

**State of Oregon Subdivision Agreement  
Regarding Distribution and Use of  
Settlement Funds – Distributor Settlement**

**DRAFT**

**12.9.2021**

**For Distribution to Local  
Governments**

**Rights to Further Edit  
Reserved**

**1. Introduction**

Pursuant to the Distributor Settlement Agreement, dated as of July 21, 2021, and any revision thereto (the “Distributor Settlement Agreement”), including its Section V and Exhibit O, this agreement (the “OR Distributor Allocation Agreement”) is between the State of Oregon and the OR Participating Subdivisions and governs the allocation, distribution, and use of Settlement Fund payments made to Oregon pursuant to Sections IV and V of the Distributor Settlement Agreement.<sup>1</sup> For the avoidance of doubt, this agreement does not apply to payments made pursuant to Sections IX or X of the Distributor Settlement Agreement.

Pursuant to Exhibit O, Paragraph 4, of the Distributor Settlement Agreement, acceptance of this OR Distributor Allocation Agreement is a requirement to be an Initial Participating Subdivision.

**2. Definitions**

The following terms shall have the meaning set forth below when used in this OR Distributor Allocation Agreement. Additional terms defined within this OR Distributor Allocation Agreement shall have that meaning when used in this OR Distributor Allocation Agreement. In addition, terms used in this OR Distributor Allocation Agreement that are defined in the Distributor Settlement Agreement will have that meaning unless otherwise defined in this OR Distributor Allocation Agreement.

- a) *OR Participating Subdivision* means a governmental entity listed on Exhibit A to this Agreement, and any Additional Participant who becomes entitled to a share of the OR Subdivision Funds as described in Section 4(c)(ii) below.
- b) *Janssen Settlement Agreement* means the Janssen Settlement Agreement dated July 21, 2021, and any revision thereto.
- c) *Litigating Special District* means a school district, fire protection district, health authority, health plan, or other special district that has filed a lawsuit against an Opioid Defendant.
- d) *Litigating Local Government* means a Subdivision located in Oregon, other than a Litigating Special District, that filed a lawsuit, on behalf of the Subdivision and/or through an official of the Subdivision on behalf of the People of the State of Oregon, against one or more Opioid Defendants prior to October 1, 2020.
- e) *Opioid Defendant* means any defendant (including but not limited to Johnson & Johnson, Janssen Pharmaceuticals, Inc., Purdue Pharma L.P., Cardinal Health, Inc., Amerisource Bergen Corporation, and McKesson Corporation) named in a

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<sup>1</sup> A parallel but separate agreement (the OR Janssen Allocation Agreement”) will govern the allocation, distribution, and use of settlement fund payments under the Janssen Settlement Agreement. An eligible Subdivision may elect to participate in either the Distributor Settlement or the Janssen Settlement, or in both.

lawsuit seeking damages, abatement, or other remedies related to or caused by the opioid public health crisis in any lawsuit brought by any state or local government on or before October 1, 2020.

- f) *State of Oregon* or *State* has the same meaning as “Executive Department” as set forth in ORS 174.112, but does not include the Oregon State Treasurer or the Office of the Oregon State Treasurer. When used in any provision of this OR Distributor Allocation Agreement the term *State of Oregon* or *State* means, as the context requires, an agency, department, division, board, commission or other entity within the Executive Department that has the authority to undertake the obligations or receive the benefit of the particular provision.
- g) *Oregon* means the geographic territory of Oregon and the state and its local governments therein.
- h) *Approved Abatement Uses* means the Opioid Remediation activities described in Exhibit E to the Distributor Settlement Agreement.
- i) *Litigating Local Governments* means the Counties of Clackamas, Clatsop, Columbia, Coos, Curry, Jackson, Josephine, Lane, Multnomah, Washington, Yamhill, and the City of Portland.

### **3. General Terms**

This OR Distributor Allocation Agreement is subject to the requirements of the Distributor Settlement Agreement, as well as applicable law. If the terms of this OR Distributor Allocation Agreement conflict with the terms of the Distributor Settlement Agreement the terms of the Distributor Settlement Agreement will take precedence over the inconsistent provisions of this OR Distributor Allocation Agreement.

Pursuant to Section V(D)(1) of the Distributor Settlement Agreement, (a) all Settlement Fund payments will be used for Approved Abatement Uses, except as allowed by Section V(B)(2) of the Distributor Settlement Agreement; and (b) at least seventy percent (70%) of Settlement Fund payment amounts will be used solely for future Approved Abatement Uses consistent with the Distributor Settlement Agreement.

### **4. Allocation of Settlement Funds**

- a) **Allocation Generally.** The total Settlement Fund payments made to Oregon pursuant to the Distributor Settlement Agreement (the “Oregon Settlement Amount”) shall be combined pursuant to this OR Distributor Allocation Agreement and 45% of such Settlement Funds shall be allocated to the State of Oregon (such funds, the “OR State Funds”) and 55% of such Settlement Funds to the OR Participating Subdivisions (such funds, the “OR Subdivision Funds”).
- b) **State of Oregon Allocation**
  - i. For purposes of this OR Distributor Allocation Agreement “Enabling Legislation” means legislation passed by the Oregon Legislative Assembly and presented to the Oregon Governor for signature, that establishes the authority within the State of Oregon

to accept, administer, and expend the State of Oregon Allocation, and addresses other matters related to this OR Distributor Allocation Agreement. It is the intent of the Parties that the Enabling Legislation will provide, without limitation, that:

1. The State of Oregon Allocation will be deposited in a Prevention, Treatment and Recovery Fund (the “PTR Fund”), overseen by a board (the “PTR Board”), which shall be used by the State for future Approved Abatement Uses as follows:
    - (ii) Administration of the PTR Fund and PTR Board;
    - (iii) Development of a unified and evidence-based state system for collecting, analyzing and publishing data about the availability and efficacy of substance use prevention, treatment and recovery services across the state; and
    - (iv) Funding statewide and regional Approved Abatement uses.
  2. The PTR Board is constituted and authorized so that the State and OR Participating Subdivisions shall have equal representation and voting power on the PTR Board, whether directly or by designated representatives.
  3. Releases any potential claims by all local governments or local service districts, as those terms are defined in ORS 174.116, and special government bodies, as defined in ORS 174.117, that have not previously provided a release consistent with the release described in Section 9 of this OR Distributor Allocation Agreement.
- ii. The OR State Funds will be accepted, administered, and spent in accordance with the Enabling Legislation (as defined in Section 4(b)(i) above). The Parties, including the State of Oregon, agree that they will cooperate in drafting and promoting the passage of the Enabling Legislation. Until the Enabling Legislation becomes law, the OR State Funds shall be deposited in the Oregon Department of Justice’s Client Trust Account and may be expended or distributed by the Oregon Department of Justice for Approved Abatement Uses.

**c) OR Subdivision Allocation**

- i. The OR Subdivision Allocation will be allocated based on the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804), as adjusted to reflect only those cities and counties that are eligible to receive Settlement Funds, based on population or litigation status, to become a OR Participating Subdivision. The percentage for each OR Participating Subdivision is set forth in Exhibit A in the column entitled “Abatement Percentage” (the “Local Allocation”). For the avoidance of doubt, Litigating Special Districts and non-litigating Oregon towns, cities, and counties with a population less than 10,000 are not eligible to receive an allocation of OR Subdivision Funds.

- ii. If the Parties agree to pursue a release consistent with Section 9 of any additional local governments or local service districts, as those terms are defined in ORS 174.116, or special government bodies, as defined in ORS 174.117 (an “Additional Participant”) where such release is advantageous to the Parties in order to maximize the amount of Settlement Funds available to Oregon under the Distributor Settlement Agreement, and such Additional Participants condition its release on receiving an allocation of Settlement Funds due to Oregon, the amount allocated to the Additional Participant will be deducted from the OR Subdivision Funds in an amount agreed to by a number of OR Participating Subdivisions whose share of the OR Subdivision Funds represents 50% or more of the OR Subdivision Funds. Upon such agreement and the execution of a release by the Additional Participant consistent with Section 9, then the OR Subdivision Funds will be reallocated in accordance with the agreement.
- iii. An OR Participating Subdivision that is a county, or a city and county, will be allocated its Local Allocation share as of the date on which it becomes an OR Participating Subdivision, and will receive payments as provided in the Distributor Settlement Agreement.
- iv. An OR Participating Subdivision that is a city will be allocated its Local Allocation share as of the date on which it becomes an OR Participating Subdivision. The Local Allocation share for a city that is an OR Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is an OR Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date. A Local Allocation share allocated to a city but paid to a county is not required to be spent exclusively for Approved Abatement Uses in that city but will become part of the county’s share of the OR Subdivision Allocation, which will be used in accordance with Section 4.B.ii (Use of OR Subdivision Funds) and reported on in accordance with Section 4.B.iii (OR Funds Oversight).
- v. A city within a county that is an OR Participating Subdivision may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the Settlement Fund Administrator at least 60 days prior to a Payment Date. For purposes of this OR Distributor Allocation Agreement, the City of Portland will be deemed to have elected direct payment if it becomes a Participating Subdivision.
- vi. The State will receive the Local Allocation share of any payment to the Settlement Fund that is attributable to a county or city that is eligible to become an OR Participating Subdivision, but that has not, as of the date of that payment to the Settlement Fund, become an OR Participating Subdivision.
- vii. Funds received by an OR Participating Subdivision, and not expended or encumbered within five years of receipt and in accordance with the Distributor Settlement Agreement and this OR Distributor Allocation Agreement shall be transferred to the PTR Fund (or equivalent fund created by the Enabling Legislation) or, if the Enabling Legislation has not become law, to the fund referenced in Section 4(b)(ii) provided however, that OR

Participating Subdivisions have seven years from receipt of funds to expend or encumber OR Subdivision Funds designated to support capital outlay projects before they must be transferred to the State.

- viii. One hundred percent (100%) of Settlement Funds received by an OR Participating Subdivision that is not also a Litigating Local Government shall be used for Approved Abatement Uses.
- ix. At least ninety five percent (95%) of Settlement Funds received by an OR Participating Subdivision that is also a Litigating Local Government shall be used for Approved Abatement Uses. Up to five percent (5%) of the funds received by a Participating Subdivision that is also a Litigating Local Government may be used for opioid related expenses including opioid related litigation costs and fees for in-house and outside private counsel, subject to any limitations set forth in the Distributor Settlement Agreement.
- x. For the avoidance of doubt, and subject to the requirements of the Distributor Settlement Agreement and applicable law, OR Participating Subdivisions may form agreements or ventures, or otherwise work in collaboration with, federal, state, local, tribal or private sector entities in pursuing Approved Abatement Uses funded from the OR Subdivision Fund. Further, provided that OR Subdivision Funds are used for Approved Abatement Activities, a county and any cities or towns within the county may agree to reallocate their respective shares of the OR Subdivision Fund among themselves, provided that any direct distribution may only be to an OR Participating Subdivision and any OR Participating Subdivision must agree to its share being reallocated.
- xi. Each OR Participating Subdivision is responsible for obtaining necessary budget or expenditure authority under applicable law for its distribution or expenditures of OR Subdivision Funds in accordance with this OR Distributor Allocation Agreement.

**d) Provision for State Back-Stop Agreement**

On August 6, 2021, Judge Dan Polster of the U.S. District Court, Northern District of Ohio, Eastern Division, issued an order (ECF Docket Number 3814) (“MDL Fees Order”) in the National Prescription Opiate Litigation (MDL No. 2804) “cap[ping] all applicable contingent fee agreements at 15%.” Private counsel representing Litigating Local Government should seek its contingency fees and costs from the Attorney Fee Fund or Cost Funds under the Distributor Settlement Agreement and, if applicable, the Janssen Settlement Agreement.

A Litigating Local Government may separately agree to use its share of the OR Subdivision Fund to pay for fees or costs incurred by its contingency-fee counsel (“State Back-Stop Agreement”), pursuant to Exhibit R, section I(R), of the Distributor Settlement Agreement and the MDL Fees Order, so long as such contingency fee for a Litigating Local Government do not exceed a total contingency fee greater than 12% of the Litigating Counties proportional allocation of 50% of the Oregon Settlement Amount, pursuant to the Distributor Settlement Agreement and, provided further, the Oregon State Back-Stop amount for the Litigating County does not exceed the sum of \$2,500,000, inclusive of contingency fees from the national Attorney Fee Fund and the State Back-Stop Agreement. Before seeking fees or litigation costs and expenses from a State Back-Stop Agreement, private counsel representing Litigating Local

Governments must first seek contingency fees and costs from the Attorney Fee Fund or Cost Funds created under the Distributor Settlement Agreement and, if applicable, the Janssen Settlement Agreement. Further, private counsel may only seek reimbursement for litigation fees and costs that have not previously been reimbursed through prior settlements or judgments. An example of the calculation of Back-Stop Fees is set forth in Exhibit C.

To effectuate a State Back-Stop Agreement pursuant to this section, an agreement in the form of Exhibit B may be entered into by a Litigating Local Government, private counsel, and the Oregon Department of Justice. The Oregon Department of Justice shall, upon the request of a Litigating Local Government, execute any agreement executed by a Litigating Local Government and its private counsel if it is in the form of Exhibit B. The Oregon Department of Justice will also consider requests from Litigating Local Governments to execute and enter into agreements presented in other forms.

For the avoidance of doubt, this Distributor Settlement Agreement does not require a Litigating Local Government to request or enter into a State Back-Stop Agreement, and no State Back-Stop Agreement shall impose any duty or obligation on the State of Oregon or any of its agencies or officers, including without limitation the Oregon Department of Justice or the Oregon Attorney General.

#### **e) Additional Costs**

Each OR Participating Subdivision may contribute up to 5% of its share of the OR Subdivision Funds to pay opioid related expenditures such as unreimbursed administrative expenses, costs, professional fees and attorney fees of outside legal counsel and in-house legal counsel employed by the OR Participating Subdivisions (collectively, "Additional Costs"). Each OR Participating Subdivision is responsible for determining the amount of its share of the OR Subdivision Funds it uses to pay Additional Costs (subject to the limit in the previous sentence and as set forth below), and which Additional Costs it chooses to pay.

The Additional Costs may only be used to consistent with the Distributor Settlement Agreement, and pursuant to the August 6, 2021, order by Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributor Settlement Agreement and their counsel. In addition, to the extent the Additional Costs are used to pay the attorney's fees of outside counsel for a Litigating County, the cumulative amount of such fees paid to such outside counsel pursuant to a Back-Stop Agreement entered into under Section 4(d) and paid as Additional Costs may not exceed 15% of the Litigating County's proportional allocation of 50% of the Oregon Settlement Amount.

Each OR Participating Subdivision that pays Additional Costs pursuant to this Section 4(e) shall report such payments as required by the Distributor Settlement Agreement and this OR Distributor Allocation Agreement.

Neither the State of Oregon, including the Oregon Department of Justice, nor the Oregon Attorney General shall have any responsibility for any Additional Costs, and shall have no

responsibility or authority to resolve any disputes among the OR Participating Subdivisions, private counsel of the Litigating Counties, or any other parties with respect to any claims for payment of Additional Costs.

## **5. State and Subdivision Reporting and Oversight**

- a) Prior to July 1st of each year until including the July 1<sup>st</sup> following the date that the Settlement Funds are fully expended, or as otherwise required by any Court Order, each OR Participating Subdivision receiving payment of OR Subdivision Funds under this OR Distributor Allocation Agreement shall deliver an annual report to the Oregon Department of Justice, to the attention of the Deputy Attorney General (as of the Effective Date, to Lisa Udland, Deputy Attorney General, at lisa.udland@state.or.us) regarding how it intends to expend, and how it did expend, its share of OR Subdivision Funds. The Oregon Department of Justice may share those reports with the PTR Board (or its equivalent as established by the Enabling Legislation) and other State entities to ensure expenditures of OR Subdivision Funds were made and will be made in accordance with the Distributor Settlement Agreement and this OR Distributor Allocation Agreement. Each report delivered under this Section 5(a) will also include a certification that all Settlement Funds received by the OR Participating Subdivision have been used in compliance with the Distributor Settlement Agreement and this OR Distributor Allocation Agreement. Each annual report will be in substantially the form determined by the State.
- b) Participating Subdivisions receiving payments of OR Subdivision Funds shall deliver to the State any documents reasonably requested by the State, and any data or information reasonably requested by the State about the use of the OR Subdivision Funds received, including documents, data, or information about OR Participating Subdivision or third-party programs, services, or infrastructure projects receiving the OR Subdivision Funds.
- c) The State will prepare an annual written report regarding the use of Settlement Funds allocated to Oregon until those funds are fully expended and for one year thereafter. These reports will be made publicly available by the State.
- d) The State, the PTR Board (or its equivalent as established by the Enabling Legislation) and all OR Participating Subdivisions receiving OR Subdivision Funds will track all deposits and expenditures. Each OR Participating Subdivision is responsible solely for the OR Subdivision Funds it receives. A county is not responsible for oversight, reporting, or monitoring of OR Subdivision Funds received by a city within that county that receives direct payment.
- e) Each Litigating Local Government receiving OR Subdivision Funds will track all deposits and expenditures, as required by the Distributor Settlement Agreement and this OR Distributor Allocation Agreement. Among other things, Litigating Local Governments using monies from the OR Subdivision Fund for purposes that do not qualify as Approved Abatement Uses must identify and include in their annual report delivered pursuant to Section 5(a), the amount of and how such funds were used, including if used to pay attorneys' fees, investigation costs, or litigation costs. Pursuant to Section V(B)(2) of the Distributor Settlement Agreement, such information must also

be reported to the Settlement Fund Administrator and the Distributors.

- f) In each year in which the State prepares an annual report the State will also host a public meeting to discuss the annual report and the Approved Abatement Uses being carried out by the State and OR Participating Subdivisions.

## **6. Audits**

- a) If the State has a reasonable basis to suspect that an OR Participating Subdivision's use of OR Subdivision Funds is inconsistent with the Distributor Settlement Agreement or this OR Distributor Allocation Agreement, whether through review of annual reports, requests for information, or information acquired from any other sources, State shall send a request to meet and confer with the OR Participating Subdivision. The State and the OR Participating Subdivision shall meet and confer in an effort to resolve the apparent inconsistency.
- b) If the State and the OR Participating Subdivision are unable to reach a mutually acceptable resolution, the State may conduct an audit of the OR Participating Subdivision's use of the OR Subdivision Funds commencing any time within one year of the initial request to meet and confer, unless the State and the OR Participating Subdivision mutually agree in writing to extend the period during which they attempt to resolve the conflict beyond this one year period. The State may conduct the audit itself, or may engage third parties to conduct such audit
- c) If the State, following the discussions referenced in Section 6(a) or the completion of the audit referenced in Section 6(b), determines that the OR Participating Subdivision's use of OR Subdivision Funds is inconsistent with the Distributor Settlement Agreement or this OR Distributor Allocation Agreement, the State may bring a motion or action in the court where the State has filed its Consent Judgment to enforce the requirements of the Distributor Settlement Agreement or this OR Distributor Allocation Agreement.
- d) No audit may be commenced under Section 6(b), and no motion or action may be brought under Section 6(c), related to a specific expenditure of funds more than five years after the date on which the OR Participating Subdivision expenditure of the funds was last reported to the State in an annual report submitted pursuant to Section 6(a).
- e) Notwithstanding the foregoing, this OR Distributor Allocation Agreement does not limit the statutory or constitutional authority of the State of Oregon or a local agency or official to conduct audits, investigations, or other oversight activities, or to pursue administrative, civil, or criminal enforcement actions.

## **7. Medicaid Clawback**

If the federal government determines that it is entitled to a portion of the Settlement Funds pursuant to a Medicaid clawback, then payment of Oregon share of the clawback to the federal government will first be deducted from the Oregon Settlement Amount prior to the distribution of the remaining Settlement Funds due to Oregon pursuant to



Section 4 of this Agreement. To the extent any such Medicaid clawback attempts to recoup Settlement Funds already distributed pursuant to this Section 7, then future distributions of OR Subsidiary Funds will be reduced, and distributions of OR State Funds will be increased until such time as the total amount Settlement Funds distributed accounts for the Medicaid clawback as set forth in this Section 7. State Back Stop funds are excluded from any Medicaid Clawback of Oregon funds.

## 8. **Applicability**

This OR Distributor Allocation Agreement applies to all funds received by Oregon for the McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, "J&J") settlements. In addition, the allocation percentage contained herein (45% to the State of Oregon, 55% to OR Subdivision Fund), shall apply to future multistate Opioid Settlements with Distributors, Manufacturers, and Pharmacies, subject to consideration of other terms of such settlements that impact allocation considerations. For the Purdue bankruptcy, the allocation of Settlement Funds set forth in Section 4 shall only apply to Oregon's share of Settlement Funds under the plan confirmed by Judge Drain on September 17, 2021. However, any additional amounts paid under the Purdue bankruptcy resulting from Oregon and other states' appeal of the that plan's confirmation shall be paid directly to the State of Oregon, and any such additional amounts shall not be included in the calculation of the amount of the OR State Funds due to the State of Oregon under Section 4. In addition, this OR Distributor Allocation Agreement and allocation percentages described in Section 4 shall not apply to any legal actions pursued by or settled by the State of Oregon as an individual state.

## 9. **Releases**

All Parties agree to release all claims as required to participate in the Distributor Settlement Agreement as set forth in the Distributor Settlement Agreement. Each Party shall exercise due diligence, seek all necessary authorizations, and take all necessary steps to complete such release.

## 10. **Miscellaneous**

- a) **Enforcement.** The State or any OR Participating Subdivision may bring a motion or action in the court where the State has filed its Consent Judgment to enforce the requirements of this OR Distributor Allocation Agreement. Before filing such a motion or action the Party intending to file the motion or action will meet and confer with the Party that is or will be the subject of the anticipated motion or action.
- b) **No Intended Third Parties.** Except as provided in the Distributor Settlement Agreement, this OR Distributor Allocation Agreement is not enforceable by any party other than the State and the OR Participating Subdivisions. There are no intended third party beneficiaries to this OR Distributor Allocation Agreement, and this OR Distributor Allocation Agreement does not confer any rights or

remedies upon, and shall not be enforceable by, any person, legal entity, or public body that is not a Party to this OR Distributor Allocation Agreement.

- c) **Severability.** Except as provided in the OR Distributor Allocation Agreement, if any provision of this OR Distributor Allocation Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this OR Distributor Allocation Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this OR Distributor Allocation Agreement will be valid and enforceable to the fullest extent permitted by law. In the event any provision or part of this OR Distributor Allocation Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.
- d) **Additional Litigation.** Nothing in this OR Distributor Allocation Agreement alters or is intended to alter or change the right of the State of Oregon or any OR Participating Subdivision to pursue its own claims against any Defendant through separate opioid-related litigation.
- e) **Waiver of Conflict of Interest.** Consistent with the intent of this Agreement, there is no conflict of interest in Counsel representing the State of Oregon and/or Participating Subdivisions to this Agreement, but to the extent Counsels' representation may constitute a conflict of interest, the Parties waive any potential conflict of interest.
- f) **Construction.** With regard to each and every term and condition of this OR Distributor Allocation Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared and drafted. If at any time the Parties or any court, mediator, arbitrator, or arbitration panel, are required to interpret or construe any such term or condition, no consideration shall be given to the issue of which Party actually prepared, drafted or requested any term or condition thereof.
- g) **Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes and cancels all previous negotiations and agreements, if any.
- h) **Amendments.** Any and all amendments to this Agreement must be in writing and must be signed by all Parties. Each Party that enters into this OR Distributor Allocation Agreement represents that it has authority to enter into this OR Distributor Allocation Agreement and that all necessary actions by the Party's respective Commissions, Councils, Boards, or other governing bodies have authorized the Party to enter into this OR Distributor Allocation Agreement.
- i) **Legal Advice.** Each Party to this OR Distributor Allocation Agreement

acknowledges that is has been advised to seek legal counsel and has had the opportunity to have this Agreement reviewed by legal counsel.

- j) **Governing Law.** Except as provided in the Distributor Settlement Agreement, this agreement shall begoverned by and interpreted in accordance with the laws of the State of Oregon.

## **EXHIBIT A**

**DISCLAIMER:** The allocation percentages herein are estimates only and should not be relied on for decisions regarding legal rights, releases, waivers, or other decisions affecting current or potential legal claims. Percentages shown in the Litigating Local Government Percentage column may change pursuant to Section 4.C. of the Oregon State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds—Distributor Settlement, whereas the percentages shown in the Abatement Percentage column should not change. Participating Subdivisions, underlying calculations, and the calculated allocation percentages are subject to change. Regarding the column herein entitled “Abatement Percentage,” pursuant to Section 4.B.e., the State of Oregon will receive the Local Allocation share of any payment to the Settlement Fund that is attributable to a county or city that is eligible to become a CA Participating Subdivision, but that has not, as of the date of that payment to the Settlement Fund, become a Participating Subdivision. Regarding the column herein entitled “Litigating Local Government Percentage,” payments allocated to a Litigating Local Government, which is not an Initial Participating Subdivision, will be re-allocated among the Litigating Local Governments that are Initial Participating Subdivisions.

Regarding the column herein entitled “Abatement Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the Oregon Abatement Account Funds received, pursuant to Section 4.B. Regarding the column herein entitled “Litigating Local Government Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the Oregon Subdivision Funds received, pursuant to Section 4.C. Regarding the column herein entitled “Weighted Allocation Percentage,” the annotation of “100%” refers to one-hundred percent (100%) of the combined and weighted allocation of the Abatement Percentage and the Litigating Local Government Percentage.

**EXHIBIT B**  
**OREGON-SUBDIVISION BACKSTOP AGREEMENT**

On August 6, 2021, Judge Polster of the US District Court for the Northern District of Ohio issued an Order (the Order), docket number 3814, in In Re National Prescription Opiate Litigation, MDL 2804, addressing contingent attorney fee contracts between political subdivisions eligible to participate in the Distributors Settlement and their counsel.

In light of the Order, and at the request of [SUBDIVISION], the [SUBDIVISION], its counsel [COUNSEL], and the Oregon Department of Justice, on behalf of the State of Oregon, are entering into this Oregon-Subdivision Backstop Agreement (Backstop Agreement). Terms used herein have the meaning set forth in the Distributor Settlement Agreement or this OR Distributor Allocation Agreement, as applicable.

[SUBDIVISION] and [COUNSEL] intend this Backstop Agreement to constitute a State Back-Stop Agreement as that term is used in the Order and in Exhibit R (Agreement on Attorneys' Fees, Expenses and Costs) of the Distributor Settlement Agreement.

Pursuant to this Backstop Agreement, [SUBDIVISION] may, subject to the limitations of the Distributor Settlement Agreement and the OR Distributor Allocation Agreement, as well as any other limitations imposed by law, use funds that it receives from the Distributor Settlement OR Subdivision Fund to pay a contingent fee to [COUNSEL]. Any such payment from [SUBDIVISION] to [COUNSEL], together with any contingency fees that [COUNSEL] may receive from the national Attorney Fee Fund, will not exceed a total contingency fee of the lesser of \$2,500,000 or a PERCENTAGE NOT TO EXCEED 12% of [SUBDIVISION'S] proportional allocation of 50% of the Oregon Settlement Amount.

[COUNSEL] certify that they first sought fees and costs from the Attorney Fee Fund created under the Distributor Settlement Agreement before seeking or accepting payment under this backstop agreement. [COUNSEL] further certify that they are not seeking and will not accept payment under this Backstop Agreement of any litigation fees or costs that have been reimbursed through prior settlements or judgments.

The Oregon Department of Justice is executing this agreement solely because the definition of "State Back- Stop Agreement" in Exhibit R of the Distributor Settlement Agreement requires such agreements to be between "a Settling State" and private counsel for a participating subdivision. Neither the Oregon Department of Justice nor the State of Oregon have any obligations under this Backstop Agreement, and this Backstop Agreement does not require the payment of any funds of the State of Oregon to [SUBDIVISION], [COUNSEL], or any other party.

[DATE]

[SUBDIVISION SIGNATURE BLOCK]

[DATE]

[COUNSEL SIGNATURE BLOCK]

[DATE]

[OREGON DOJ SIGNATURE BLOCK]

## EXHIBIT C

### Sample Back-Stop Calculation

\$329M = Oregon total allocation

50% = Agreed OR Participating Subsidiaries direct contribution percentage for Back-Stop computation

\$164.5M = Agreed local direct contribution amount for Back-Stop computation

X% = direct allocation percentages for litigating subdivisions as set out in Exhibit G of the Distributor Settlement Agreement

$\$164.5M \times X\%$  = direct allocation for Litigating Local Governments for purpose of Sample Back-Stop computation

12% = Cap for Back-Stop payment

$(\$164.5M \times X\%) \times 12\%$  = Maximum total payment to attorneys for Litigating Local Governments from both the national attorney fee fund + Back-Stop payment

$((\$164.5M \times X\%) \times 12\%) - \$8.8M$  = Back-Stop payment to litigating subdivisions assuming \$8.8M is recovered from the national fund (so long as this Back-Stop payment does not exceed \$2.5 million)