

FINAL BUT UNOFFICIAL TEXT – DO NOT SIGN THIS VERSION

**Second Supplemental Agreement for Additional Funds
From Additional Settlement of Opioid Litigation (“SAAF-2”)**

I. PURPOSE

The purpose of this Second Supplemental Agreement for Additional Funds (“SAAF-2”) is to direct Kroger Funds from the Kroger Settlement to the state of North Carolina and local governments in a manner consistent with the 2021 Memorandum of Agreement (“MOA”) Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation (finalized in 2022) as well as the 2023 Supplemental Agreement for Additional Funds From Additional Settlements of Opioid Litigation (“SAAF”), which govern the distribution of Opioid Settlement Funds to the State and its Local Governments.

This SAAF-2 does not change the scope or meaning of the MOA or SAAF with respect to Opioid Settlement Funds governed by the MOA or Additional Funds governed by the SAAF, respectively. Instead, this SAAF-2 applies the terms of the MOA – with certain clarifications noted below – to the Kroger Funds from the Kroger Settlement described below.

II. SCOPE

- A. Scope of the MOA. Under the terms of the MOA, the MOA governs Opioid Settlement Funds from:
1. The National Settlement Agreement with the drug distributors Cardinal, McKesson, and AmerisourceBergen and the drug maker Johnson & Johnson and its subsidiary Janssen Pharmaceuticals; and
 2. The Bankruptcy Resolution with Mallinckrodt; the Bankruptcy Resolution with Endo; any Bankruptcy Resolution with Purdue; and any other Bankruptcy Resolution as the term “Bankruptcy Resolution” is defined in the MOA.
- B. Scope of the SAAF. The SAAF governs Additional Funds from the Additional Settlements with Additional Settling Defendants Walmart, Inc., Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Allergan Limited, CVS Health Corporation, CVS Pharmacy, Inc., and Walgreen Co., as well as their subsidiaries, affiliates, officers, and directors named in the Additional Settlements.
- C. This SAAF-2 governs Kroger Funds from the Kroger Settlement as described below.

III. APPLICATION OF THE MOA TO THE KROGER SETTLEMENT AND FUNDS

The MOA, which is incorporated herein by reference, governs the Kroger Settlement and Kroger Funds in every respect, except as set forth hereinbelow. In the event of any conflict between the MOA and this SAAF-2, with respect to the Kroger Settlement and Kroger Funds, the provisions of this SAAF-2 shall take precedence.

A. Definitions.

1. The definitions used in the MOA and the SAAF are incorporated by reference into this SAAF-2.
2. “Kroger” means the Kroger Co., as well as its subsidiaries, affiliates, officers, and directors named in the Kroger Settlement.
3. “Kroger Funds” means all funds allocated by the Kroger Settlement to the State or Local Governments for purposes of opioid remediation activities, as well as any repayment of those funds and any interest or investment earnings that may accrue as those funds are temporarily held before being expended on opioid remediation strategies. Not included are funds made available in the Kroger Settlement for the payment of the Parties’ litigation expenses or the reimbursement of the United States Government.
4. “Kroger Settlement” means a national opioid settlement agreement with the Parties and Kroger concerning alleged misconduct in manufacture, marketing, promotion, distribution, or dispensing of an opioid analgesic.
5. “Local Counsel” means legal counsel and law firms who have a principal office in North Carolina and represented one or more North Carolina counties and municipalities in litigation against one or more Additional Settling Defendant or Kroger concerning opioids.
6. “National Counsel” means legal counsel and law firms who have a principal office outside of North Carolina and represented various North Carolina counties and municipalities in litigation concerning opioids against one or more Settling Defendant, Additional Settling Defendant, or Kroger.
7. “Required Local Governments” means all North Carolina counties and municipalities that have filed litigation against any of the Settling Defendants, Additional Settling Defendants, or Kroger.

B. Allocation of Additional Funds

1. Method of distribution. Pursuant to the Kroger Settlement, Kroger Funds shall be distributed directly to the State, Local Governments, and Local Counsel for such uses as set forth in the MOA and this SAAF-2, provided Kroger Funds shall not be considered funds of the State, any Local Governments, or any Local Counsel unless and until such time as each distribution is made.
2. Overall allocation of funds. Kroger Funds shall be allocated as follows with respect to each payment from Kroger: (i) 15% directly to the State (“State Kroger Abatement Fund”), (ii) 84.62% to abatement funds established by Local Governments (“Local Kroger Abatement Funds”), and (iii) 0.38% to a Local Counsel Fee Fund described in section IV of this SAAF-2.
3. The allocation of Local Kroger Abatement Funds between Local Governments shall be as described in MOA section B.3. However, to the extent required by the terms of the Kroger Settlement, the proportions set forth in MOA Exhibit G shall be adjusted: (i) to provide no payment from the Kroger Settlement to any listed county or municipality that does not participate in the Kroger Settlement; and (ii) to provide a reduced payment from the Kroger Settlement to any listed county or municipality that signs onto the Kroger Settlement after the deadline specified by the Kroger Settlement.
4. Municipal allocations of Local Kroger Abatement Funds shall be as described in MOA section B.4. Consistent with the manner in which MOA section B.4.b has been interpreted by the parties to the MOA with respect to Opioid Settlement Funds, a municipality that directs Local Kroger Abatement Funds to the county or counties in which it is located pursuant to MOA section B.4 shall be relieved of any reporting or other obligations under the MOA with respect to the redirected funds.
5. The use of Kroger Funds for opioid remediation activities shall be as described in MOA section B.5.
6. All Parties acknowledge and agree the Kroger Settlement will require a Local Government to release all its claims against Kroger to receive Kroger Funds. All Parties further acknowledge and agree based on the terms of the Kroger Settlement, a Local Government may receive funds through this SAAF-2 only after complying with all requirements set forth in the Kroger Settlement to release its claims.

C. Payment of Litigating and Non-Litigating Parties

No party engaged in litigating the MDL Matter shall receive a smaller payment than a similarly situated non-litigating Party, other than as based on the Allocation Proportions in MOA Exhibit G.

D. Special Revenue Fund

Every Local Government receiving Kroger Funds shall either (1) deposit the Kroger Funds in the special revenue fund that the Local Government created for Opioid Settlement Funds pursuant to MOA section D.1 and/or Additional Funds pursuant to SAAF section D.1 or (2) create a separate special revenue fund as described in MOA section D.1 that is designated for the receipt and expenditure of the Kroger Funds. In either case, every Local Government receiving Kroger Funds shall abide by MOA section D and other relevant provisions of the MOA with respect to the Kroger Funds in the special revenue fund.

E. Opioid Remediation Activities

1. Local Governments shall expend Kroger Funds according to the requirements for Opioid Settlement Funds stated in MOA section E.
2. The coordination group established by MOA section E.7 and described in MOA Exhibit D shall have the same responsibilities with respect to remediation activities funded by Kroger Funds and related requirements and procedures that it has with respect to the Opioid Settlement Funds covered by the MOA.

F. Auditing, Compliance, Reporting, and Accountability

1. The Auditing, Compliance, Reporting, and Accountability provisions stated in MOA section F shall apply to Kroger Funds in the way they apply to Opioid Settlement Funds.
2. The coordination group established by MOA section E.7 and described in MOA Exhibit D shall have the same responsibilities with respect to auditing, compliance, reporting, and accountability provisions relating to Kroger Funds that it has with respect to the Opioid Settlement Funds covered by the MOA.

G. Effectiveness

1. When this SAAF-2 takes effect. This SAAF-2 shall become effective at the time a sufficient number of Local Governments have joined the SAAF-2 to qualify the SAAF-2 as a State-Subdivision Agreement under the Kroger Settlement. If this SAAF-2 does not thereby qualify as a State-Subdivision Agreement, this SAAF-2 will have no effect.
2. Amendments to the SAAF-2.
 - a. Amendments to conform to final national documents. The Attorney General, with the consent of a majority vote from a group of Local Government attorneys appointed by the Association of County Commissioners, may initiate a process to amend this SAAF-2 to make any changes required by the final provisions of the Kroger Settlement. The Attorney General's Office will provide written notice of the necessary amendments to all the previously joining parties. Any previously joining party will have a two-week opportunity to withdraw from the SAAF-2. The amendments will be effective to any party that does not withdraw.
 - b. Coordination group. The coordination group may make the changes to the SAAF-2 described and authorized in MOA Exhibit D.
 - c. No amendments to allocation between Local Governments. Notwithstanding any other provision of this SAAF-2, the allocation proportions set forth in MOA Exhibit G may not be amended.
 - d. General amendment power. After execution, the coordination group may propose other amendments to the SAAF-2, subject to the limitation in Section G.2.c of this SAAF-2. Such amendments will take effect only if approved in writing by the Attorney General and at least two-thirds of the Local Governments who are Parties to this SAAF-2. In the vote, each Local Government Party will have a number of votes measured by the allocation proportions set forth in MOA Exhibit G.
3. Acknowledgement. The Parties acknowledge this SAAF-2 is an effective and fair way to address the needs arising from the public health crisis due to the misconduct committed by the Pharmaceutical Supply Chain Participants.

4. When SAAF-2 is no longer in effect. This SAAF-2 is effective until one year after the last date on which any (a) Opioid Settlement Funds are being spent by Local Governments pursuant to the National Settlement Agreement and any Bankruptcy Resolution, or (b) Additional Funds are being spent by Local Governments pursuant to the Additional Settlements, or (c) Kroger Funds are being spent by Local Governments pursuant to the Kroger Settlement.
5. Application of SAAF-2 to settlements. This SAAF-2 applies to the Kroger Settlement.
6. Applicable law and venue. Unless required otherwise by the Kroger Settlement, this SAAF-2 shall be interpreted using North Carolina law and any action related to the provisions of this SAAF-2 must be adjudicated by the Superior Court of Wake County. If any provision of this SAAF-2 is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision which can be given effect without the invalid provision.
7. Scope of this SAAF-2. The Parties acknowledge this SAAF-2 does not excuse any requirements placed upon them by the terms of the Kroger Settlement, except to the extent those terms allow for a State-Subdivision Agreement to do so.
8. No third party beneficiaries. No person or entity is intended to be a third party beneficiary of this SAAF-2.
9. No effect on authority of parties. Nothing in this SAAF-2 shall be construed to affect or constrain the authority of the Parties under law.
10. Signing and execution of this SAAF-2. This SAAF-2 may be signed and executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A signature transmitted by facsimile, electronic image, or DocuSign shall be deemed an original signature for purposes of executing this SAAF-2. Each person signing this SAAF-2 represents he or she is fully authorized to enter into the terms and conditions of, and to execute, this SAAF-2, and all necessary approvals and conditions precedent to execution have been satisfied.

IV. LOCAL COUNSEL FEE FUND

Local Counsel have reviewed the Kroger Settlement, find it to be equitable, and recommend their clients execute the Kroger Settlement and this SAAF-2. If (1) all Local Counsel sign this SAAF-2 whereby they consent to the terms of this SAAF-2 and agree to be legally bound by this SAAF-2, including but not limited to Section IV of this SAAF-2, and (2) all Required Local Governments agree on or before August 2, 2024 to execute the Kroger Settlement, and dismiss litigation against Kroger (if applicable), as required by the Kroger Settlement, then each Local Counsel shall be entitled to receive a portion of the Local Counsel Fee Fund for the Kroger Settlement, in such proportions as set forth below. If one or more Required Local Governments does not execute the Kroger Settlement, and dismiss litigation (if applicable), as required by the Kroger Settlement, then the 0.38% share of Kroger Funds set forth in Section III.B.2 of this SAAF-2 for the Local Counsel Fee Fund shall be included in the Local Kroger Abatement Funds, such that 85% of the Kroger Funds will be allocated to Local Kroger Abatement Funds, and 0% will be allocated to the Local Counsel Fee Fund.

Local Counsel release all North Carolina counties and municipalities from any claim regarding the obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against Kroger. Local Counsel retain their rights to recover legal fees from any national legal fee fund established by a national settlement and to collect any fees due from National Counsel. If one or more National Counsel fails to release its North Carolina client counties and/or municipalities from any contractual obligation to pay legal fees or costs relating to their representation of North Carolina counties and municipalities regarding opioid claims and litigation against Kroger, as required for National Counsel and Local Counsel to receive a portion of the national fee funds created by the Kroger Settlement, then the 0.38% share of Kroger Funds set forth in Section III.B.2 of this SAAF-2 for the Local Counsel Fee Fund shall be included in the Local Kroger Abatement Funds, such that 85% of the Kroger Funds will be allocated to Local Kroger Abatement Funds, and 0% will be allocated to the Local Counsel Fee Fund.

The proportion of the Local Counsel Fee Fund to be received by each Local Counsel will be the same as for the Local Counsel Fee Fund created by the SAAF. Each Local Counsel's release of claims against all North Carolina counties and municipalities as provided above shall remain in full force and effect regardless of the proportion of the Local Counsel Fee Fund that any Local Counsel receives.

FINAL BUT UNOFFICIAL TEXT – DO NOT SIGN THIS VERSION

IN WITNESS WHEREOF, the parties, through their duly authorized officers, have executed this Second Supplemental Agreement for Additional Funds under seal as of the date hereof.

By: _____
Name: _____
Title: _____
County/City/Town of _____
Date: _____

Commented [MD1]: DocuSign signature goes here

Commented [MD2]: Blanks to be completed through DocuSign process.

UNOFFICIAL