

**MONTANA DISTRIBUTORS' AND JANSSEN OPIOIDS
SETTLEMENT
SECOND AMENDED MEMORANDUM OF UNDERSTANDING**

(“MOU”)

WHEREAS the people of the State of Montana and its communities have been harmed by serious and substantial wrongdoing committed by certain entities within the Pharmaceutical Supply Chain; and,

WHEREAS the State of Montana, through the State’s Attorney’s Office of the Montana Attorney General, and certain litigating cities and counties, through their elected representatives and counsel, are separately engaged in litigation seeking to hold manufacturers, distributors, and others in the Pharmaceutical Supply Chain accountable for the harms caused by their wrongdoing; and,

WHEREAS the State of Montana and Montana’s cities and counties (hereafter Local Governments) share a common desire to abate and remediate the impacts of that wrongdoing throughout the State of Montana and to maximize the resources devoted to combatting the opioid crisis; and,

WHEREAS researchers and clinicians in Montana and elsewhere have now built a substantial body of evidence demonstrating which opioid abatement strategies work and which do not and there are public health leaders in the State and at the local level with expertise in addiction and substance use available to guide determinations for the use of any settlement funds; and,

WHEREAS the State of Montana recently agreed to join a settlement agreement process (hereafter Settlement Agreements) which, if finalized, will resolve litigation against certain specific defendants in the Pharmaceutical Supply Chain,

namely the opioid distributors McKesson Corporation, Cardinal Health, Inc., and Amerisource Bergen Corporation and also Janssen and the related entities listed in the Section I. 32 of the Janssen Settlement Agreement¹ for harms caused by their wrongdoing that require – with limited exception – that all settlement funds be used for forward-looking remediation and abatement of opioid associated harms; and

WHEREAS maximum monetary payments available to the State of Montana and its Local Governments depend upon maximum Local Government participation in the Settlement Agreements and in this Memorandum of Understanding (MOU);

NOW THEREFORE the State of Montana and its Local Governments, subject to completing any additional documents needed to effectuate their agreement, enter into this MOU for the allocation, management, and use of the proceeds of the Settlement Agreements: (a) to develop a fair and transparent process for making decisions based on medical and scientific evidence concerning where and how to spend the funds from the Settlement Agreements to effectuate forward-looking abatement strategies and to supplement rather than replace existing spending; (b) to establish a dedicated Montana Abatement Trust with representation that reflects the public health expertise and diversity of affected communities when allocating settlement funds that meets the requirements of Section V.E.2.d. of the Distributors’ Settlement Agreement and Section VI.E.2.d of the Janssen Settlement Agreement; and (c) to provide a framework for equitable distribution of funds from the Settlement Agreements among all participating Local Governments within the State of Montana

¹ “Janssen” means Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.

that agree to be bound by this MOU and forego pursuing separate litigation against any of the settling defendants named above.

I. DEFINITIONS

1. “The State” shall mean the State of Montana acting through the Attorney General.

2. “Participating Local Governments” shall mean any Montana county or city that has chosen to participate in this MOU and the Settlement Agreements, including execution of all documents required to effectuate the Settlement Agreements and this MOU.

3. “The Parties” shall mean the State of Montana and the Participating Local Governments.

4. “Settlement Agreements” shall mean the Distributor Settlement Agreement dated as of July 21, 2021, and the Janssen Settlement Agreement dated as of July 21, 2021.

5. “Settlement Funds” shall mean all monetary amounts obtained through the Settlement Agreements as defined herein, according to the allocation percentage to the State provided for in Section F of the Settlement Agreements, and as determined by the Settlement Fund Administrator.

6. The “Settlement Fund Administrator” shall mean the person or entity in I. MMM of the Definitions section of the Settlement Agreements chosen by the settling defendants and the national plaintiffs’ enforcement committee to determine the proper allocation of funds from the Settlement Agreements to each participating

state and to manage the distribution of the Settlement Funds to all participating states.

7. “Opioid Remediation” as defined or referenced in the Settlement Agreements shall include care, treatment, and other forward-looking programs and expenditures for Approved Purposes, including: to (1) address the misuse and abuse of prescription opioid products, (2) treat or mitigate opioid misuse or related disorders, or (3) mitigate other injuries or harms resulting from the overprescribing of opioids, including diversion and the misuse or abuse of Fentanyl or Fentanyl-containing products or substances. Opioid Remediation efforts shall involve evidence-based strategies, programming, and services used to: expand the availability of treatment for individuals affected by opioid use or polysubstance use disorders; develop, promote, and provide opioid-related or polysubstance use prevention strategies; provide opioid-related or polysubstance use avoidance and awareness education; decrease the oversupply of licit and illicit opioids, including Fentanyl or products or substances containing Fentanyl; support recovery through addiction services performed by qualified and appropriately licensed providers of persons suffering from opioid-related use disorder, polysubstance abuse, or chronic-pain patients and others who suffer from or are at substantial risk of opioid abuse or dependency; and support for law enforcements’ addressing the impact of opioid-related substance abuse in the communities they serve, including misuse or illicit use of heroin and/or Fentanyl. Exhibit E in the Settlements Agreements provides a

non-exhaustive list of expenditures that qualify as Opioid Remediation. Qualifying expenditures may include reasonably-related administrative expenses.

8. “Approved Purposes” shall mean forward-looking strategies, programming, and services to abate the opioid epidemic as identified by the terms of the Settlement Agreements.

II. FUND GOVERNANCE, ALLOCATION, AND DISBURSEMENT

A. Montana Subdivisions

9. Local disbursement of Opioid Settlement Funds shall take place through Abatement Regions. The Abatement Regions shall comprise nine Metropolitan Abatement Regions—consisting of the nine Montana counties with populations exceeding 30,000—and five Multi-County Abatement Regions—utilizing the five existing Health Planning Regions established by the Montana Department of Public Health and Human Services. *See Montana Abatement Regions Map, attached as Exhibit A.*

10. The Nine Metropolitan Regions having populations of 30,000 or more are Yellowstone, Missoula, Gallatin, Flathead, Cascade, Lewis & Clark, Silver Bow, Ravalli, and Lake Counties, provided they participate in this Agreement.

11. The Multi-County Abatement Regions derived from the five existing Montana Department of Health and Human Services Health Planning Regions exclude any local governments not participating in this MOU and the Settlement Agreements. The five Multi-County Abatement Regions also exclude the nine

Metropolitan Regions and all Local Governments within the nine Metropolitan Regions. *See Exhibit A.*

12. All the Metropolitan Regions that agree to the Settlement Agreements and this MOU as well as all the constituent Participating Local Governments comprising a Multi-County Abatement Region that have chosen to enter into this MOU and the Settlement Agreements shall be treated as Participating Abatement Regions. Any county or city listed in the MOU Abatement Region Allocation, attached as Exhibit B, within a Multi-County Region that does not enter into this MOU and the Settlement Agreements shall not be included in the Abatement Region where it is geographically located and shall not be entitled to receive any funds from the Settlement. Rather, the share(s) of the funds that a nonparticipating city or county would be allocated according to Exhibit B shall instead be allocated to the Abatement Trust.

B. Allocation of Funds between State Government and Subdivisions

13. According to the terms of the Settlement Agreements, the State of Montana and the Local Governments will receive the maximum amount of funds available under the Settlement Agreements if all agree to participate in the settlement process.

14. Of the total funds paid to the State of Montana under the Settlement Agreements:

- a. fifteen percent (15%) shall be direct-deposited into the State of Montana Opioid Remediation Fund;

- b. seventy percent (70%) shall be direct-deposited into the Abatement Trust; and
- c. fifteen percent (15%) shall be direct-deposited into the Local Government Fund.

C. The Montana State Opioid Remediation Fund

15. The Settlement Funds allocated to the Montana State Opioid Remediation Fund shall be used by the State for Approved Purposes as determined by a separate committee made up of three representatives from the Attorney General and two representatives from the Montana Department of Health and Human Services.

D. The Abatement Trust

i. Trust Governance & Management

16. The Attorney General shall create a private, non-profit Abatement Trust (“Abatement Trust”). The Attorney General will appoint an Abatement Trust Operating Board (“ATOB”) to manage the Settlement Funds paid into the Abatement Trust. Management shall include determining investment strategy for the Settlement Funds received in the Abatement Trust and determining on an annual basis the amount of funds that will be disbursed by the Advisory Committee. Funds shall be disbursed solely for Approved Purposes. All earnings on the invested Trust funds shall be used for statewide Opioid Remediation programs and Approved Purposes. The ATOB shall be composed of seven members. The ATOB may also

propose Opioid Remediation projects to the Advisory Committee. The Executive Director of the Advisory Committee shall serve in the same capacity for the ATOB.

ii. The Advisory Committee and the Disbursement of Funds

17. The Attorney General shall also create an Advisory Committee, as required by the Settlement Agreements, for the purpose of disbursing Settlement Funds allocated to the Abatement Trust to participating Abatement Regions and the State of Montana for Opioid Remediation and Approved Purposes.

18. The Advisory Committee shall consist of ten voting members and an Executive Director appointed by the Attorney General who is an *ex officio* member of the Advisory Committee and will vote only in the event of a tie.

19. The ten voting members of the Advisory Committee shall provide equal representation between the State and local governments as follows: three members chosen by the Metropolitan Regions, two members chosen by the Multi-County Regions, two members chosen by the Director of the Department of Health and Human Services (DPHHS), and three members chosen by the Attorney General.

20. At least one of the ten members of the Committee shall be a law-enforcement representative from the Montana Department of Justice's Division of Criminal Investigation and/or Montana Highway Patrol (MHP). One of the ten members of the Advisory Committee may be, but is not required to be, a family member of a person who had or has suffered from opioid use disorder. All other Committee members must come from the fields of medicine, public health, mental health, addiction, or public safety.

21. Committee terms will be three years and initially staggered. Committee members may serve more than one term. In the first year, two members from the Metropolitan Regions and one member from the Multi-County Regions will have a one-year term, one member representing DPHHS and one member representing the Attorney General will have two-year terms, and the remaining members will have three-year terms. In the event a Committee member vacates the position before the expiration of his or her term, a replacement shall be appointed by the same authority that appointed the vacating member, and the replacement shall serve the remainder of the vacating member's term. Six members of the Committee shall constitute a quorum. Unless the Committee determines otherwise, the Metropolitan and Multi-County Abatement Regions shall determine for themselves how to choose their member representatives. No Committee member shall receive compensation but may be reimbursed for reasonable costs expended for work on the Committee.

22. To provide for health security and reduce expense, members of the Committee shall participate in meetings by telephone or video conference at least every three months, except, if feasible, one annual in-person meeting per year shall be set by consensus of the Committee. If a member of the Committee is unable to attend in-person or remotely, s/he may designate a proxy. A quorum exists if six members are voting in-person, remotely, or by proxy.

23. In all votes of the Committee, a measure shall pass if a quorum is present and the measure receives the affirmative votes from a majority of those Committee members voting. The Executive Director may vote to break a tie.

24. The Attorney General shall appoint the Executive Director at his/her discretion from a list of three candidates provided to the Attorney General by the Committee. If the Attorney General finds all three candidates to be unsatisfactory, the Attorney General may reject all three candidates and request that the Committee provide three new persons to select from.

25. In choosing candidates to be submitted to the Attorney General, with the exception of the one member who is a family member of a victim of the opioid crisis, if applicable, and representative(s) from DCI and/or MHP, the Committee shall seek candidates with at least six years of experience in issues related to addiction, mental health, public health, public safety, or public administration and who have management experience in those fields.

26. The Attorney General shall set a date for the first in-person meeting of the Committee and shall designate an Interim Executive Director to conduct the meeting and other scheduled meetings until a permanent Executive Director can be named.

27. At the first meeting, the Committee shall develop written guidelines for receiving input from the State of Montana, Abatement Regions, Local Governments, communities, or other groups or individuals regarding how the opioid crisis is affecting their jurisdictions or communities, and their respective abatement needs. These written guidelines shall provide procedures for Regions, Local Governments, communities, or other groups or individuals to develop and submit proposals for distribution of funds from the Abatement Trust.

28. The Committee shall draft its own bylaws or other governing documents, which must include appropriate conflict of interest and dispute resolution provisions, in accordance with the terms of this MOU and Montana law. It shall not have rulemaking authority under Montana law. The Committee shall draft and finalize necessary bylaws, procedures and other governing documents with the goal of minimizing red tape and maximizing the efficient flow of funds to abate the opioid problem.

29. The Committee shall be responsible for the accounting of all Opioid Funds it distributes. The Committee shall be responsible for disbursing Opioid Funds in accordance with Approved Purposes, the Settlement Agreements, and this MOU and shall develop policies and procedures for the release and oversight of such funds.

30. The Committee may also require outcome-related data from any Party or Local Government that receives Opioid Funds and may publish such outcome-related data. In determining which outcome-related data may be required, the Committee shall work with all Parties, Regions, and Local Governments to identify appropriate data sets and develop reasonable procedures for collecting such data sets so that the administrative burden does not outweigh the benefit of producing such outcome-related data.

31. The Committee shall facilitate collaboration between the State, Regions, and Participating Local Governments regarding sharing information related to abating the opioid crisis in Montana.

32. The State of Montana, by and through the Attorney General, shall be designated the primary point of contact for Montana's communications with the Settlement Fund Administrator.

iii. Disbursement & Allocation of Abatement Trust Funds

33. Of the amount apportioned to the Abatement Trust for Opioid Remediation as outlined in 3(b) above, eighty percent (80%) shall be allocated to the Participating Abatement Regions. For purposes of disbursing this 80% of abatement Trust Proceeds, when considering and approving program proposals the Advisory Committee should:

- a. ensure that aggregate spending across all proposals for a given Abatement Region does not exceed that Abatement Region's allotment under Exhibit B; and
- b. for the Multi-county Regions, ensure that programs will benefit the entire Abatement Region in a fair and equitable manner rather than being solely concentrated in one or a few counties in the Abatement Region.

The allocation of 80% of the Abatement Trust to the Participating Abatement Regions, however, does not change the calculation of attorneys' fees for Outside Counsel for Local Governments described in Section E below. That calculation, which is set forth in the Settlement Agreements Exhibit R, is based on dividing and allocating the total settlement funds received by the State, half to the State and half to Local Governments. Attorneys' fees are then calculated by multiplying the Local

Governments' funds by the allocation percentage in Exhibit B to determine the total amount allocated to their respective Local Governments, upon which the attorneys' fees are based.

34. Participating Abatement Regions may collaborate with other Participating Abatement Regions to submit joint proposals to be paid for from the Regional Shares of two or more Participating Abatement Regions for the use of those Regions.

35. Funds from the Abatement Trust may also be expended by the Trust for statewide programs, innovation, research, and education. Any statewide programs funded from the Trust would be only as directed by an affirmative majority vote of the Committee. Expenditures for these purposes may also be funded by the Trust with funds received from either the State of Montana's share (as directed by the Attorney General in consultation with DPHHS) or from sources other than Opioid Settlement Funds as provided for below.

36. Disbursements for proposed Opioid Remediation programs and services to Participating Abatement Regions shall be reviewed by the Committee to determine whether the proposed disbursements meet the criteria for Opioid Remediation and Approved Purposes. The Committee is advisory and intended to be available to provide professional advice to Abatement Regions when requested. It may not deny a proposal for distribution of funds from a Region or Local Government, provided the proposal identifies Approved Purposes for which the funds will be expended as defined and provided for in the Settlement Agreements and this MOU. The

Committee's responsibility to review proposals shall be limited to confirmation that the proposal identifies Approved Purposes for which the funds will be expended.

E. The Local Government Fund

37. Amounts apportioned to the Local Government Fund shall be allocated to Participating Local Governments included on Exhibit B per the Subdivision or Local Government Allocation Percentage listed in Exhibit B, in a manner consistent with the following paragraph. No Non-Participating Local Government will receive any amount from the Settlement Funds allocated to the State of Montana, regardless of whether such Local Government is included on Exhibit B.

38. Each Abatement Region shall create its own governance structure for the administration, management, and disbursement of Opioid Remediation funds from the Local Government. The Abatement Region governance structures should ensure all Participating Local Governments within that Region have input and equitable representation regarding regional Opioid Remediation administration and decisions, selection of projects to be funded from the Region's share of the Local Government Fund, and representation on the Abatement Trust's Advisory Committee. That governance structure shall include designation of a fiscal agent within the Region to receive and distribute Settlement Funds allocated to it.

39. All Participating Abatement Regions shall have the responsibility to make decisions about planning, budgeting, and disbursement of funds from the Local Government Fund for projects that will equitably and appropriately serve the needs of the entire Region for appropriate Opioid Remediation and Approved Purposes.

F. Transparency Obligations

40. All decisionmaking about the Settlement Funds shall be guided by the recognition that budgeting for operating expenditures should be conservative and carefully limited to ensure that the maximum funds are preserved for Opioid Remediation and Approved Purposes. In recognition of these core principles, funds will be disbursed to support evidence-based Opioid Remediation for opioid-related substance abuse/misuse abatement, education, and prevention efforts as described in detail in this MOU and the Settlement Agreements.

41. The Advisory Committee shall operate in a transparent manner. Meetings shall follow Montana constitutional and statutory law and be open and all documents shall be public to the same extent they would be if the Trust were a public, governmental entity. All operations of the Committee and all entities receiving Trust Funds shall, at the request of any of the parties to this agreement, be subject to audit with respect to the receipt and use of such funds. The Advisory Committee (or ATOB?) shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities. The Advisory Committee shall also adopt rules governing audits, including the frequency with which an entity may be subjected to audit. Audits shall be conducted by an independent, third-party auditor agreed to by the parties. The bylaws of the Trust regarding governance of the Committee, as adopted by the Committee, may clarify any other provisions in this MOU.

42. Eighty-five percent (85%) of the total funds obtained pursuant to the Distributors' Settlement Agreement and eighty-six and one-half percent (86.5%) of the funds obtained pursuant to the Janssen Settlement Agreement must be spent directly on Opioid Remediation. The remaining funds may be spent on overhead costs, but such expenditures must be reported to the Settlement Fund Administrator as required in Section V.B.2 of the Distributors' Settlement Agreement and Section VI.B.2 of the Janssen Settlement Agreement.

III. ATTORNEYS' FEES AND COSTS

43. The Settlement Agreements each provide very substantial separate funds for payment of fees for both outside counsel for litigating local governments and outside counsel for litigating states such as Montana. If any Settlement is insufficient to cover the fee obligations owed to outside counsel representing the State of Montana and to outside counsel representing Local Governments (collectively, "Outside Counsel"), the deficiencies may be covered as set forth in further detail below.

44. Regarding attorneys' fees for local governments that filed suit, United States District Judge Dan Polster who is responsible for the MultiDistrict Litigation (MDL 2804) *IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION*, on August 6, 2021 (Docket No. 3804) notified:

... all eligible participants to the July 21, 2021 Settlement Agreements, and ... their private counsel, that a contingent fee in excess of 15% of the participant's award under the Settlement Agreements is presumptively

unreasonable. Accordingly, the Court caps all applicable contingent fee agreements at 15%.

45. As such, total attorney fees to outside counsel collected from the Settlement Agreement attorney fee funds and the Montana Back Stop shall be capped at a 15% contingency fee of the amount allocated to their respective governmental entities.

46. Fees claimed and collected for common benefit work under the Settlement Agreements shall be calculated pursuant to the specific requirements of Exhibit R to the Settlement Agreements and shall not be utilized to reduce fees otherwise recoverable from the Montana Attorney Fee Back Stop Fund.

47. The State of Montana and Litigating Local Governments shall first seek to have their attorneys' fees and expenses paid through the attorneys' fee funds created by the Settlement Agreements. The Local Governments litigating in the MDL proceeding in the Northern District of Ohio, the Honorable Judge Dan Polster presiding, shall endeavor to obtain the maximum recovery from the Settlement Agreements attorney fee fund. In addition, as a means of covering any deficiencies in paying Outside Counsel, a supplemental Montana Attorney Fee Back-Stop Fund shall be established.

48. The Montana Attorney Fee Back-Stop Fund shall be funded by 5.5% of the total settlement funds paid to the State of Montana. Fifty percent (50%) of the Montana Attorney Fee Back-Stop Fund shall be allocated to the Montana Attorney General's Back-Stop Sub-fund and fifty percent (50%) to the Litigating Local

Government Attorney Fee Back Stop Sub-Fund. The Attorney General's Fund shall be used in the Attorney General's sole discretion to (a) reimburse the State of Montana for opioid-related investigations and litigation costs; (b) offset the costs of the legal and administrative burdens imposed upon the Attorney General's Office by the Settlement Agreements as well as future settlements or disbursements by bankruptcy courts; and (3) for approved remediation or abatement purposes including, without limitation, the development of plans or project whereby the State of Montana and the Local Governments may pool their respective recoveries and resources to fund efficient and effective statewide or regional abatement programs or strategies.

The remaining Fifty percent (50%) of the Montana Attorney Fee Back-Stop Fund shall be allocated to the Montana Litigating Local Government's Attorney Fee Back-Stop Sub-fund for payment of Outside Counsel attorney's fees incurred by Participating Local Governments. Fees for Outside Counsel for Montana Litigating Local Governments shall be based on the recovery to their clients under the percentages in Exhibit B. For purposes of determining attorney's fees, the calculation of the total amount that a Local Government recovers will include the Local Government Fund plus that Local Government's share of the eighty percent (80%) portion of the Abatement Trust Fund described in paragraph 51, according to the percentages in Exhibit B.

49. Subject to the 15% cap, above, Outside Counsel for Litigating Local Governments may apply to the Montana Attorney Fee Back-Stop Fund for only a

shortfall, that is, the difference between what their fee agreements would entitle them to minus what they have already collected from any contingency fee fund created pursuant to the Settlement Agreements. Payments out of the Montana Litigating Local Governments' Attorney Fee Back-Stop Sub-fund shall be fairly allocated by a neutral committee consisting of one representative from each Litigating Local Government.

50. Any funds remaining in the Montana Litigating Local Governments' Attorney Fee Back-Stop Sub-fund in excess of the amounts needed to cover the fees and litigation expenses to Outside Counsel for Litigating Local Governments shall revert to the allocations described in Section (D).

51. Payments to Outside Counsel shall be made from the Montana Attorney Fee Back-Stop Fund in the same percentages and over the same period of time as the national Contingency Fee Fund for each settlement. The Attorneys' Fees and Costs schedule for the Settling Distributors is listed in the Exhibit R §(II)(A)(1) of the Distributor Settlement Agreement. The Attorneys' Fees and Costs schedule for Janssen is listed in Exhibit R §(II)(A)(1) of the Janssen Settlement Agreement.

IV. MISCELLANEOUS PROVISIONS

52. Any other matter concerning the allocation, management, and use of Settlement Funds from the Settlement Agreements not covered by this MOU, shall be controlled by the terms of the Settlement Agreements.

53. This Second Amended MOU shall supersede both the original MOU, dated November 26, 2021, and the Amendment to the MOU dated January 27, 2022.

DATED this 19th day of April, 2022.

MONTANA ATTORNEY GENERAL

A handwritten signature in blue ink, appearing to read "Austin Knudsen".

Austin Knudsen
Montana Attorney General

SIGNATURE PAGE

Governmental Entity: _____

Authorized Official: _____

Address 1: _____

Address 2: _____

City, State, Zip: _____

Phone: _____

Email: _____

The Governmental Entity identified above, in order to obtain an in consideration for the benefits provided to the Governmental Entity pursuant to the Distributors' and Janssen Settlements dated July 21, 2021, acting through its Authorized Official, hereby agrees to the Second Amended Memorandum of Understanding.

Signed this __ day of _____, 2022

Signature: _____

Title: _____