

Remediating Opioids Across Delaware through State-Municipal Abatement Partnership (“ROADS MAP”) Agreement

State-Subdivision Agreement Pursuant to the Opioid Settlement Agreements for the State of Delaware

This Remediating Opioids Across Delaware through State-Municipal Abatement Partnership Agreement is entered into between and among the State of Delaware, *ex rel.* Kathleen Jennings, Attorney General (the “**State**”) and each Eligible Subdivision that has executed this Agreement. This ROADS MAP Agreement shall be effective only upon the occurrence of both (i) S.B. 166 (as defined below) being signed by the Governor and (ii) the earlier of October 31, 2021 or the last date on which the last Eligible Subdivision becomes a Party.

WHEREAS, the people of the State of Delaware and Delaware communities have been harmed by the opioid epidemic, which was caused, in part, by certain manufacturers of opioids, pharmaceutical distributors and pharmacies (collectively, “**Opioids Defendants**”);

WHEREAS, the State and certain Delaware subdivisions are engaged in litigation seeking to hold certain Opioids Defendants accountable for the damage they have caused;

WHEREAS, the State and the Eligible Subdivisions share a common desire to abate and alleviate the impacts of the Opioids Defendants’ misconduct through the State of Delaware in a coordinated and expeditious manner;

WHEREAS, upon satisfaction of the terms of each of the Settlement Agreements, each will become binding on all Settling States, Participating Subdivisions, and other settling entities party thereto;

WHEREAS, each Settlement Agreement encourages or allows that each Settling State and its respective subdivisions to enter into a State-Subdivision Agreement in order to direct allocation of their portion of the Settlement Fund;

WHEREAS, the 151st Delaware General Assembly has passed Senate Bill No. 166 as amended by Senate Amendment No. 1, 83 Del. Laws ch. ____ “An Act To Amend Title 16 Of The Delaware Code And The Laws Of Delaware Relating To The Distribution Of Funds From The Prescription Opioid Impact Fee And Court Settlements” (“**S.B. 166**”), which amends Title 16 of the Delaware Code and the Laws of Delaware relating to the distribution of funds from opioid settlements;

WHEREAS, in order to maximize the amount of settlement funds available to Delaware and to ensure a nimble stakeholder-informed process to distribute such funds on a statewide basis, S.B. 166 established the Prescription Opioid Settlement Fund to “hold all monies collected by the State and its subdivisions as a result of the terms of statewide opioid

EXECUTION VERSION

settlement agreements, judgments, or other recoveries in connection with a defendant's actual or alleged liability for contributing to the opioid crisis in Delaware;"

WHEREAS, each Settlement Agreement, together with this ROADS MAP Agreement, is a "statewide opioid settlement agreement" as defined by S.B. 166;

WHEREAS, S.B. 166 established the Prescription Opioid Settlement Distribution Commission to distribute the Prescription Opioid Settlement Fund;

WHEREAS, pursuant to S.B. 166, money in the Prescription Opioid Settlement Fund may not be used to supplant existing state or local government funding and must be used for activities in 1 of the following categories:

1. For services that remediate the harm caused by opioids.
2. To reduce harm caused by opioids.
3. Consistent with the terms of the settlement, judgment, or other source of monies.

WHEREAS, each Settlement Agreement requires that monies set aside for abatement be used for Opioid Remediation, which is defined as "care, treatment, and other programs and expenditures . . . designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic," and attaches an Exhibit E that provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation, in addition to reasonable related administrative expenses;

WHEREAS, the State and the Participating Delaware Subdivisions enter into this ROADS MAP Agreement with the intent to participate in each Settlement Agreement and have this ROADS MAP Agreement be a "State-Subdivision Agreement" as contemplated by each of the Settlement Agreements (and, in the case of a bankruptcy plan or other Settlement Agreement that uses "Statewide Abatement Agreement" or other similar term to refer to an agreed-upon allocation for opioid abatement funds, the State and the Participating Delaware Subdivisions intend this ROADS MAP Agreement to be a Statewide Abatement Agreement or such other similar term);

WHEREAS, the State and certain litigating Eligible Subdivisions have hired outside counsel with respect to their claims against Opioid Defendants and such counsel may be entitled to attorneys' fees as a result of the finalization of one or both Settlement Agreements;

WHEREAS, it is the intent of the State and those litigating Eligible Subdivisions that their respective outside counsel seek payment of appropriate attorneys' fees directly from the State Outside Counsel Fee Fund and the Attorney Fee Fund, as appropriate, each as established pursuant to the relevant Exhibits of the Settlement Agreements, which in turn shall help ensure that the entire Settlement Fund in Delaware is available for Opioid Remediation;

WHEREAS, in order to ensure that outside counsel for litigating Eligible Subdivisions are eligible for fee awards from the Contingency Fee Fund, a *de minimis* amount of settlement

monies from each Settlement Agreement shall be allocated to the litigating Eligible Subdivisions;

WHEREAS, this ROADS MAP Agreement together with each Settlement Agreement provides the framework for how the settlement funds received by Delaware may be allocated and used to remediate the harm caused by the opioid crisis throughout Delaware;

WHEREAS, the Prescription Opioid Settlement Distribution Commission must comply with all applicable terms of each Settlement Agreement and this ROADS MAP Agreement when disbursing monies derived from such settlements.

NOW, THEREFORE, the State and the Participating Delaware Subdivisions hereby agree as follows:

1) Definitions

a) As used in this Agreement:

i) “**Distributor Settlement Agreement**” means that certain settlement agreement dated as of July 21, 2021 setting forth the terms of settlement between and among McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, on the one hand, and certain Settling States and certain Participating Subdivisions on the other hand.

ii) “**Eligible Subdivision**” means each of:

- (1) Kent County
- (2) Sussex County
- (3) New Castle County
- (4) City of Dover
- (5) City of Seaford
- (6) City of Newark
- (7) Town of Middletown
- (8) City of Milford
- (9) Town of Smyrna
- (10) City of Wilmington

iii) “**J&J Settlement Agreement**” means that certain settlement agreement dated as of July 21, 2021 setting forth the terms of settlement between and among Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc.,

and Janssen Pharmaceutica, Inc., on the one hand, and certain Settling States and certain Participating Subdivisions on the other hand.

- iv) “**Local Government Committee**” means the committee of the same name established by S.B. 166.
- v) “**Non-Participating Subdivision**” means an Eligible Subdivision that is not a Participating Subdivision.
- vi) “**Participating Delaware Subdivision**” means each Eligible Subdivisions that that is both (i) a signatory to this ROADS MAP Agreement and (ii) a Participating Subdivision as defined in each Settlement Agreement.
- vii) “**Parties**” means the State and each Eligible Subdivision that is a signatory to this ROADS MAP Agreement.
- viii) “**Prescription Opioid Impact Fund**” means the fund of the same name established by S.B. 166.
- ix) “**Prescription Opioid Settlement Fund**” means the fund of the same name established by S.B. 166.
- x) “**Prescription Opioid Settlement Distribution Commission**” means the commission of the same name established by S.B. 166.
- xi) “**ROADS MAP Agreement**” means this Remediating Opioids Across Delaware through State-Municipal Abatement Partnership Agreement, which is a State-Subdivision Agreement as contemplated by and defined in each Settlement Agreement.
- xii) “**Settlement Agreements**” means the Distributor Settlement Agreement, the J&J Settlement Agreement, and any similar agreement (including consent judgments or consent decrees filed or unfiled), entered into after the date of this Agreement, by, between, or among one or more opioid manufacturers, pharmaceutical distributors, or pharmacies, or an affiliate, agent, consultant, or advisor of an opioid manufacturer, pharmaceutical distributor, or pharmacy, relating to the manufacture, distribution, or sale of opioids, in which both the State and an Eligible Subdivision is eligible to directly receive funds under the agreement.

In addition to the foregoing, upon confirmation of the plan in any bankruptcy proceeding for which the State will receive a payment or distribution in connection with claims similar to those released in the Settlement Agreements, which shall include both *In re: Purdue Pharma L.P., et al.*, No. 19-23649 (RDD) (Bankr. S.D. N.Y.) and *In re: Mallinckrodt PLC, et al.*, No. 20-12522 (JTD) (Bankr. D. Del.), such confirmed plan will also become a Settlement Agreement hereunder for purposes of Section 3(c) of this ROADS MAP Agreement.

EXECUTION VERSION

xiii) “State” means the State of Delaware, *ex. rel.* Kathleen Jennings, Attorney General

b) Capitalized terms used and not otherwise defined herein have the meaning given to them in the Settlement Agreements.

2) Participating Delaware Subdivisions

a) Each Eligible Subdivision may become a Participating Delaware Subdivision by (i) executing this ROADS MAP Agreement and (ii) taking the necessary steps under each Settlement Agreement to become a Participating Subdivision. While it is the intent to have all Eligible Subdivisions become Participating Delaware Subdivisions by October 31, 2021, an Eligible Subdivision shall not be precluded from becoming a Participating Delaware Subdivision by taking the foregoing steps after October 31, 2021, so long as both steps are completed prior to the date to become a Participating Subdivision under each Settlement Agreement.

b) The Local Government Committee shall include each Participating Delaware Subdivision as a member of such committee, unless and until such Participating Delaware Subdivision gives written notice to the Chair of the Local Government Committee that it resigns as a member of such committee.

c) As contemplated by S.B. 166, the Local Government Committee shall provide recommendations to the Prescription Opioid Settlement Distribution Commission regarding the distribution of money from the Prescription Opioid Settlement Fund and the Prescription Opioid Impact Fund.

d) A Non-Participating Delaware Subdivision is ineligible to be a member of the Prescription Opioid Settlement Distribution Commission or any committee or subcommittee thereof.

3) Allocation

a) As set forth in both the Distributor Settlement Agreement and the J&J Settlement Agreement, the Settlement Fund shall be comprised of an Abatement Accounts Fund, a State Fund, and a Subdivision Fund for each Settling State.

b) Further to paragraph V.D.1 of the Distributor Settlement Agreement and paragraph VI.D.1 of the J&J Settlement Agreement, which each contemplate the reallocation and distribution within Delaware’s account of amounts contained in the Settlement Fund sub-funds per a State-Subdivision Agreement:

i) Amounts allocated to the State Fund for Delaware shall be reallocated to the Abatement Accounts Fund for Delaware.

ii) Amounts allocated to the Subdivision Fund for Delaware shall be reallocated to the Abatement Accounts Fund for Delaware, *except that* four dollars (\$4.00) from the first relevant payment under each Settlement Agreement shall be held back from such

EXECUTION VERSION

reallocation and allocated instead 25% to each litigating Eligible Subdivision (*i.e.*, Kent County, Sussex County, City of Dover, and City of Seaford), such that each litigating Eligible Subdivision retains a one dollar (\$1.00) direct allocation under each Settlement Agreement and allows their respective outside counsel to be eligible for attorneys' fee awards from the Contingency Fee Fund.

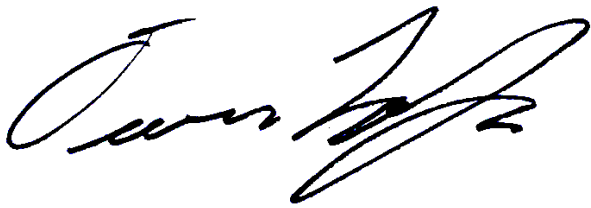
- c) The Abatement Accounts Fund for Delaware (which after the reallocations set forth above shall contain 100% of the amounts contained in the Settlement Fund within Delaware's account, less the four dollars (\$4.00) held back pursuant to paragraph (3)(b)(ii), above), along with any other amounts distributed to Delaware under the Settlement Agreements for purposes of opioid abatement, shall be disbursed to the Prescription Opioid Settlement Fund.
- d) As set forth in paragraph VII.H of each of the Distributor Settlement Agreement and the J&J Settlement Agreement, Non-Participating Delaware Subdivisions shall not directly receive any portion of any base or incentive payments, including from the State Fund and direct distributions from the Abatement Accounts Fund. This shall not prevent the Prescription Opioid Settlement Distribution Commission from funding Opioid Remediation that indirectly benefits a Non-Participating Subdivision.

4) Amendments

- a) The Parties agree to make such amendments as necessary to implement the intent of this Agreement.
- b) This Agreement may be amended by written agreement of the Parties.

ACCEPTED AND AGREED TO BY THE UNDERSIGNED:

State of Delaware ex. rel. Kathleen Jennings, Attorney General



By: Owen Lefkon, Deputy Attorney General

Date: September 17, 2021

Kent County

By: _____

Date: _____, 2021

Sussex County

By: _____

Date: _____, 2021

New Castle County

By: _____

Date: _____, 2021

City of Dover

By: _____

Date: _____, 2021

City of Seaford

By: _____
Date: _____, 2021

City of Newark

By: _____
Date: _____, 2021

Town of Middletown

By: _____
Date: _____, 2021

EXECUTION VERSION

City of Milford

By: _____
Date: _____, 2021

Town of Smyrna

By: _____
Date: _____, 2021

City of Wilmington

By: _____
Date: _____, 2021