state are not eligible to participate in that Settlement.

This electronic envelope contains:

- The *Participation Form* for the Kroger settlement, including a release of any claims.
- The *Memorandum of Understanding* for the Kroger settlement for subdivisions to execute through the DocuSign process.

The *Participation Form* must be executed, without alteration, and submitted on or before August 12, 2024, in order for your subdivision to be considered for initial participation calculations and payment eligibility.

Based upon subdivision participation forms received on or before August 12, 2024, the subdivision participation rate will be used to determine whether participation is sufficient for the settlement to move forward and whether a state earns its maximum potential payment under the settlement. If the settlement moves forward, your release will become effective. If a settlement does not move forward, that release will not become effective.

Any subdivision that does not participate cannot directly share in the settlement funds, even if the subdivision’s state is settling and other participating subdivisions are sharing in settlement funds. Any subdivision that does not participate may also reduce the amount of money for programs to remediate the opioid crisis in its state. Please note, a subdivision will not necessarily directly receive settlement funds by

participating; decisions on how settlement funds will be allocated within a state are subject to intrastate agreements or state statutes.

You are encouraged to discuss the terms and benefits of the *New National Opioids Settlement* with your counsel, your Attorney General's Office, and other contacts within your state. Many states are implementing and allocating funds for this new settlement the same as they did for the prior opioids settlements with McKesson, Cardinal, Cencora (formerly AmerisourceBergen), J&J/Janssen, Teva, Allergan, CVS, Walgreens, and Walmart but states may choose to treat this settlement differently.

Information and documents regarding the *New National Opioids Settlement* and how it is being implemented in your state and how funds will be allocated within your state can be found on the national settlement website at <https://nationalopioidsettlement.com/>. This website will be supplemented as additional documents are created.

How to return signed forms:

There are three methods for returning the executed *Participation Form* and any supporting documentation to the Implementation Administrator:

- (1) *Electronic Signature via DocuSign*: Executing the *Participation Form* electronically through DocuSign will return the signed form to the Implementation Administrator and associate your form with your subdivision's records. Electronic signature is the most efficient method for returning the *Participation Form*, allowing for more timely participation and the potential to meet higher settlement payment thresholds, and is therefore strongly encouraged.
- (2) *Manual Signature returned via DocuSign*: DocuSign allows forms to be downloaded, signed manually, then uploaded to DocuSign and returned automatically to the Implementation Administrator. Please be sure to complete all fields. As with electronic signature, returning a manually signed *Participation Form* via DocuSign will associate your signed forms with your subdivision's records.
- (3) *Manual Signature returned via electronic mail*: If your subdivision is unable to return an executed *Participation Form* using DocuSign, the signed *Participation Form* may be returned via electronic mail to opioidsparticipation@rubris.com. Please include the name, state, and reference ID of your subdivision in the body of the email and use the subject line Settlement Participation Form - [Subdivision Name, Subdivision State] - [Reference ID].

Detailed instructions on how to sign and return the *Participation Form*, including changing the authorized signer, can be found at <https://nationalopioidsettlement.com/>. You may also contact opioidsparticipation@rubris.com.

The sign-on period for subdivisions ends on August 12, 2024.

If you have any questions about executing the *Participation Form*, please contact your counsel, the Implementation Administrator at opioidsparticipation@rubris.com, or Melissa M. Devine at the Georgia Attorney General's Office at (404) 458-3765 or mdevine@law.ga.gov.

Thank you,

New National Opioids Settlement Implementation Administrator

The Implementation Administrator is retained to provide the settlement notice required by the New National Opioids Settlement and to manage the collection of the Participation Form.

Subdivision Participation and Release Form

Governmental Entity: Dalton city	State: GA
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“*Governmental Entity*”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated March 22, 2024 (“*Kroger Settlement*”), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Kroger Settlement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Governmental Entity elects to participate in the Kroger Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall promptly, and in any event no later than 14 days after the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed. With respect to any Released Claims pending in *In re National Prescription Opiate Litigation*, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental Entity a Stipulation of Dismissal with Prejudice substantially in the form found at <https://nationalopioidsettlement.com/>.
3. The Governmental Entity agrees to the terms of the Kroger Settlement pertaining to Participating Subdivisions as defined therein.
4. By agreeing to the terms of the Kroger Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Kroger Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Kroger Settlement. The Governmental Entity likewise agrees to arbitrate before the National



Arbitration Panel as provided in, and for resolving disputes to the extent otherwise provided in, the Kroger Settlement.

7. The Governmental Entity has the right to enforce the Kroger Settlement as provided therein.
8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Kroger Settlement, including without limitation all provisions of Section XI (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Kroger Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Kroger Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Kroger Settlement.
10. In connection with the releases provided for in the Kroger Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Kroger Settlement.



11. Nothing herein is intended to modify in any way the terms of the Kroger Settlement, to which Governmental Entity hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Settlement in any respect, the Kroger Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



**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.



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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.



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- 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.



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- 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



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- 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



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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



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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-



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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 th



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consent of all Parties to this Memorandum. Proposed amendments shall be circulated to all Parties through designated contacts provided in their 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.

* * * * *



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ATTACHED EXHIBITS:

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



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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:

- Dalton city 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 Dalton city, and has the authority to execute this document and bind Dalton city to the Memorandum.
- Dalton city 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 Dalton city, understands and acknowledges the terms of the Memorandum, and Dalton city agrees to be bound by its terms.
- No party is under duress or undue influence.

Signature: _____

Name: _____

Title: _____

Date: _____

Entity: Dalton city, GA

Designated Contact for Purposes of Section VIII.b:

Name: _____

Title: _____

Address: _____

Email: _____

