

COMMONWEALTH OF KENTUCKY
BULLITT CIRCUIT COURT
DIVISION ONE
NO. 24-CI-00154

COMMONWEALTH OF KENTUCKY, *ex rel.*,
RUSSELL COLEMAN, ATTORNEY GENERAL,

Plaintiff

v.

THE KROGER CO.,
KROGER LIMITED PARTNERSHIP I, and
KROGER LIMITED PARTNERSHIP II,

Defendants.

**COVER SHEET TO FINAL CONSENT JUDGMENT
AND DISMISSAL WITH PREJUDICE**

The Final Consent Judgment and Dismissal with Prejudice attached hereto has been agreed to by the Commonwealth of Kentucky, *ex rel.*, Russell Coleman, Attorney General (“Commonwealth”) and The Kroger Co., Kroger Limited Partnership I, and Kroger Limited Partnership II (collectively, “Kroger”). The Commonwealth and Kroger request that the Court enter the attached Final Consent Judgment and Dismissal with Prejudice.

WHEREFORE, the Court being well and sufficiently advised in the premises, and the Court having jurisdiction and venue for the purposes of entering and enforcing this judgment, the Final Consent Judgment and Dismissal with Prejudice attached hereto is hereby approved and the above-referenced Civil Action is dismissed with prejudice.

The Office of the Attorney General shall receive fifteen percent (15%) of each payment referenced in KRS 15.293(3)(a) as its reasonable costs of investigation and litigation per KRS 48.005.

Judge, Bullitt Circuit Court
Division One

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Plaintiff

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THE KROGER CO.,
KROGER LIMITED PARTNERSHIP I, and
KROGER LIMITED PARTNERSHIP II,

Defendants.

FINAL CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE

The Commonwealth of Kentucky (“*Commonwealth*”) and The Kroger Co., Kroger Limited Partnership I, and Kroger Limited Partnership II (collectively, “*Kroger*”) (together with the Commonwealth, the “*Parties*,” and each a “*Party*”) have entered into a consensual resolution of the above-captioned litigation (the “*Action*”) pursuant to a settlement agreement dated October 31, 2024 (the “*Agreement*”), a copy of which is attached hereto as Exhibit A. The Agreement shall become effective by its terms upon the entry of this Final Consent Judgment (the “*Consent Judgment*”) by the Court without trial or adjudication of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

RECITALS:

1. Each Party warrants and represents that it engaged in arm’s-length negotiations in good faith. In hereby executing the Agreement, the Parties intend to effect a good-faith settlement.
2. The Commonwealth, acting through the Attorney General, has determined that the Agreement and entry of this Consent Judgment is in the public interest.

3. Kroger denies the allegations against it and denies that it has any liability whatsoever to the Commonwealth, its Subdivisions, and/or (a) any of the Commonwealth's or its Subdivisions' departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts in the Commonwealth, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public. Kroger is entering into this Consent Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, regulation, or ordinance, or of any other matter of fact or law, or of any fault, liability, or wrongdoing, all of which Kroger denies.

4. The Parties recognize that the outcome of the Action is uncertain and a final resolution through the adversarial process likely would require protracted litigation.

5. The Parties agree to the entry of the injunctive relief terms attached as Exhibit P to the Agreement.

6. Therefore, without any admission of liability or wrongdoing by Kroger or any other Released Entities (as defined in the Agreement), and without this Consent Judgment constituting evidence against or admission by anyone with respect to any issue of fact or law, the Parties now mutually consent to the entry of this Consent Judgment and agree to dismissal of the claims with

prejudice pursuant to the terms of the Agreement to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

In consideration of the mutual promises, terms, and conditions set forth in the Agreement, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and between Kroger and the Commonwealth, and adjudicated by the Court, as follows:

1. The foregoing Recitals are incorporated herein and constitute an express term of this Consent Judgment.

2. The Parties have entered into a full and final settlement of all Released Claims of Releasers (including but not limited to the Commonwealth) against Kroger and the Released Entities pursuant to the terms and conditions set forth in the Agreement. This Consent Judgment summarizes and gives effect to those terms. In the event of a conflict between the terms of the Agreement (including its exhibits) and language in this Consent Judgment, the terms of the Agreement shall govern. Nothing in this summary document shall have the effect of expanding, diminishing, explaining, or otherwise modifying any term of the Agreement.

3. The “Definitions” set forth in Section II of the Agreement are incorporated by reference into this Consent Judgment. Unless otherwise defined herein, capitalized terms in this Consent Judgment shall have the same meaning given to them in the Agreement.

4. The Parties agree that the Court has jurisdiction over the subject matter of the Action and over the Parties with respect to the Action and this Consent Judgment. This Consent Judgment shall not constitute and shall not be construed or used as a waiver of any jurisdictional defense Kroger or any other Released Entity may raise in any other proceeding.

5. The Court finds that the Agreement was entered into in good faith and is in the public interest, and that entry of this Consent Judgment is in the public interest. By this Consent Judgment, the Agreement is hereby approved by the Court.

6. The Commonwealth's remaining Claims against Kroger as laid out in the Complaint filed February 12, 2024, not previously dismissed, are hereby DISMISSED WITH PREJUDICE, subject to a retention of jurisdiction by the Court as provided herein and in the Agreement.

7. The Court shall have authority to resolve disputes identified in Section VIII of the Agreement, governed by the rules and procedures of the Court.

8. The Parties have satisfied the Condition set forth in Section III.A of the Agreement and the Release set forth in Section III.B of the Agreement, as follows:

- a. The Attorney General of the Commonwealth exercised the fullest extent of his powers to release Kroger and all other Released Entities from all Released Claims pursuant to the Agreement.
- b. Kroger has determined to proceed with the Agreement.
- c. Pursuant to KRS 15.29(4)(d) each county, consolidated local government, urban county government, city, political subdivision, and public agency, as that term is defined in KRS 61.805(2), of the Commonwealth is by operation of law deemed to have released its claims for Covered Conduct against Kroger and its affiliates and subsidiaries to the extent referenced in the Agreement and this Consent Judgment. Pursuant to this statute, any Litigating Subdivision in the Commonwealth must dismiss with prejudice any Released Claims that it has filed against Kroger or any of the Released Entities. A list of these Litigating Subdivisions as of the date of this Agreement is attached as Exhibit B.

9. Release. The Parties acknowledge that the release provision in Section III of the Agreement, which is incorporated by reference herein, is an integral part of this Consent Judgment. Pursuant to the Agreement and without limitation and to the maximum extent of the power of the Commonwealth's Attorney General, Kroger and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (a) the Commonwealth and its

Subdivisions and any of their departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including the Commonwealth's Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing, and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts in the Commonwealth, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the Commonwealth or any Subdivision in the Commonwealth, whether or not any of them participate in the Agreement. Pursuant to the Agreement and the AG Release and to the maximum extent of the Commonwealth's power, Kroger and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (1) the Commonwealth, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, and (3) any of the Commonwealth's past and present executive departments, agencies, divisions, boards, commissions, and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation or suspension of a pharmaceutical distribution or dispensing license. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the Commonwealth's Governor. Further, the provisions set forth in Section III of the Agreement are incorporated by reference into this Consent Judgment as if fully set forth herein. The Parties acknowledge, and the Court finds, that those provisions are an integral

part of the Agreement and this Consent Judgment, and shall govern the rights and obligations of all participants in the settlement, including without limitation the Commonwealth, Kroger and the Released Entities.

10. Release of Unknown Claims. The Commonwealth (for itself and its Releasors) expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

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

The Commonwealth may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the Commonwealth (for itself and its Releasors) expressly waived and fully, finally, and forever settled, released and discharged, through the Agreement, any and all Released Claims that may exist as of the Effective Date but which the Commonwealth does not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would have materially affected the Commonwealth's decision to enter into the Agreement.

11. The Court finds that the releases are given in good faith and are effective as to all Releasors and Released Entities.

12. Pursuant to KRS 15.293(4)(d), each county, consolidated local government, urban county government, city, political subdivision, and public agency, as that term is defined in KRS 61.805(2), of the Commonwealth is by operation of law deemed to have released its claims against

Kroger and its affiliates and subsidiaries to the extent referenced in the Agreement and this Judgment.

13. Costs and Fees. The Parties will bear their own costs and attorneys' fees except as otherwise provided in the Agreement.

14. No Admission of Liability. Kroger is consenting to this Consent Judgment solely for the purpose of effectuating the Agreement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Kroger expressly denies. Neither Kroger nor any other Released Entity admits that it caused or contributed to any public nuisance, and neither Kroger nor any other Released Entity admits any wrongdoing that was or could have been alleged by the Commonwealth, its Subdivisions, or any other person or entity. No part of this Consent Judgment shall constitute evidence of any liability, fault, or wrongdoing by Kroger or any other Released Entity. The Parties acknowledge that payments made under the Agreement are not a fine, penalty, or payment in lieu thereof and are properly characterized as described in Section IX.D of the Agreement.

15. No Waiver. This Consent Judgment is entered based on the Agreement without trial or adjudication of any contested issue of fact or law or finding of liability of any kind. This Consent Judgment shall not be construed or used as a waiver of Kroger's right, or any other Released Entity's right, to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims or suits relating to the subject matter or terms of this Consent Judgment. Notwithstanding the foregoing, the Commonwealth may enforce the terms of this Consent Judgment as expressly provided in the Agreement.

16. No Private Right of Action. This Consent Judgment is not for use by any third party for any purpose, including submission to any court for any purpose, except Subdivisions for the limited purposes set forth in Section VII.B of the Agreement. Except as expressly provided in the Agreement, no portion of the Agreement or this Consent Judgment shall provide any rights to, or be enforceable by, any person or entity other than the Commonwealth or Released Entity. The Commonwealth shall allow Subdivisions in the Commonwealth to notify it of any perceived violations of the Agreement or this Consent Judgment. The Commonwealth may not assign or otherwise convey any right to enforce any provision of the Agreement.

17. Admissibility. This Consent Judgment shall not be admissible in any other case against Kroger or any other Released Entity. This Consent Judgment shall not be binding on Kroger or any other Released Entity in any respect other than in connection with the enforcement of this Consent Judgment or the Agreement in the Commonwealth. For the avoidance of doubt, nothing herein shall prohibit Kroger or any other Released Entity from entering this Consent Judgment or the Agreement into evidence in any litigation or arbitration concerning (1) Kroger's right to coverage under an insurance contract or (2) the enforcement of the releases provided for by the Agreement and this Consent Judgment.

18. Preservation of Privilege. Nothing contained in the Agreement or this Consent Judgment, and no act required to be performed pursuant to the Agreement or this Consent Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, patient-safety work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

19. Mutual Interpretation. The Parties agree and stipulate that the Agreement was negotiated on an arm’s-length basis between parties of equal bargaining power and was drafted jointly by counsel for each Party. Accordingly, the Agreement is incorporated herein by reference and shall be mutually interpreted and not construed in favor of or against any Party.

20. Retention of Jurisdiction. The Court shall retain jurisdiction over the Parties for the limited purpose of the resolution of disputes identified in Section VIII of the Agreement. The Court shall have jurisdiction over Subdivisions in the Commonwealth for the limited purposes identified in the Agreement.

21. Successors and Assigns. This Consent Judgment is binding on Kroger’s successors and assigns.

22. Modification. This Consent Judgment shall not be modified (by the Court, by any other court, or by any other means) without the consent of the Commonwealth and Kroger and without the approval of the Court. Modification of the Agreement shall be governed by Section IX.L of the Agreement.

So ORDERED this ____ day of _____, 2025.

Enter:

By Order:

APPROVED, AGREED TO AND PRESENTED BY:

<p>RUSSELL COLEMAN ATTORNEY GENERAL</p> <p>By Counsel,</p> <p><u>/s/ J. Christian Lewis</u> Justin Clark (KY Bar No. 89313) J. Christian Lewis (KY Bar No. 87109) Stephen B. Humphress (KY Bar No. 84880) J. Christopher Bowlin (KY Bar No. 90479) Office of the Kentucky Attorney General 700 Capital Avenue, Suite 118 Frankfort, Kentucky 40601 justind.clark@ky.gov christian.lewis@ky.gov steve.humphress@ky.gov christopher.bowlin@ky.gov Tel: (502) 696-5300 Fax: (502) 573-8317</p> <p><u>/s/ Brendan Austin</u> Linda Singer (Admitted Pro Hac Vice) Mimi Liu (Admitted Pro Hac Vice) Elizabeth Smith (Admitted Pro Hac Vice) David I. Ackerman (Admitted Pro Hac Vice) Brendan Austin (Admitted Pro Hac Vice) MOTLEY RICE LLC 401 9th Street NW, Suite 630 Washington, DC 20004 lsinger@motleyrice.com mliu@motleyrice.com esmith@motleyrice.com dackerman@motleyrice.com baustin@motleyrice.com Tel: (202) 232-5504 Fax: (202) 386-9622</p> <p>Danielle Reesor Blandford, Esq. (KY Bar No. 94957) MORGAN & MORGAN 1219 S. Hurstbourne Pkwy Louisville, KY 40223 dblandford@forthepeople.com Tel: (502) 912-5952 Fax (direct): (502) 912-6451</p>	<p>THE KROGER CO., KROGER LIMITED PARTNERSHIP I, and KROGER LIMITED PARTNERSHIP II,</p> <p>By Counsel,</p> <p><u>/s/ S. Chad Meredith (with permission)</u> S. Chad Meredith (KY Bar No. 92138) SQUIRE PATTON BOGGS (US) LLP 201 E. Fourth St., Suite 1900 Cincinnati, Ohio 45202 Tel: (513) 631-1200 Fax: (513) 361-1201 chad.meredith@squirepb.com</p> <p>Ronda L. Harvey (Admitted Pro Hac Vice) Ashley Hardesty Odell (Admitted Pro Hac Vice) Steptoe & Johnson PLLC 707 Virginia Street, East Charleston, WV 25301 Tel: (304) 353-8160 Fax: (304) 598-8150 ronda.harvey@steptoe-johnson.com ashley.odell@steptoe-johnson.com</p>
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EXHIBIT A

**Kroger-Kentucky State-Wide Opioid
Settlement Agreement**

I. Overview

This Settlement Agreement dated as of October 31, 2024 sets forth the terms and conditions of a settlement between and among the Commonwealth of Kentucky (defined herein) and Kroger (defined herein) (collectively, “the Parties”) to resolve opioid-related Claims (defined herein) against Kroger.

Kroger has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Kroger expressly denies. No part of this Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Kroger. Unless the contrary is expressly stated, this Agreement is not intended for use by any third party for any purpose, including submission to any court for any purpose. Nothing in this paragraph limits the ability of the Parties to submit this Agreement to the Court in connection with any effort to enforce this Agreement.

This Agreement resolves as to Kroger, among other things, the lawsuit captioned *Kentucky v. the Kroger Co. et al.*, Case No. 24-CI-00154 (the “Kentucky AG Action”), and, through its terms and conditions and by operation of KRS §15.293, actions brought and/or Claims possessed by Subdivisions in Kentucky. As part of this Agreement, the Commonwealth of Kentucky agrees to dismiss from the Kentucky AG Action with prejudice all claims relating to Covered Conduct, including the distribution of opioids.

II. Definitions

A. Any capitalized term not otherwise defined herein shall have the definition as provided in Kroger’s Multistate Settlement, attached hereto as Appendix A.

B. “Settlement Amount” means the settlement amount paid to Kentucky as described in Section IV.A.

C. “Agreement” and “Settlement Agreement” and “Settlement” refer to this settlement agreement.

D. “Commonwealth” and “Kentucky” refer to the Commonwealth of Kentucky, acting by and through its Attorney General.

E. “Counsel” means a solo practitioner, multi-attorney law firm, or other legal representative of the Commonwealth or a Subdivision in the Commonwealth.

F. The “Court” shall refer to the Bullitt County Circuit Court in Kentucky.

G. “Covered Conduct” means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement,

misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the date of this Agreement (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) relating in any way to (1) compounding, counseling and documentation relating to any Product or class of Products (2) the discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to, any Product, or any system, plan, policy or advocacy relating to any Product or class of Products, including, but not limited to, any unbranded promotion, marketing, programs, or campaigns relating to any Product or class of Products; (3) the characteristics, properties, risks, or benefits of any Product; (4) the reporting, disclosure, non-reporting or nondisclosure to federal, state or other regulators of orders placed with any Released Entity; or (5) diversion control programs or suspicious order monitoring.

H. “Execution Date” means the date on which this Agreement is executed by the last Party to do so.

I. “Initial Payment Date” means, with respect to this Agreement, the date on which Kroger makes the Initial Payment as described in Section IV.B.

J. “Initial Payment” means the payment to be made by Kroger to Kentucky pursuant to Section IV.B of this Agreement.

K. “Kroger” means The Kroger Co. For the avoidance of doubt, this definition shall not in any way limit the definition of Released Entities.

L. “Kroger’s Multistate Settlement” and “Kroger’s Multistate Settlement Agreement” mean the settlement agreement dated as of March 22, 2024 between and among the Settling States, Participating Subdivisions, and Kroger.

M. “Multistate Effective Date” means the date on which Kroger’s Multistate Settlement becomes Effective, as that term is defined in Kroger’s Multistate Settlement.

N. “Product” means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is: (1) an opioid or opiate, as well as any product containing any such substance; or (2) benzodiazepine, carisoprodol, or gabapentin; or (3) a combination or "cocktail" of chemical substances prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. “Product” shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, diazepam, estazolam, quazepam, alprazolam, clonazepam, oxazepam, flurazepam, triazolam, temazepam, midazolam, carisoprodol, gabapentin, or any variant of these substances or any similar substance. Notwithstanding the foregoing, nothing in this section prohibits a Settling State from taking administrative or regulatory action related to benzodiazepine (including, but not limited to, diazepam, estazolam, quazepam, alprazolam,

clonazepam, oxazepam, flurazepam, triazolam, temazepam, and midazolam), carisoprodol, or gabapentin that is wholly independent from the use of such drugs in combination with opioids, provided such action does not seek money (including abatement and/or remediation) for conduct prior to the date of this Agreement.

O. “Released Claims” means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the date of this Agreement. Without limiting the foregoing, Released Claims include any Claims that have been asserted against Released Entities, by the Commonwealth of Kentucky or any Kentucky subdivision in any federal, state, or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of, or relating to, in whole or in part, the Covered Conduct, or any such Claims that could be or could have been asserted prior to the date of this Agreement by the Commonwealth of Kentucky or any Kentucky subdivision (whether or not such action or proceeding was filed). The Parties intend that this term, “Released Claims,” be interpreted broadly. This Agreement does not release Claims by private individuals. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law.

P. “Released Entities” means with respect only to Released Claims, Kroger and (1) all past and present subsidiaries, divisions, predecessors, successors, and assigns (in each case, whether direct or indirect) of Kroger; (2) all past and present subsidiaries and divisions (in each case, whether direct or indirect) of any entity described in subsection (1); (3) the respective past and present officers, directors, members, trustees, and employees of any of the foregoing (each for actions that occurred during and related to their work for, or employment with, any of Kroger or the foregoing entities); (4) all past and present joint ventures (whether direct or indirect) of Kroger or its subsidiaries, including in any subsidiary’s capacity as a participating member in such joint venture; (5) all direct or indirect parents and shareholders of Kroger (solely in their capacity as parents or shareholders of Kroger with respect to Covered Conduct); and (6) any insurer of Kroger or any person or entity otherwise described in subsections (1)-(5) (solely in its role as insurer of such person or entity). Notwithstanding any other provision of this Agreement, Albertsons Companies, Inc. (and its joint ventures, subsidiaries, divisions, and affiliates, and the predecessors, successors, assigns, and agents of Albertsons Companies, Inc., its joint ventures, subsidiaries, divisions, and affiliates) is not a Released Entity and will not become a Released Entity if acquired by Kroger. Any other entity acquired, or joint venture entered into, by Kroger after the date of this Agreement is not a Released Entity.

III. Consideration To Be Provided by Kentucky

A. Conditional on Kroger’s Multistate Settlement Becoming Effective. This Agreement is contingent on Kroger’s Multistate Settlement becoming Effective. If, for any reason, the Multistate Effective Date does not occur by January 31, 2025, or such later date as may be agreed to by Kroger and Kentucky, or if Kroger’s Multistate Settlement is otherwise abandoned in writing by the Parties thereto prior to January 31, 2025, this Agreement shall be null and void.

B. Released Claims. Kentucky agrees to execute all releases with respect to the Released Claims and the Released Entities as required by Kroger’s Multistate Settlement as if Kentucky were a Settling State in Kroger’s Multistate Settlement.

C. Participation by Kentucky Subdivisions. All Kentucky Subdivisions will forever release their claims for Covered Conduct against the Released Entities either by submitting participation forms identical to those required for Participating Subdivisions in Kroger’s Multistate Settlement within thirty (30) days of the Multistate Effective Date, or by operation of Kentucky statute, KRS § 15.293(4)(d). No conditions may be placed on the participation forms submitted by Kentucky and its Participating Subdivisions.

D. Confidentiality. Except as necessary to satisfy these conditions or as otherwise required by law, all terms relating to Kroger’s settlement with Kentucky will remain confidential until after the Multistate Effective Date, and Kentucky and Kroger and their respective Counsel will not issue any press release or public statement regarding this Agreement before the Multistate Effective Date.

E. Preserving Kroger’s Multistate Settlement. Kentucky and its Counsel will take reasonable steps to ensure that Kroger’s Multistate Settlement is not delayed or otherwise negatively impacted in any way by this Agreement.

F. Consent Judgment. Kentucky and Kentucky’s Litigating Subdivisions shall file Consent Judgments pursuant to Section VIII.C of Kroger’s Multistate Settlement.

IV. Consideration To Be Provided by Kroger

A. Settlement Amount. Kroger will pay Kentucky \$43,399,936.00 in addition to what Kentucky’s allocation would have been under Kroger’s Multistate Settlement if Kentucky were a Settling State, which reflects a substantial premium for the Commonwealth given the unique facts and circumstances associated with the Kentucky AG Action, including without limitation the scope of the opioid epidemic in the Commonwealth.

1. The parties acknowledge and agree that, if Kentucky were a Settling State under Kroger’s Multistate Settlement, Kroger would have paid approximately \$66,600,064.00 into the Settlement Fund for Kentucky’s participation in Kroger’s Multistate Settlement (“Kentucky’s Multistate Settlement Allocation”).

2. The Parties acknowledge and agree that not all of Kentucky’s Multistate Settlement Allocation would have been paid directly to Kentucky if it were a Settling State. The Parties therefore further acknowledge and agree that \$1,596,463.96 of Kentucky’s Multistate Settlement Allocation will be paid into the Multistate Settlement Fund, and not directly to Kentucky. This \$1,596,463.96 will be referred to herein as the “Common Benefit and Subdivision Cost Fund Portion” of Kentucky’s Multistate Settlement Allocation.

3. The total amount paid by Kroger directly to Kentucky pursuant to this Settlement will therefore be \$108,403,536.04 (the “Settlement Amount”). The Settlement Amount is paid to resolve the Claims of the Kentucky AG Action and Claims for Covered Conduct by Kentucky and Participating Kentucky Subdivisions, including all claims related to Kroger’s dispensing of opioids in the Commonwealth. For avoidance of doubt, the Settlement Agreement releases all Claims in connection with Covered Conduct.

4. Since Kroger is not reducing the payment to the Common Benefit Fund or the Subdivision Cost and Expense Fund under the Kroger Multistate Settlement as a result of this Agreement, the parties acknowledge and agree that this Settlement will not trigger any additional MDL 2804 Common Benefit Assessment including under the Ongoing Common Benefit Order (Dkt. #4428).

B. Settlement Amount Allocation. The Parties agree that the portion of the Settlement Amount paid by Kroger, which constitutes remediation for damage or harm allegedly caused by the potential violation of a law, shall not be less than \$86,722,828.84 (such portion of the Settlement Amount, the “Settlement Remediation Amount”). The Parties agree that the remainder of the Settlement Amount will not exceed \$21,680,707.21 (such remainder of the Settlement Amount, the “Settlement Cost Amount”). Regardless, the Parties will meet and confer and will agree by November 6, 2024 on the exact amount of the Settlement Cost Amount that constitutes litigation costs, including reasonable attorneys’ fees or investigation costs associated with the Settlement, (such amount, the “Settlement Litigation Cost Amount”). The Parties further agree that any remaining amounts of the Settlement Cost Amount that do not constitute litigation costs, attorneys’ fees, or investigation costs associated with the Settlement solely constitute remediation for damage or harm allegedly caused by the potential violation of a law (such amount, the “Settlement Cost Remediation Amount”), subject to revision by the Court, and this Agreement shall be amended to reflect the monetary values of any such allocation. If the Parties agree on an allocation of the Litigation Cost Amount and the Court later orders a different allocation as between the remediation amount and the litigation cost amount, the Commonwealth agrees to cooperate with Kroger in preparing any tax forms reasonably requested by Kroger.

1. **Uses of Settlement Amount.** The Settlement Amount will be used, except as otherwise provided herein, for opioid abatement. A list of permitted uses is attached as Exhibit E.

C. Timeline for Payment of Settlement Amount. Kroger will pay the Settlement Amount to Kentucky pursuant to the following schedule:

1. An Initial Payment of \$6,398,553.33 within thirty (30) business days of the Multistate Effective Date.

2. Five (5) annual payments of \$6,398,553.32 on March 31 of every year from 2025 until 2029 (for the avoidance of doubt, annual payments of \$6,398,553.32 will be made respectively on March 31, 2025, March 31, 2026, March 31, 2027, March 31, 2028, and March 31, 2029).

3. Five (5) annual payments of \$7,314,498.35 on March 31 of every year from 2030 until 2034 (for the avoidance of doubt, annual payments of \$7,314,498.35 will be made respectively on March 31, 2030, March 31, 2031, March 31, 2032, March 31, 2033, and March 31, 2034).

4. Four (4) annual payments of \$8,359,931.09 to be made on March 31 of every year from 2035 until 2038 (for the avoidance of doubt, annual payments of \$8,359,931.09 will be made respectively on March 31, 2035, March 31, 2036,

March 31, 2037, and March 31, 2038).

5. The parties acknowledge and agree that these annual payments laid out in Section IV.C are estimates, and will be finally determined by the third party settlement administrator in order to arrive at the settlement amount agreed to in Paragraph IV.A.

D. No Other Payments. Other than the payments described in Section IV.A of this Agreement, none of the Released Entities shall have any obligation to make any further or additional payments to Kentucky or Subdivisions in Kentucky in connection with Claims for Covered Conduct, this Settlement Agreement, or Kroger's Multistate Settlement.

E. Administration of Settlement Amount. Kroger will procure and pay for services of the Settlement Fund Administrator as defined in Section I(SSS) of Kroger's Multistate Settlement to administer the Settlement Amount. The services to be rendered related to the Settlement Amount shall be the same as those provided for under Section I(SSS) and Exhibit L.

V. Intra-State Allocation and Disbursement of Remediation Amount

Kroger shall have no duty, liability, or influence of any kind with respect to the apportionment and use of the Settlement Amount. Kentucky specifically represents, however, that any such apportionment and use shall be made in accordance with this Agreement and all applicable laws, unless otherwise ordered by a court of competent jurisdiction.

VI. Injunctive Relief

Kroger agrees to implement the Injunctive Relief provisions described in Exhibit P. The Parties further agree that the only injunctive relief provided by Kroger under this Agreement is the Injunctive Relief described in Exhibit P. For the avoidance of doubt, Kroger will not provide any non-monetary relief to Kentucky other than the Injunctive Relief described in Exhibit P.

VII. Cessation of Litigation Activities

A. It is the Parties' intent that any and all litigation activities in the actions relating to Claims against the Released Entities shall immediately cease as of the Execution Date, and that the Commonwealth will not assert Claims against the Released Entities in the trial of any action against any other defendant. The Commonwealth shall use best efforts to cause Litigating Subdivisions to cease all activities in accordance with the foregoing understanding.

B. If not already in place in the Kentucky AG Action as of the Execution Date of this Agreement, then within two business days of the Execution Date of this Agreement, the Parties will file a joint motion to stay and suspend all deadlines in the Kentucky AG Action (including all depositions) until January 31, 2025 or such later date as may be agreed to by the parties. Kentucky and its Participating Subdivisions shall then file Consent Judgments pursuant to Section III.F of this Agreement and Section VIII.C of Kroger's Multistate Settlement. If such a stay is already in place on the Execution Date, neither party will seek modification of that stay without the consent of the other party, except that either party may request that the stay be lifted upon the termination of Kroger's Multistate Agreement.

C. In the event that Kroger's Multistate Settlement Agreement is terminated by any party, the Parties will file a joint motion to resume the Kentucky AG Action (including all depositions) within 5 business days of such event. Currently noticed depositions will be scheduled to take place within 54 days thereafter. Nothing herein is intended to limit or waive any objections that Kroger may have to any depositions in the Kentucky AG Action, nor the Attorney General's opposition to any such objections, including that such objections were previously waived. Kroger expressly reserves all rights to seek relief from the Court with respect to any depositions in the Kentucky AG Action.

VIII. Enforcement and Dispute Resolution

A. This Agreement shall be enforceable, only by Kroger and the Commonwealth.

B. If either the Commonwealth or Kroger believes the other is not in compliance with any term of this Agreement (with the exception of Section IX below), then that Party shall (1) provide written notice to the other Party specifying the reason(s) why it believes the other is not in compliance with the Agreement; and (2) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "Cure Period"). In the event the alleged non-compliance is cured within the Cure Period, the other Party shall not have any liability for such alleged non-compliance. In the event of a dispute regarding whether a Party has cured its non-compliance within the Cure Period, Kroger and the Commonwealth shall meet and confer within thirty (30) days after the conclusion of the Cure Period to attempt to resolve the dispute. If the dispute is not resolved, the Parties may bring an action to enforce the terms of the Agreement before the Bullitt County Circuit Court in Kentucky. The Parties consent to the exclusive jurisdiction of the Bullitt County Circuit Court for the limited purpose of enforcing this Agreement and for the resolution of disputes identified in this Section VIII.

IX. Miscellaneous Provisions

A. **No Admission of Liability.** The Commonwealth acknowledges and agrees that this Settlement is a compromise of matters involving disputed issues of law and fact. The Released Entities are entering into this Settlement solely for the purposes of settlement, to resolve the Released Claims, and thereby avoid significant expense, inconvenience, and uncertainty. Nothing contained herein may be taken as or deemed to be an admission or concession by the Released Entities of (i) any violation of law, regulation, or ordinance in connection with the Covered Conduct or Subdivision Claims; (ii) any fault, liability, or wrongdoing by Kroger in relation to the Covered Conduct or Subdivision Claims; (iii) the strength or weakness of any claim or defense or allegation made in any other past, present, or future proceeding relating to any Covered Conduct or any opioid or Subdivision Claim; or (iv) any other matter of fact or law. Nothing in this Settlement Agreement shall be construed or used to prohibit any Released Entity from engaging in the conduct of its business relating to any Product in accordance with applicable laws and regulations.

B. **Use of Agreement as Evidence.** Neither this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement (i) is or may be deemed to be or may be used as an admission of, or evidence of, any Covered Conduct, or of any wrongdoing or liability of the Released Entities; or (ii) is or may be deemed to be or may be used as an

admission of, or evidence of, any liability, fault, or omission of the Released Entities in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible as evidence or otherwise used in any way in any proceeding for any purpose, except to enforce the terms of this Settlement, and except that the Released Entities may use this Agreement in any action for any purpose, including, but not limited to, in order to support a claim for contribution and/or indemnification or to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or similar defense or counterclaim, including but not limited to against Released Claims asserted against the Released Entities by Kentucky Subdivisions, whether currently pending or in the future.

C. Voluntary Settlement. This Settlement Agreement is a product of arm's length settlement negotiations between the duly-authorized representatives of the Parties. The Parties represent and warrant that they have been advised by their respective Counsel of their rights and obligations under this Settlement Agreement and the accompanying Releases, and enter into this Settlement Agreement and the accompanying Releases freely, voluntarily, and without duress.

D. Taxes. Each of the Parties acknowledges, agrees, and understands that (and its intention that) the Commonwealth sought restitution and remediation for damage or harm allegedly caused by the potential violation of law and the Settlement Remediation Amount and the Settlement Cost Remediation Amount paid by Kroger constitutes restitution for damage or harm allegedly caused by the potential violation of a law (in each case, within the meaning of 26 U.S.C. § 162(f)(2)(A) and 26 C.F.R. § 1.162-21(e)(4)(i)). The Parties acknowledge and agree that only the Settlement Litigation Cost Amount represents reimbursement to the Commonwealth, any Participating Subdivision or other person or entity for the costs of any investigation or litigation and no portion of the Settlement Remediation Amount or the Settlement Cost Remediation Amount represents reimbursement to the Commonwealth, any Participating Subdivision or any other person or entity for the costs of any investigation or litigation; and that no portion of the Settlement Amount represents or should properly be characterized as the payment of fines, penalties, or other punitive assessments. The Commonwealth shall perform all obligations and adhere to the "Tax Cooperation and Reporting Requirements" provision in Section XIII(F) of Kroger's Multistate Settlement in all respects with respect to the Settlement Amount, including, without limitation, filing a properly completed IRS Form 1098-F with respect to the Settlement Amount.

E. No Third-Party Beneficiaries. Except as to Released Entities, nothing in this Settlement Agreement is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever.

F. Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Entities.

G. Choice of Law. Any dispute arising from or in connection with this Settlement Agreement shall be governed by Kentucky law without regard to its choice-of-law provisions.

H. Notices. To be effective, all notices under this Agreement shall be in writing and

delivered to the persons specified below (“Notice Designees”) (i) by e-mail or (ii) by either hand delivery or registered or certified mail, return receipt required, postage pre-paid. Any Party may change its Notice Designee(s) by giving written notice to all other Parties as provided in this paragraph.

1. Notices to the Commonwealth shall be delivered to:

Robert Duncan
Deputy Attorney General
Office of the Kentucky Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601
Email: robertm.duncan@ky.gov

AND

Chris Lewis
Division Chief
Office of the Kentucky Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
Email: christian.lewis@ky.gov

AND

Linda Singer
MotleyRice LLC
401 9th St. NW, Suite 630
Washington, DC 20004
Email: lsinger@motleyrice.com

2. Notices to Kroger shall be delivered to:

Antonio Matthews
Senior Litigation Counsel
1014 Vine St.
Cincinnati, Ohio, 45202
Telephone: (513) 762-4623
Email: toney.matthews@kroger.com

AND

Chantale Fiebig
Weil Gotshal & Manges LLP
2001 M Street, NW
Washington, D.C. 20036
Telephone: (202) 682-7200

I. Severability; Reinstatement. In the event any one or more immaterial provisions of this Settlement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Settlement. Material provisions are those in Sections III, IV, VI, and VII of this Agreement.

J. Headings; Definitions. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms.

K. No Party Deemed to Be the Drafter. None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

L. Modification. This Agreement may only be modified by a written agreement of the Parties or, in the case of the Consent Judgment(s), by court proceedings resulting in a modified judgment of a court of competent jurisdiction. For purposes of modifying this Agreement or the Consent Judgment(s), Kroger may contact the Kentucky Attorney General for purposes of coordinating this process. Modifications must be in writing to be enforceable.

M. Waiver. Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

N. Execution in Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. An executed signature page of this Settlement delivered in PDF format via email shall be as effective as an original executed signature page.

O. Integrated Agreement. This Agreement constitutes the entire agreement between the Parties and no representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized herein. As such, the Parties represent and warrant that they are not relying on any promises, inducements, or representations other than those provided herein.

P. Confidentiality and Public Statements. Consistent with mediation confidentiality, neither party shall disclose or discuss the negotiating positions the parties advanced during discussions in connection with this Settlement Agreement. In addition, and for the avoidance of doubt, neither party shall discuss the negotiation of specific terms and conditions of this Settlement Agreement. All terms relating to this Settlement Agreement will remain confidential until after the Multistate Effective Date, except as permitted by Section III.D, and neither party will issue any press release or public statement regarding this Settlement Agreement

or the Settlement Amount before the Multistate Effective Date.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have executed this Agreement as of the dates set forth below.

Date: October 31, 2024

THE KROGER CO.

By: 

WEIL GOTSHAL & MANGES LLP

Chantale Fiebig

2001 M Street, NW

Washington, D.C. 20036

Telephone: (202) 682-7200

Email: chantale.fiebig@weil.com

Date: October 31, 2024

THE COMMONWEALTH OF KENTUCKY

By: 

Name: Russell Coleman

Title: Attorney General

EXHIBIT E

List of Opioid Remediation Uses

Schedule A
Core Strategies

Settling States and Participating Subdivisions listed on Exhibit G may choose from among the abatement strategies listed in Schedule B. However, priority may be given to the following core abatement strategies (“*Core Strategies*”).¹

A. NALOXONE OR OTHER FDA-APPROVED DRUG TO REVERSE OPIOID OVERDOSES

1. Expand training for first responders, schools, community support groups and families; and
2. Increase distribution to individuals who are uninsured or whose insurance does not cover the needed service.

B. MEDICATION-ASSISTED TREATMENT (“MAT”) DISTRIBUTION AND OTHER OPIOID-RELATED TREATMENT

1. Increase distribution of MAT to individuals who are uninsured or whose insurance does not cover the needed service;
2. Provide education to school-based and youth-focused programs that discourage or prevent misuse;
3. Provide MAT education and awareness training to healthcare providers, EMTs, law enforcement, and other first responders; and
4. Provide treatment and recovery support services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allow or integrate medication and with other support services.

¹ As used in this Schedule A, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

C. PREGNANT & POSTPARTUM WOMEN

1. Expand Screening, Brief Intervention, and Referral to Treatment (“*SBIRT*”) services to non-Medicaid eligible or uninsured pregnant women;
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for women with co-occurring Opioid Use Disorder (“*OUD*”) and other Substance Use Disorder (“*SUD*”)/Mental Health disorders for uninsured individuals for up to 12 months postpartum; and
3. Provide comprehensive wrap-around services to individuals with OUD, including housing, transportation, job placement/training, and childcare.

D. EXPANDING TREATMENT FOR NEONATAL ABSTINENCE SYNDROME (“*NAS*”)

1. Expand comprehensive evidence-based and recovery support for NAS babies;
2. Expand services for better continuum of care with infant-need dyad; and
3. Expand long-term treatment and services for medical monitoring of NAS babies and their families.

E. EXPANSION OF WARM HAND-OFF PROGRAMS AND RECOVERY SERVICES

1. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments;
2. Expand warm hand-off services to transition to recovery services;
3. Broaden scope of recovery services to include co-occurring SUD or mental health conditions;
4. Provide comprehensive wrap-around services to individuals in recovery, including housing, transportation, job placement/training, and childcare; and

5. Hire additional social workers or other behavioral health workers to facilitate expansions above.

F. TREATMENT FOR INCARCERATED POPULATION

1. Provide evidence-based treatment and recovery support, including MAT for persons with OUD and co-occurring SUD/MH disorders within and transitioning out of the criminal justice system; and
2. Increase funding for jails to provide treatment to inmates with OUD.

G. PREVENTION PROGRAMS

1. Funding for media campaigns to prevent opioid use (similar to the FDA’s “Real Cost” campaign to prevent youth from misusing tobacco);
2. Funding for evidence-based prevention programs in schools;
3. Funding for medical provider education and outreach regarding best prescribing practices for opioids consistent with the CDC guidelines, including providers at hospitals (academic detailing);
4. Funding for community drug disposal programs; and
5. Funding and training for first responders to participate in pre-arrest diversion programs, post-overdose response teams, or similar strategies that connect at-risk individuals to behavioral health services and supports.

H. EXPANDING SYRINGE SERVICE PROGRAMS

1. Provide comprehensive syringe services programs with more wrap-around services, including linkage to OUD treatment, access to sterile syringes and linkage to care and treatment of infectious diseases.

I. EVIDENCE-BASED DATA COLLECTION AND RESEARCH ANALYZING THE EFFECTIVENESS OF THE ABATEMENT STRATEGIES WITHIN THE STATE

Schedule B Approved Uses

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

PART ONE: TREATMENT

A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (“*OUD*”) and any co-occurring Substance Use Disorder or Mental Health (“*SUD/MH*”) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:²

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, including all forms of Medication-Assisted Treatment (“*MAT*”) approved by the U.S. Food and Drug Administration.
2. Support and reimburse evidence-based services that adhere to the American Society of Addiction Medicine (“*ASAM*”) continuum of care for OUD and any co-occurring SUD/MH conditions.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (“*OTPs*”) to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.
6. Provide treatment of trauma for individuals with OUD (*e.g.*, violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (*e.g.*, surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.

² As used in this Schedule B, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

7. Support evidence-based withdrawal management services for people with OUD and any co-occurring mental health conditions.
8. Provide training on MAT for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions.
10. Offer fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Offer scholarships and supports for behavioral health practitioners or workers involved in addressing OUD and any co-occurring SUD/MH or mental health conditions, including, but not limited to, training, scholarships, fellowships, loan repayment programs, or other incentives for providers to work in rural or underserved areas.
12. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (“*DATA 2000*”) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a *DATA 2000* waiver.
13. Disseminate web-based training curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service–Opioids web-based training curriculum and motivational interviewing.
14. Develop and disseminate new curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service for Medication–Assisted Treatment.

B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the programs or strategies that:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.
2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support

- services and counseling, community navigators, case management, and connections to community-based services.
3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.
 4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA-approved medication with other support services.
 5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.
 6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.
 7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.
 8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.
 9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
 10. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.
 11. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.
 12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.
 13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions, including new Americans.
 14. Create and/or support recovery high schools.

15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED
(CONNECTIONS TO CARE)**

Provide connections to care for people who have—or are at risk of developing—OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Fund SBIRT programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.
4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments.
6. Provide training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically appropriate follow-up care through a bridge clinic or similar approach.
8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.
9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-

occurring SUD/MH conditions or to persons who have experienced an opioid overdose.

11. Expand warm hand-off services to transition to recovery services.
12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
13. Develop and support best practices on addressing OUD in the workplace.
14. Support assistance programs for health care providers with OUD.
15. Engage non-profits and the faith community as a system to support outreach for treatment.
16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

D. ADDRESS THE NEEDS OF CRIMINAL JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:
 1. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (“*PAARF*”);
 2. Active outreach strategies such as the Drug Abuse Response Team (“*DART*”) model;
 3. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
 4. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (“*LEAD*”) model;

5. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or
 6. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MAT, and related services.
 3. Support treatment and recovery courts that provide evidence-based options for persons with OUD and any co-occurring SUD/MH conditions.
 4. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.
 5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison or have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
 6. Support critical time interventions (“CTI”), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
 7. Provide training on best practices for addressing the needs of criminal justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, harm reduction, case management, or other services offered in connection with any of the strategies described in this section.

E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal abstinence syndrome (“NAS”), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support evidence-based or evidence-informed treatment, including MAT, recovery services and supports, and prevention services for pregnant women—or women who

- could become pregnant—who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for uninsured women with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.
 3. Provide training for obstetricians or other healthcare personnel who work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.
 4. Expand comprehensive evidence-based treatment and recovery support for NAS babies; expand services for better continuum of care with infant-need dyad; and expand long-term treatment and services for medical monitoring of NAS babies and their families.
 5. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with NAS get referred to appropriate services and receive a plan of safe care.
 6. Provide child and family supports for parenting women with OUD and any co-occurring SUD/MH conditions.
 7. Provide enhanced family support and child care services for parents with OUD and any co-occurring SUD/MH conditions.
 8. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.
 9. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including, but not limited to, parent skills training.
 10. Provide support for Children’s Services—Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding medical provider education and outreach regarding best prescribing practices for opioids consistent with the Guidelines for Prescribing Opioids for Chronic Pain from the U.S. Centers for Disease Control and Prevention, including providers at hospitals (academic detailing).
2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Providing Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Supporting enhancements or improvements to Prescription Drug Monitoring Programs (“PDMPs”), including, but not limited to, improvements that:
 1. Increase the number of prescribers using PDMPs;
 2. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or
 3. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.
6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation’s Emergency Medical Technician overdose database in a manner that complies with all relevant privacy and security laws and rules.
7. Increasing electronic prescribing to prevent diversion or forgery.
8. Educating dispensers on appropriate opioid dispensing.

G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding media campaigns to prevent opioid misuse.
2. Corrective advertising or affirmative public education campaigns based on evidence.
3. Public education relating to drug disposal.
4. Drug take-back disposal or destruction programs.
5. Funding community anti-drug coalitions that engage in drug prevention efforts.
6. Supporting community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction—including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (“SAMHSA”).
7. Engaging non-profits and faith-based communities as systems to support prevention.
8. Funding evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
10. Create or support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.
11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or another drug misuse.

H. PREVENT OVERDOSE DEATHS AND OTHER HARMS (HARM REDUCTION)

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increased availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, schools, community navigators and outreach workers, persons being released from jail or prison, or other members of the general public.
2. Public health entities providing free naloxone to anyone in the community.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.
4. Enabling school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expanding, improving, or developing data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Syringe service programs and other evidence-informed programs to reduce harms associated with intravenous drug use, including supplies, staffing, space, peer support services, referrals to treatment, fentanyl checking, connections to care, and the full range of harm reduction and treatment services provided by these programs.
10. Expanding access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
11. Supporting mobile units that offer or provide referrals to harm reduction services, treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.
12. Providing training in harm reduction strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions.

13. Supporting screening for fentanyl in routine clinical toxicology testing.

PART THREE: OTHER STRATEGIES

I. FIRST RESPONDERS

In addition to items in section C, D and H relating to first responders, support the following:

1. Education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
2. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment intervention services, and to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
2. A dashboard to (a) share reports, recommendations, or plans to spend opioid settlement funds; (b) to show how opioid settlement funds have been spent; (c) to report program or strategy outcomes; or (d) to track, share or visualize key opioid- or health-related indicators and supports as identified through collaborative statewide, regional, local or community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

K. TRAINING

In addition to the training referred to throughout this document, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, those that:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (*e.g.*, health care, primary care, pharmacies, PDMPs, etc.).

L. RESEARCH

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on novel harm reduction and prevention efforts such as the provision of fentanyl test strips.
5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (*e.g.*, Hawaii HOPE and Dakota 24/7).
7. Epidemiological surveillance of OUD-related behaviors in critical populations, including individuals entering the criminal justice system, including, but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring (“ADAM”) system.
8. Qualitative and quantitative research regarding public health risks and harm reduction opportunities within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.

9. Geospatial analysis of access barriers to MAT and their association with treatment engagement and treatment outcomes

EXHIBIT L

Settlement Fund Administrator Terms

[Exhibit to be inserted prior to the Effective Date]

EXHIBIT P

Pharmacy Controlled Substance Compliance Program & Anti-Diversion Injunctive Terms

I. INTRODUCTION

1. Except where these Injunctive Terms specify a different implementation period, Kroger shall implement the Injunctive Terms set forth below in Sections II through XVIII by the Injunctive Terms Implementation Date (defined below).
2. To the extent that Kroger already has in place positions, committees, departments, policies or programs that satisfy the Injunctive Terms, no re-naming or other change is required by these Injunctive Terms.
3. Overview
 - a. Kroger will implement or maintain a Controlled Substance Compliance Program (“CSCP”).
 - b. The CSCP must include written standard operating procedures and/or corporate policies (the “CSCP Policies and Procedures”) required by these Injunctive Terms.
 - c. The CSCP shall apply during the term of these Injunctive Terms, to each of Kroger’s retail pharmacy stores that dispense Schedule II Designated Controlled Substances and are registered or licensed with each Settling State.
 - d. Kroger shall provide a copy of the relevant CSCP Policies and Procedures to each Settling State within sixty (60) days of the Injunctive Terms Implementation Date. To the extent any implementation is expected to require additional time, the Parties agree to work together in good faith to establish a timeline for implementation. No later than thirty (30) days after the Injunctive Terms Implementation Date, each Settling State shall identify the person or office to whom Kroger must provide a copy of the relevant CSCP Policies and Procedures and any other State-specific reporting required under these Injunctive Terms.
 - e. Settling States shall form the States Injunctive Relief Committee to serve as a point of contact for Kroger and to perform such other roles as set forth herein. Upon the committee’s formation, Settling States shall provide notice to Kroger of the members of the committee.
4. Compliance with Laws
 - a. Kroger acknowledges and agrees that its pharmacies must comply with applicable state and federal laws, regulations, and rules, including those

regarding the dispensing of Controlled Substances. The requirements of these Injunctive Terms are in addition to, and not in lieu of, any other requirements of federal, state, or local law. Nothing in the Injunctive Terms shall be construed as relieving Kroger of the obligation of its pharmacies to comply with all federal, state and local laws, regulations or rules, nor shall any of the provisions of the Injunctive Terms be deemed as permission for Kroger to engage in any acts or practices prohibited by such laws, regulations or rules.

- b. The Injunctive Terms are not intended to and shall not be interpreted to prevent Kroger from taking or implementing any other compliance or policy steps that are more restrictive or that are necessary to conform with federal, state, or local legal requirements, unless such steps would conflict with State or local law. The Injunctive Terms are not intended to and shall not be interpreted to require Kroger to inventory any Controlled Substances or any particular Controlled Substances or to require dispensing of any Controlled Substances or of any individual, types, subsets or categories of Controlled Substances prescriptions.
- c. In the event that Kroger determines that there may be a conflict between the Injunctive Terms and the express requirements of federal, state, or local laws, or interpretations of such laws articulated by an agency responsible for enforcing such laws or a court (“Express Interpretations”), such that Kroger determines that it cannot comply with the Injunctive Terms without violating these express requirements or Express Interpretations, Kroger shall follow the express requirements of the federal, state or local law or Express Interpretation thereof and shall provide notice to the Settling State(s). Within thirty (30) days after receipt of a notification from Kroger referenced above, Kroger and the State shall meet and discuss the potential conflict, and Kroger shall comply with any reasonable requests from the Settling State as necessary to determine whether there is a conflict between the Injunctive Terms and the express requirements of federal, state, or local laws, or Express Interpretations. In the event that Kroger believes a court or administrative action brought by a governmental body in a Settling State has commenced against it or its pharmacists for actions required by the Injunctive Terms, then Kroger may notify the Attorney General of the Settling State of such pending action. If the State agrees that the court or administrative action is a result of actions required by the Injunctive Terms, the State will engage in best efforts to resolve the conflict or assist in achieving resolution of the court or administrative action. Nothing in this paragraph shall (i) limit the right of the Settling State to disagree with Kroger as to the conflict; (ii) be deemed to relieve Kroger from following any subsequently enacted law or regulation, or judicial decisions from a regulatory authority with jurisdiction over controlled substances that is more restrictive than the provisions of the Injunctive Terms, or from following the Injunctive Terms if they are more restrictive than applicable laws at issue in the administrative action if there is no conflict; (iii) be deemed to relieve Kroger from adhering to the outcome of a court or administrative action when it is determined that there is no conflict; or (iv) limit a Settling State’s ability to relieve Kroger of a duty under these Injunctive

Terms if that Settling State determines that that term is in conflict with that Settling State's express legal requirements.

- d. Kroger shall retain all records it is required to create pursuant to its obligations hereunder for a period outlined in appendix A, unless otherwise specified. Nothing in these Injunctive Terms shall prevent a Settling State from issuing a lawful subpoena or Civil Investigative Demand (CID) for records pursuant to an applicable law.
5. No Admission and No Use as Evidence. Kroger does not admit liability or wrongdoing. These Injunctive Terms shall not be considered, construed, or represented to be (1) an admission, concession, or evidence of liability, wrongdoing, or to impose the existence of any legal obligations or requirements other than the requirement to follow these Injunctive Terms, or (2) a waiver or limitation of any defense otherwise available to Kroger. These Injunctive Terms shall not be offered or received in evidence or otherwise relied on in any action or proceeding for any purpose other than in an action or proceeding to modify or enforce or monitor compliance with these Injunctive Terms.

II. TERM AND SCOPE

1. The term of these Injunctive Terms shall be from the Injunctive Terms Implementation Date until November 15, 2032, unless otherwise specified herein.
2. Except as otherwise stated herein, the Injunctive Terms shall apply to Kroger's retail pharmacy stores located in, and registered or licensed with, each Settling State that dispense Schedule II Designated Controlled Substances to Patients, including any Schedule II Designated Controlled Substances dispensed by any such retail pharmacy stores that are mailed or shipped to patients in a Settling State. Should Kroger operate an online pharmacy that is registered or licensed to dispense Schedule II Designated Controlled Substances in any Settling State while these Injunctive Terms are in effect, the Injunctive Terms shall apply to such pharmacy as well.¹
3. These Injunctive Terms may be amended by mutual agreement of a majority of the States Injunctive Relief Committee and Settling Pharmacy. Any such amendments must be in writing.

III. DEFINITIONS

1. The term "Distributor Injunctive Terms" means Exhibit P of the Settlement Agreement, dated as of July 21, 2021, between McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation and certain States and subdivisions.

¹ Kroger's specialty and mail order pharmacies are not subject to, and are not online pharmacies for purposes of, these Injunctive Terms.

2. The term “Block” means an action taken by Kroger preventing or otherwise prohibiting any Settling Pharmacy pharmacist from filling prescriptions for Controlled Substances from a specific identified Prescriber.
3. The term “Clearinghouse” means the system established by Section XVII of the Distributor Injunctive Terms.
4. The term “Controlled Substances” means those substances designated under schedules II-V pursuant to the federal Controlled Substances Act.
5. The term “Designated Controlled Substances” shall be limited to: (a) oxycodone; (b) hydrocodone; (c) hydromorphone; (d) tramadol; (e) oxymorphone; (f) morphine; (g) methadone; and (h) fentanyl.
6. The term “Injunctive Terms Implementation Date” means sixty (60) days after the Effective Date of the Settlement Agreement as defined in Section I.V of the Kroger Settlement Agreement.
7. The term “National Arbitration Panel” is defined in Section I.LL of the Kroger Settlement Agreement.
8. The term “Patient” means any individual who receives a prescription for a Designated Controlled Substance from a Prescriber, whether legally valid or not, and attempts to fill it at one of Kroger’s pharmacy stores in a Settling State.
9. The term “Prescriber” means any individual that has issued a prescription for a Designated Controlled Substance, whether legally valid or not, that is presented to Kroger in a Settling State.
10. The term “Red Flag(s)” means the enumerated Patient Red Flags, Prescription Red Flags, and Prescriber Red Flags set out in Section IX.
11. The term “Settling State(s)” means each State that is a signatory to the Kroger Settlement Agreement.
12. The term “States Injunctive Relief Committee” means a committee representing the Settling States composed of between four and eight members designated by the Settling States. The members of the States Injunctive Relief Committee shall be employees of a Settling State’s Office of Attorney General and/or employees of another agency of a Settling State.
13. The term “Kroger Settlement Agreement” means the settlement agreement dated as of March 22, 2024, between and among the Settling States, the Participating Subdivisions and Kroger.

IV. CONTROLLED SUBSTANCE COMPLIANCE PERSONNEL

1. Kroger shall designate a Controlled Substance Compliance Director, or other appropriately titled position, to be a member of the Controlled Substance Compliance Committee (described below in Section VI), and to oversee a Controlled Substance Compliance Department and Kroger's compliance with 21 C.F.R. 1306.04 and these Injunctive Terms. As used in these Injunctive Terms, the terms "Controlled Substance Compliance Committee" and "Controlled Substance Compliance Department" refer to the entity or entities, however titled, that carry out the functions required by these Injunctive Terms. Notwithstanding the preceding sentence, to the extent an existing position, committee or department carries out the functions required by these Injunctive Terms, any other functions undertaken by such position, committee or department shall not be subject to these Injunctive Terms or oversight by the Settling States pursuant to these Injunctive Terms. The position, committee and department discussed in these Terms may bear different names and need not be limited to the roles and functions set forth herein.
2. The Controlled Substance Compliance Director shall have knowledge of and experience with the laws and regulation of Controlled Substances, in particular the regulations in 21 C.F.R. § 1306.04.
3. The Controlled Substance Compliance Director shall provide at least quarterly reports to the Controlled Substance Compliance Committee (described below in Section VI) regarding Kroger's compliance with these Injunctive Terms, including the implementation of any changes to the CSCP Policies and Procedures required by these Injunctive Terms.
4. Staffing levels of Kroger's Controlled Substance Compliance Department shall be reviewed periodically, but at least on an annual basis, by Kroger's Controlled Substance Compliance Committee to assess whether such staffing levels are sufficient for the Controlled Substance Compliance Department to comply with this Agreement. This review shall include consideration of relevant developments in technology, law, and regulations.
5. Throughout the term of these Injunctive Terms, Kroger shall maintain a telephone and electronic submission hotline(s) (the "Hotline") to permit employees and/or Patients and/or members of the public to anonymously report suspected inappropriate or illegitimate dispensing, prescribing or diversion of Designated Controlled Substances, violations of the CSCP Policies and Procedures, these Injunctive Terms, or other applicable law related to Designated Controlled Substances. The Hotline may be implemented by adding a dedicated option to existing systems that includes reporting regarding Designated Controlled Substances. Kroger shall publish its Hotline contact information to its employees and Patients in the Settling States. Kroger shall maintain for a period outlined in appendix A a record of each complaint made to the Hotline regarding Designated Controlled Substances and documentation regarding any investigation or response to such complaints. Nothing herein shall require Kroger to investigate a pharmacist's professional judgment to refuse a

prescription that the pharmacist believes was prescribed or is being used for other than a legitimate medical purpose or that the pharmacist believes was not prescribed by an individual Prescriber acting in the usual course of his or her professional practice.

V. INDEPENDENCE

1. Kroger's Controlled Substance Compliance Department personnel, pharmacists and pharmacist technicians who work at Kroger's pharmacies within the Settling States, and field personnel who supervise pharmacists and pharmacist technicians (together, "CSCP Employees"), shall not be compensated in whole or in part by commissions, bonuses, incentives or any other monetary or non-pecuniary benefit that depends in material part on revenue or profitability targets or expectations to sales of Controlled Substances. Nothing in these Injunctive Terms shall be interpreted to prevent compensation of employees based on sales volume, revenue or profitability targets/expectations for enterprise-, store-, or pharmacy-wide sales that include Controlled Substances.
2. No CSCP Employees may be terminated, suspended, threatened with or face any other negative employment consequence for failing to meet any revenue or profitability targets or expectations that depends in material part on sales of Controlled Substances. Nothing in these Injunctive Terms shall be interpreted to prevent Kroger from taking employment action based on sales volume, revenue or profitability targets/expectations for enterprise-, store-, or pharmacy-wide sales that include Controlled Substances.
3. Personnel in Kroger's Controlled Substance Compliance Department shall not report to Kroger's sales, marketing, or business development departments, and sales, marketing, or business development departments shall not be authorized to make decisions regarding the promotion, compensation, demotion, admonition, discipline, commendation, periodic performance reviews, hiring, or firing of Controlled Substance Compliance Department personnel. This provision does not apply to an officer or executive to whom both the Controlled Substance Compliance Department and sales, marketing and/or business development departments report.
4. Kroger's sales, marketing and business development departments are prohibited from interfering with, obstructing, or otherwise exerting control over any Controlled Substance Compliance Department or Controlled Substance Committee decision-making. This provision does not apply to an officer or executive to whom both the Controlled Substance Compliance Department and sales, marketing and/or business development departments report.
5. To the extent necessary to comply with this section, Kroger's Controlled Substance Compliance Committee shall review, modify, and direct any changes to any compensation and non-retaliation policies specific to the sale or dispensing of Designated Controlled Substances.

VI. OVERSIGHT

1. To the extent not already established, within thirty (30) business days of the Injunctive Terms Implementation Date, Kroger shall establish a compliance committee, however titled, that includes representatives from its respective legal, compliance, pharmacy operations and asset protection departments, however named, to provide oversight over the CSCP and its compliance with the Injunctive Terms. For the purposes of reference herein, this committee, however named, shall be referred to as the “Controlled Substance Compliance Committee.” Kroger shall maintain its Controlled Substance Compliance Committee for the duration of the term of the Injunctive Terms. The Controlled Substance Compliance Director shall be a member of the Controlled Substance Compliance Committee.
2. Kroger’s Controlled Substance Compliance Committee shall have quarterly meetings during which the Controlled Substance Compliance Director shall report on, and the Controlled Substance Compliance Committee shall review, among other things, (a) the Prescription Validation Process, including the CSCP Policies and Procedures on identifying and resolving Patient, Prescriber and Prescription Red Flags; (b) the training required under the Injunctive Terms; (c) proactive due diligence and site visits; (d) the Prescriber Review Processes; (e) significant new national and regional diversion trends involving Controlled Substances; (f) Kroger’s adherence to the Injunctive Terms and applicable laws and regulations; and (g) any technology, staffing, or other resource needs for the CSCP. The Controlled Substance Compliance Committee shall have access to all CSCP reports described in the following subsection.
3. On an annual basis, Kroger’s Controlled Substance Compliance Committee shall provide a written report to the President of the Settling Pharmacy’s Retail Division, the Chief Financial Officer of the Settlement Pharmacy’s Retail Division, the Chief Legal Officer of the Settling Pharmacy’s Retail Division, and the corporate Chief Compliance Officer, outlining (a) the Settling Pharmacy’s adherence to, and any material deviations from these Injunctive Terms; (b) the allocation of resources sufficient to comply with these Injunctive Terms; and (c) any revisions to the CSCP that the Controlled Substance Compliance Committee has approved. The corporate Chief Compliance Officer shall determine if and when it is appropriate to make a report to the Board or any subcommittee thereof, but shall report at least annually.
4. Kroger, through its Controlled Substance Compliance Department and Committee, shall, at least once every year, review and oversee any enhancements to the CSCP Policies and Procedures and systems for dispensing activity that the Controlled Substance Compliance Committee deems necessary.
5. The Controlled Substance Compliance Committee shall be responsible for the approval of all material revisions to the CSCP Policies and Procedures, provided that nothing herein shall prevent Kroger from implementing changes to the CSCP Policies and Procedures pending such review and approval.

VII. MANDATORY TRAINING

1. The CSCP Policies and Procedures shall be published in a form and location readily accessible to all pharmacy and compliance personnel at each of Kroger's retail pharmacy locations in the Settling States. Online availability is sufficient, so long as pharmacy and compliance personnel have access to a computer with access to the CSCP Policies and Procedures.
2. Kroger shall launch training for all existing CSCP Employees, to the extent practical (for example, accounting for employee leave), on the CSCP Policies and Procedures required under these Injunctive Terms, including the Prescription Validation Process and corresponding responsibility. The training shall be launched within one hundred twenty (120) days of the Injunctive Terms Implementation Date. All CSCP Employee new hires, to the extent practical, shall be required to participate in such trainings within sixty (60) days of hiring or six (6) months of the Injunctive Terms Implementation Date, whichever is later. Kroger will further require that every CSCP Employee, to the extent practical, receive such training at least once every three (3) years for the term of these Injunctive Terms.
3. On an annual basis for the duration of these Injunctive Terms, Kroger shall test its CSCP Employees on their knowledge regarding the CSCP Policies and Procedures required under these Injunctive Terms, including the Prescription Validation Process and corresponding responsibility.
4. It shall be a part of the CSCP Policies and Procedures and all trainings of all CSCP Employees required under these Injunctive Terms that pharmacists shall refuse to dispense Controlled Substances that they believe were prescribed or are being used for other than a legitimate medical purpose or that they believe were not prescribed by an individual Prescriber acting in the usual course of his or her professional practice.
5. All trainings required under these Injunctive Terms shall also make clear that (i) Kroger's compensation and non-retaliation policies, including pursuant to these Injunctive Terms, prevent CSCP Employees from being compensated or penalized in any way related to revenue or profitability targets or expectations specific to sales of Controlled Substances; and ii) pharmacists will not be penalized in any way for exercising their professional judgment to refuse to fill prescriptions for Controlled Substances pursuant to their corresponding responsibility. To the extent that trainings designed and launched prior to the Effective Date of these Injunctive Terms do not reference these policies, they shall be added by the end of April 2024.

VIII. THE PRESCRIPTION VALIDATION PROCESS

1. As part of its CSCP, Kroger shall maintain a Prescription Validation Process in the CSCP Policies and Procedures, as further described and set forth in this section, that each pharmacist employed by Kroger in a Settling State must follow when dispensing a prescription for a Controlled Substance. The inclusion of an enumerated Red Flag in these Injunctive Terms shall not be considered, construed, or represented to be an

admission, concession, or evidence of any factual or legal contention related to such Red Flag. A Red Flag shall not be interpreted to mean that a prescription is, or is more likely than not, illegitimate and/or not issued in the usual course of professional practice or treatment.

2. A Red Flag will be considered “resolved” if, after further investigation as described below, and given other facts and circumstances surrounding the prescription, a pharmacist determines, in his or her professional judgment, that the facts that triggered the Red Flag do not lead him or her to believe that the prescription was written or is being submitted for an illegitimate medical purpose or outside the usual course of a Prescriber’s professional practice.
3. Kroger’s CSCP Policies and Procedures shall provide that if a pharmacist identifies any “Patient Red Flags” associated with a Controlled Substances prescription (described in Section IX(3) below), before filling the prescription the pharmacist must resolve them; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing the Patient’s profile and history with the Settling Pharmacy, calling the Prescriber or Prescribers if appropriate, speaking with the Patient if appropriate, calling on the pharmacist’s pre-existing knowledge of the Patient or Prescriber, reviewing available Prescription Monitoring Program (“PMP” or “PDMP”) data, and/or reviewing other data or information available to the pharmacist.
4. Kroger’s CSCP Policies and Procedures shall provide that if forgery or fraud is suspected, or if the pharmacist identifies any other “Prescription Red Flags” associated with a Controlled Substances prescription (described in Section IX(4) below), the pharmacist must resolve the Prescription Red Flags before filling the prescription; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing the Patient’s profile and history with Kroger, calling the Prescriber or Prescribers if appropriate, speaking with the Patient if appropriate, calling on the pharmacist’s pre-existing knowledge of the Patient or Prescriber, reviewing available PMP or PDMP data, and/or reviewing other data or information available to the pharmacist.
5. Kroger’s CSCP Policies and Procedures shall require that if a pharmacist identifies any “Prescriber Red Flags” associated with a Controlled Substances prescription (described in Section IX(5) below), the pharmacist must resolve them before filling the prescription; and that the method of resolution falls within the judgment of the pharmacist and may include reviewing any Kroger records regarding the Prescriber, calling the Prescriber if appropriate, speaking with the Patient if appropriate, calling on the pharmacist’s pre-existing knowledge of the Patient or Prescriber, reviewing available PMP or PDMP data, and/or reviewing other data or information available to Kroger.
6. Kroger’s CSCP Policies and Procedures related to Schedule II Designated Controlled Substances shall provide that the resolution of all Red Flags identified by the pharmacist, as well as any prescriptions that were rejected pursuant to Red Flags

identified by the pharmacist, and the reasons why they were rejected, must be documented by the pharmacist, unless (a) if based on the pharmacist's pre-existing knowledge of the Patient or Prescriber or (b) if documentation is not possible (e.g., a patient refuses to hand over a non-electronic prescription). Any such records shall be maintained for a period outlined in appendix A. To the extent that a Red Flag is resolved based upon facts or circumstances that are already reflected or documented in Kroger's records, further documentation of those facts or circumstances is not required for resolution of substantially the same Red Flag on subsequent prescriptions. For example, if a Patient lives fifty-five (55) miles from a Kroger but works near the pharmacy and that fact is reflected in pharmacy records, no documentation for the resolution of the Red Flag addressing the Patient's distance from the pharmacy is required in connection with individual prescriptions dispensed for that Patient. A lack of documentation shall not be interpreted to create a presumption that a pharmacist did not resolve any identified Red Flags. Nothing in these Injunctive Terms shall require Kroger to create a record in those instances where the pharmacist rejects a prescription when presented without an effort to resolve any red flags, including but not limited to instances where the pharmacist rejects a prescription for clinical reasons, or where the pharmacist identifies on the face of the prescription a Prescription Red Flag (defined in Section IX below) that causes the pharmacist to conclude without further inquiry that the prescription is invalid.

7. Kroger's CSCP Policies and Procedures shall provide that, even if all Red Flags are resolved, a pharmacist shall reject a prescription if, in his or her professional judgment, he or she believes that it was written or is being submitted for other than a legitimate medical purpose and/or was written outside the usual course of an individual Prescriber's professional practice.

IX. RED FLAGS

1. Upon request by the Settling States, but no more than annually, and no earlier than four months after the Injunctive Terms Implementation Date, Kroger shall provide to the Settling States a report (the "Annual Data Report") that sets forth: (1) the total number of prescriptions for Controlled Substances dispensed annually, aggregated nationally and by state; (2) the top twenty-five prescribers of Designated Controlled Substances in each Settling State; (3) the list of prescribers subject to disclosure in section X.5; (4) the specific process, system, metrics or algorithms (if any) sufficient to demonstrate the operational system's ability to identify each category of Red Flag listed in this section; and (5) the total number of Designated Controlled Substance prescriptions that pharmacists at the Settling Pharmacy refused to dispense, as reflected in the pharmacy dispensing or other electronic system. Unless otherwise required by law, if a Settling State seeks to disclose any data and/or information provided under this provision as part of a proceeding to enforce these Injunctive Terms or for other law enforcement purposes, it shall first provide ten (10) days' notice to Kroger unless doing so would conflict with applicable law.

2. A Settling State shall not otherwise disclose or provide any data provided under this provision to third parties during or after the Term of these Injunctive Terms unless required to do so by law. If a Settling State is required to disclose or provide any data under this provision to third parties during or after the Term of these Injunctive Terms, it shall first provide ten (10) days' notice to Kroger unless doing so would conflict with applicable law. All data and/or information provided under this paragraph shall be deemed confidential law enforcement material, to the extent state law permits, and shall not be subject to production unless required by law. Nothing in this paragraph shall be deemed to prevent a Settling State from sharing this material with other State or federal law enforcement agencies.
3. Within the ninety (90) days following the provision of the Annual Data Reports, either Kroger or the States Injunctive Relief Committee may propose in writing a meet and confer to discuss potential changes to the scope of one or more categories of Red Flags. At such a meeting, Kroger or the States Injunctive Relief Committee may provide additional research, information or data available to them beyond that provided in the Annual Data Reports. For example, Kroger might propose reducing the threshold for triggering a particular category of Red Flag or consolidating certain Red Flags or subcategories of Red Flags into a single metric, or the States Injunctive Relief Committee might propose increasing the threshold for triggering a particular Red Flag or expanding that Red Flag to include multiple subcategories (e.g., number of prescriptions, distance thresholds).
 - a. If Kroger and the States Injunctive Relief Committee agree on such changes to one or more Red Flags, they shall document those changes in writing and they shall become a part of these Injunctive Terms for all intents and purposes.
 - b. If Kroger and the States Injunctive Relief Committee cannot agree on the proposed changes during their meeting and confer, the Party seeking the change(s) to the Red Flag(s) may seek a 5-day mediation of the issue at its own expense. If the mediation fails to resolve the dispute between the parties, the party seeking the proposed change(s) may appeal to the National Arbitration Panel to have the National Arbitration Panel modify the Red Flags on the basis that the change(s) would be consistent both with avoiding unnecessary material costs of identifying and resolving Red Flags and materially reducing the diversion of Controlled Substances. In such a proceeding, the Party seeking the proposed change(s) may provide evidence from Annual Data Reports or from other research, data and information.
 - c. In any such proceedings, there shall be a presumption against imposition of any proposed Red Flags, or proposed modifications to pre-existing Red Flags, that have not been identified by the United States Drug Enforcement Administration (DEA) or other law enforcement agencies tasked with the regulation of Controlled Substances.
 - d. The Red Flags required by these Injunctive Terms shall at no point be too numerous or complex to be reasonably workable for pharmacists in the context

of protecting patient safety, performing corresponding responsibility, drug utilization review, and their other responsibilities. Any dispute over whether the Red Flags required by these Injunctive Terms have become too numerous or complex to be reasonably workable for pharmacists shall be submitted to the National Arbitration Panel. In the event a dispute is submitted to the National Arbitration Panel, it shall be Kroger's burden to prove that the Red Flag(s) at issue are overly burdensome and that their burdensome nature outweighs any public health benefit.

4. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Patient Red Flags":
 - a. A Patient seeks to fill a Schedule II Designated Controlled Substance prescription more than three days prior to the contemplated exhaustion date of an earlier prescription of the same Schedule II Designated Controlled Substance (e.g., exhaustion of the days' supply assuming the prescription has been taken in accordance with the prescribers' directions on the face of the prescription), provided the previous prescription was also dispensed by the same Settling Pharmacy;
 - b. A Patient seeks to fill a Designated Controlled Substance prescription from a Prescriber after having filled Designated Controlled Substance prescriptions at the same Kroger pharmacy from more than four other Prescribers, from separate practices, in a given 6-month period;²
 - c. To the extent personally known by the dispensing pharmacist, Prescriber has been the subject of more than ten (10) documented refusals to fill a Designated Controlled Substances or any opioid product within a six-month period;
 - d. A Patient seeks to fill a Designated Controlled Substance prescription after having filled three other Designated Controlled Substance prescriptions written by multiple Prescribers with overlapping days of supply at Kroger's pharmacies within thirty (30) days;
 - e. The distance between a Patient's residence and the Kroger receiving the Designated Controlled Substance prescription is farther than 50 miles;
 - f. The Patient resides more than one hundred (100) miles from the Prescriber who issued the Designated Controlled Substances prescription, unless the dispensing pharmacist makes a good faith error in evaluating the distance, and the prescription was not issued pursuant to a telemedicine consultation;
 - g. To the extent personally known by the dispensing pharmacist, a Patient seeks to fill a Designated Controlled Substance prescription after having two other

² In Kroger's sole discretion, for administrative convenience Kroger may implement this Red Flag without regard to whether Prescribers are at separate practices, thereby resulting in more instances in which the flag occurs.

- prescriptions for Designated Controlled Substances subjected to documented refusals to fill by a Kroger pharmacist within the past thirty (30) days;
- h. A patient pays in cash for a Designated Controlled Substance despite having current prescription drug insurance on file in the Settling Pharmacy's dispensing system for that medication;
 - i. To the extent personally known by any pharmacy personnel, three or more Patients come to the pharmacy together to fill prescriptions for the same Designated Controlled Substance medication;
 - j. A Patient requests a Designated Controlled Substance by its slang or street description, such as "Mallinckrodt blues," "M's" or "the blue pill"; and
 - k. A Patient presenting a prescription for a Designated Controlled Substance appears visibly altered, intoxicated, or incoherent.
5. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Prescription Red Flags:"
- a. A Controlled Substance prescription fails to meet the requirements of law. For the sake of clarity, minor deficiencies in the patient's name, address, date of birth, or contact information are not a red flag if the pharmacist, in his or her professional judgment and usual course of practice, is able to resolve these deficiencies with the patient. Similarly, minor deficiencies in the prescriber's name, address, contact information, or DEA number are not a red flag if the pharmacist is able to resolve these deficiencies with the prescriber;
 - b. A Controlled Substance prescription that appears altered, including but not limited to, a photocopied prescription or a prescription in which an altering agent, such as white out, was used;
 - c. A Controlled Substance prescription written with misspellings suggesting the prescription may not have been written by a valid Prescriber;
 - d. A Controlled Substance prescription using atypical abbreviations suggesting the prescription may not have been written by a valid Prescriber; and
 - e. A Controlled Substance prescription written with multiple colors of ink or in multiple different handwritings.
6. Kroger's CSCP Policies and Procedures shall direct its pharmacists to treat the following circumstances as "Prescriber Red Flags:"
- a. A Prescriber provides a Patient with prescriptions for all three of a Schedule II Designated Controlled Substance, a benzodiazepine, and carisoprodol;

- b. A Prescriber has no office within fifty (50) miles of the retail pharmacy store where a Designated Controlled Substance prescription is submitted; and
- c. A Prescriber of Designated Controlled Substances uses prescriptions that are preprinted or stamped with drug type and amount.

X. PRESCRIBER REVIEW

1. Kroger shall regularly review the prescribing patterns and practices of Prescribers of Designated Controlled Substances (the “Prescriber Review Process”). The Prescriber Review Process shall employ algorithms, or other means, to review data on Kroger’s retail dispensing for potential Prescribers of concern.
2. Kroger shall initiate Prescriber Review Process in the following circumstances:
 - a. Personnel implementing the Prescriber Review Process become aware that a Prescriber of Designated Controlled Substances located in a Settling State has been the subject of a blanket refusal to fill by one or more of Kroger’s retail pharmacy stores in the Settling States;
 - b. Personnel implementing the Prescriber Review Process become aware that a Prescriber of Designated Controlled Substances located in a Settling State has been charged or indicted with a crime related to prescribing Designated Controlled Substances by the Federal Government or law enforcement in a Settling State; or
 - c. Kroger has received a Hotline complaint that has been investigated and substantiated concerning a Prescriber’s alleged illegitimate prescribing of Designated Controlled Substances.
3. Based on the professional judgment of the employees operating the Prescriber Review Process, Kroger may also initiate the Prescriber Review Process when:
 - a. Personnel implementing the Prescriber Review Process are notified in writing by law enforcement that a Prescriber of Designated Controlled Substances located in a Settling State is the target of an investigation regarding the prescribing of Controlled Substances;
 - b. A Prescriber of Designated Controlled Substances was flagged for review by a Kroger pharmacist in a Settling State (other than through a refusal to fill or blanket refusal to fill) or by field personnel who supervise Kroger’s pharmacies in a Settling State; or
 - c. A Prescriber of Designated Controlled Substances located in a Settling State was identified through the running of algorithms on Kroger’s retail dispensing.
4. Once Kroger identifies a Prescriber of Designated Controlled Substances for further investigation, Kroger shall review pertinent and available data or information

pertaining to the Prescriber, which may include interviews or other information gathered in the discretion of the employees operating the Prescriber Review Process. All data and information collected or created as part of the Prescriber Review Process shall be maintained by Kroger for a period outlined in appendix A. When permitted by law, nothing contained in this Section prevents Kroger from taking immediate action to Block a Prescriber.

5. If after the Prescriber Review Process, those making the decision have not resolved the circumstances that caused Kroger to further investigate the Prescriber, from the perspective of those making the decisions, then the Prescriber shall be Blocked from having Controlled Substance prescriptions filled at Kroger's retail pharmacies in the Settling States, when permitted by law. A Prescriber may have an opportunity at the discretion of Kroger to seek future reinstatement by providing information to Kroger that may resolve its concerns. Nothing in this Section shall limit the right or ability of Kroger pharmacists to either refuse to fill a given prescription or refuse to fill all prescriptions for Controlled Substances from a given Prescriber independent of any decision by Kroger to Block or not Block a given Prescriber. On written demand, on an annual basis, Kroger shall provide to each Settling State the names of and DEA registration or NPI numbers of Prescribers of Designated Controlled Substances within that Settling State that it has Blocked. Each Settling State shall provide contact information in order to receive such information. For each of the Settling States, on an annual basis, Kroger shall provide to the Injunctive Relief Committee the number, names and DEA registration or NPI numbers of Prescribers who were: (a) blocked, and (b) the number of prescribers who were reviewed but not blocked.

XI. PROACTIVE DUE DILIGENCE AND SITE VISITS

1. During the term of these Injunctive Terms, Kroger shall conduct periodic proactive compliance reviews of its retail pharmacy stores in the Settling States to assist with the identification of potential compliance issues related to the dispensing of Designated Controlled Substances at its retail pharmacy stores in the Settling States. This may be satisfied by the use of algorithms, or other electronic means, to analyze data associated with each pharmacy's dispensing of Designated Controlled Substances to identify particular pharmacies for review as required under this Section XI. Documentation of any resulting reviews shall be maintained by Kroger and made accessible to all Controlled Substance Compliance Department personnel upon request for a period outlined in appendix A.
2. During the term of these Injunctive Terms, Kroger personnel or qualified third-party compliance consultants shall conduct site visits to each pharmacy in XI.1. in a calendar year. These site visits shall at a minimum consist of a review of Controlled Substance dispensing documentation and recordkeeping; and a review of physical surroundings and other circumstances for any indications of potential non-compliance with these Injunctive Terms or the CSCP Policies and Procedures, or any violations of other applicable laws and regulations related to the dispensing of Controlled Substances.

3. During site visits, Kroger's personnel or qualified third-party compliance consultants shall interview relevant pharmacy employees, if appropriate, about any potential areas or issues of concern, including potential violations of laws related to the dispensing of Controlled Substances, the CSCP Policies and Procedures, and these Injunctive Terms.
4. Kroger's personnel or qualified third-party compliance consultants who conduct site visits shall complete a report reflecting the findings of any site visit pursuant to this section. This report shall document areas or issues of concern, including potential violations of law related to the dispensing of Controlled Substances, the CSCP Policies and Procedures, and these Injunctive Terms.
5. The site visit reports described above shall be maintained by Kroger and made accessible to all Controlled Substance Compliance Department personnel for a period outlined in appendix A. Upon its request, the States Injunctive Relief Committee shall be provided sample reports or a report for a particular store.

XII. THEFT AND LOSS PREVENTION

1. In addition to complying with all theft and loss procedures, policies and precautions required by state and federal law, Kroger shall maintain information regarding the receipt and disposition of inventory of all Designated Controlled Substances at each retail pharmacy store for a period outlined in appendix A, if the information is an electronic record. If the information is not an electronic record, Kroger shall only be required to maintain those records for a period outlined in appendix A.
2. In addition to any other reporting obligations under state and federal law, Kroger must provide to each Settling State on a quarterly basis any reports it has made to the DEA regarding the theft or significant loss of Designated Controlled Substances in that Settling State pursuant to 21 C.F.R. §1301.76(b). There shall be no obligation to provide these reports to Settling States that receive contemporaneous reporting of thefts or significant losses of Designated Controlled Substances to a Settling State's board of pharmacy or other relevant state agency requiring such reports. Each Settling State shall provide contact information in order to receive such reports.

XIII. REPORTING TO LAW ENFORCEMENT

1. The Settling States shall inform Kroger to what extent their law enforcement authorities would like to receive reports, other than those already required by law or regulation, of any confirmed forged prescriptions. To the extent not already in place, Kroger shall implement standard operating procedures directing its employees to report any confirmed forged prescriptions for Designated Controlled Substances to those Settling States who have indicated that they want to accept it, within five (5) business days of completing any review of such prescription or conduct. The Settling States shall provide contact information in order to receive such reports.

2. Kroger shall document and for a period outlined in appendix A maintain records of any such reports that are made to Settling States regarding confirmed fraudulent or forged prescriptions, which are maintained centrally.

XIV. ENFORCEMENT OF INJUNCTIVE TERMS

1. Notice of Potential Violations and Opportunity to Cure.
 - a. A “Potential Violation” occurs when the Settling State determines, after appropriate investigation and due diligence, that Kroger is not in substantial compliance with a material aspect of the Injunctive Terms. A Potential Violation may be for a single retail pharmacy. A violation of this Agreement is not presumed to occur when a pharmacist, pharmacist technician, or other field personnel who supervise pharmacists and/or pharmacist technicians employed by Kroger violates Kroger’s CSCP Policies and Procedures.
 - b. Potential Violation Discovered by Settling State.
 - i. In the event of a Potential Violation identified by a Settling State, the Settling State shall notify Kroger in writing (the “State’s Notice”).
 - ii. Within thirty (30) days of receipt of the State’s Notice, Kroger shall provide a written response to the Settling State. The response shall include Kroger’s position as to the act(s) of non-compliance, including, possibly, a statement setting forth why Kroger believes it is in substantial compliance with the relevant provision(s) or a statement explaining how the Potential Violation has been addressed.
 - iii. If the Settling State wishes to meet with Kroger, Kroger shall promptly make itself available for such a meeting.
 - c. If, after review of a written response and any meeting, the Settling State believes that a Potential Violation is ongoing or has not been substantially addressed, it will provide written notice to Kroger and work in conjunction with Kroger to devise, within thirty (30) days, a corrective action plan (“Corrective Action Plan”) to remedy such Potential Violation, including a reasonable period for implementation of such plan.
 - d. Within sixty (60) and one hundred twenty (120) days after implementing the Corrective Action Plan, Kroger will provide a written compliance update to the Settling State and make itself available to meet with the Settling State if requested. If after reviewing the compliance update and any meeting, the Settling State believes a Potential Violation remains ongoing or has not been substantially addressed, the Settling State may commence a 30-day mediation period. If mediation fails to resolve the dispute between the parties, the Settling State may take whatever action it deems necessary, including but not limited to bringing an action to enforce these Injunctive Terms, filing a new action (administrative or civil action) for violation of the Injunctive Terms as allowed

by state law, conducting further investigation, or attempting to negotiate an updated Corrective Action Plan with Kroger. But the Settling State may not seek to reinstate claims that have been released as part of the Settlement Agreement.

- e. If Kroger fails or refuses to provide a written response, to devise or implement a Corrective Action Plan or to provide a compliance update as required by subsections 1(b), 1(c) and/or 1(d), a Settling State may bring an action to enforce these Injunctive Terms, filing a new action (administrative or civil action) for violation of the Injunctive Terms as allowed by state law, conduct further investigation, or attempt to negotiate an updated Corrective Action Plan with Kroger. But the Settling State may not seek to reinstate claims that have been released as part of the Settlement Agreement.
 - f. If, after review of a written response and any meeting, pursuant to subsections 1b. or 1c., above, the Settling State concludes that a Potential Violation is not ongoing or has been substantially addressed, the Settling State will provide written notice of this conclusion to the Settling Pharmacy within thirty (30) days of reaching its conclusion.
2. Enforcement Action. Each Settling State agrees that prior to taking any court or administrative action, other than an action that the Settling State concludes is necessary to address an immediate threat to the health, safety, or welfare of the citizens of the Settling State, or that a public emergency requiring immediate action exists, it will follow the process outlined above. If the Settling State concludes that action is necessary to address an immediate threat to the health, safety, or welfare of the citizens of the Settling State or that a public emergency requiring immediate action exists, it will make best efforts to provide reasonable notice to a Settling Pharmacy prior to initiating any such action.

XV. COMPLIANCE CERTIFICATION

1. Kroger's Controlled Substance Compliance Director, or the most senior ranking member of the Controlled Substance Compliance Committee shall, after diligent inquiry, complete an annual compliance certification on behalf of Kroger as set out in Section XV(4).
2. The certification shall be filed annually for the duration of these Injunctive Terms with a Settling State's appropriate licensing and/or regulatory agency and its Attorney General.
3. The certification shall state:

“I understand the compliance requirements and responsibilities as they relate to [insert name of department], an area under my supervision. My job responsibilities include attempting to achieve compliance with regard to the [insert name of department] with all applicable statutory requirements, obligations of the Injunctive

Terms, and applicable policies, and I have taken steps to promote such compliance. To the best of my personal knowledge, the [insert name of department] is in compliance with the obligations of these Injunctive Terms. I understand that this certification is being provided to and relied upon by the State of [Settling State].”

4. If the Controlled Substance Compliance Director is unable to provide such a certification, the Controlled Substance Compliance Director shall provide a written explanation of the reasons why he or she is unable to provide the certification outlined above.

XVI. DATA SHARING

1. Kroger shall consent to the provision by its distributors of Kroger’s unblinded “867 Data” (data sent from the distributor to the manufacturer concerning the sale of its products to Kroger) to opioid manufacturers on any particular Designated Controlled Substances manufactured by them as soon as commercially reasonable and at no cost to the manufacturers, provided that, pursuant to a prior written agreement with Kroger, the opioid manufacturers agree (a) to ensure the confidentiality of the 867 Data, except as required by law; (b) to implement safeguards and procedures to limit access to and use of the 867 Data, except as required by law; (c) that the 867 Data shall be used solely for compliance purposes as part of their Suspicious Order Monitoring programs; and (d) that the 867 Data shall be shared only with specified personnel and shall not be shared with business or sales personnel.
2. To the extent that Kroger provides McKesson Corporation, Cardinal Health, Inc., or AmerisourceBergen Corporation (the “Settling Distributors”) with Pharmacy Customer Data (as defined in the Distributor Injunctive Terms) for use in their Controlled Substance Monitoring Programs, Kroger agrees that the Settling Distributor(s) may share such Pharmacy Customer Data with the Monitor appointed pursuant to the Distributor Injunctive Terms, provided that the Monitor agrees, pursuant to a prior written agreement with Kroger, (a) to ensure the confidentiality of the Pharmacy Customer Data; (b) to implement safeguards and procedures to limit access to and use of the Pharmacy Customer Data; (c) that the Pharmacy Customer Data is used solely for the purpose of ensuring the Settling Distributors’ compliance with the Distributor Injunctive Terms; and (d) that the Pharmacy Customer Data shall be shared only with specified personnel.

XVII. CLEARINGHOUSE

1. Kroger will confer with any Settling Distributor that distributes Designated Controlled Substances to its retail pharmacies and the States Injunctive Relief Committee for a period not to exceed six (6) months from the Injunctive Terms Implementation Date to determine: what additional deidentified information, if any, is needed from Kroger for a Settling Distributor to perform suspicious order monitoring; if additional deidentified information is needed, how the Settling Pharmacy shall provide it to a Settling Distributor; and what information provided by

Kroger to a Settling Distributor may be deposited by the Settling Distributor into the Clearinghouse. For the avoidance of doubt “deidentified” does not refer to Prescribers. If agreements are not reached, the matters in dispute shall be submitted to arbitration. Due to patient privacy and legal restrictions and other confidentiality and commercial concerns, in connection with any meet and confer described above, Kroger may not be compelled to provide individual patient-level or prescription-level data, de-identified or otherwise, to the Settling Distributors.

2. Kroger and Settling Distributors will also determine whether and in what amount each Settling Pharmacy will contribute to the cost of the operation of the Clearinghouse. When Kroger contributes to the costs of the Clearinghouse, Settling Pharmacy, Settling Distributors and all other participants in the Clearinghouse shall determine an equitable amount of Kroger’s contribution. If agreements are not reached, the matters in dispute shall be submitted to arbitration.
3. Any data provided by Kroger to a Settling Distributor and/or the Clearinghouse pursuant to these Injunctive Terms shall be treated in compliance with state and federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and all applicable state and federal privacy laws.
4. No Settling Distributor or other participant in the Clearinghouse shall receive from the Clearinghouse information specific to Kroger.

XVIII. FUTURE ACQUISITIONS

1. Kroger agrees to use reasonable best efforts to bring acquired pharmacies into compliance with these injunctive relief provisions in an expeditious manner. In the event that Kroger consummates its acquisition of Albertsons, then the parties shall discuss and agree within thirty (30) days of the transaction closing on a specific time period for bringing Albertsons into compliance with the terms of the injunctive relief provisions herein.

EXHIBIT B

Litigating Subdivisions in Kentucky

Litigating Subdivision(s)	Case No.
Anderson County, Kentucky	1:18-op-45006
Bell County, Kentucky	1:18-op-45026
Boone County, Kentucky	1:18-op-45020
Boyd County, Kentucky	1:18-op-45084
Boyle County, Kentucky	1:18-op-45018
Bullitt County, Kentucky	1:18-op-45009
Campbell County, Kentucky	1:18-op-45022
Christian County, Kentucky	1:17-op-45070
City of Covington, Kentucky	1:18-op-45967
City of Henderson, KY on Behalf of Themselves and all Other Similarly Situated Home Rule Cities	1:20-op-45062
City of Lexington, Kentucky	1:18-op-45010
City of London	1:19-op-45103
City of Morehead, Kentucky	1:19-op-45104
City of Russell; City of Jenkins; City of Pineville; City of Worthington; City of Vanceburg; City of Greenup; City of South Shore; City of Bellefonte, Kentucky	1:21-op-45094
Clark County, Kentucky	1:18-op-45172
Franklin County, Kentucky	1:18-op-45007
Hardin County Fiscal Court on behalf of Hardin County, Kentucky; Breckinridge County Fiscal Court on behalf of Breckinridge County; Green County Fiscal Court on behalf of Green County; Meade County Fiscal Court on behalf of Meade County; Ohio County Fiscal Court on behalf of Ohio County	1:20-op-45063
Hopkins County, Kentucky	1:18-op-45010
Jessamine County, Kentucky	1:18-op-45090
Kenton County, Kentucky	1:18-op-45089
Kentucky River District Health Department, and "all others similarly situated"	1:18-op-45050

Litigating Subdivision(s)	Case No.
Laurel County, Kentucky	1:18-op-45105
Louisville/Jefferson County Metro Government, Kentucky	1:18-op-45013
Madison County, Kentucky	1:18-op-45011
McCracken County Kentucky	1:18-op-45611
Meade County, Kentucky	1:18-op-46275
Montgomery County, Kentucky	1:18-op-46144
Oldham County, Kentucky	1:18-op-45067
Paducah (City), Kentucky	1:18-op-45592
Powell County, Kentucky	1:18-op-46145
Pulaski County, Kentucky	1:18-op-45109
Rowan County, Kentucky	1:18-op-45018
Scott County, Kentucky	1:18-op-45173
Shelby County, Kentucky	1:17-op-45009
Wayne County, Kentucky	1:18-op-45389
Woodford County, Kentucky	1:17-op-45174