

**AGREEMENT WITH OUTSIDE COUNSEL  
FOR THE GEORGIA OPIOID CRISIS INVESTIGATION AND LITIGATION**

This Agreement is made between The State of Georgia, acting by and through Christopher M. Carr and the Georgia Department of Law (“Attorney General”) and Barnes Law Group, LLC; the Cooper Firm; Franklin Law, LLC; and Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. (collectively “the Firms”).

**SCOPE OF REPRESENTATION**

The Attorney General engages the Firms to provide legal representation to the State of Georgia in connection with the State’s claims arising out of the opioid crisis, including but not limited to claims relating to the manufacturing, marketing, sale, distribution, monitoring and/or dispensing of prescription opioid products within the State (“the Representation”). The Representation includes, but is not limited to, investigation of and/or litigation against manufacturers, distributors, wholesalers, retailers and any other entities that have contributed or are contributing to the opioid crisis in the State. The Representation is of great public importance, and will require special resources, experience, and expertise. The Firms will be compensated solely on a contingency fee basis, as the Attorney General has determined that a contingency fee is both cost-effective and in the public interest.

**1. BASIC AGREEMENT**

**1.1 Retention.**

Under the terms and conditions of this Agreement, the Attorney General, pursuant to O.C.G.A. §§ 45-15-4 and 45-15-5, retains the Firms to serve as outside counsel to conduct the Representation and the Firms accept the retention. By concurrent Administrative Order, the Attorney General has appointed John R. Bevis to serve as a Special Assistant Attorney General (“SAAG”) for the specific purpose of conducting the Representation pursuant to this Agreement, and he, together with the other attorneys who are designated below, will participate in the Representation. The SAAG and designated attorneys may assign legal work to other individuals employed by the Firms during the course of the Representation.

**1.2 Ultimate Authority.**

Notwithstanding any other provisions of this Agreement, the Attorney General, as chief legal officer for the State, will retain ultimate control and direction over all matters relating to the Representation, and his decisions in such matters shall be final.

**2. SERVICES**

**2.1 Description of Services.**

The Firms shall serve as co-counsel with the Attorney General in connection with all phases of the investigation and any litigation, including pre-trial, trial, appeals, and collection of any monetary recovery, as requested by the Attorney General.

The Firms will proceed through the designated attorneys and staff and will bring to bear their entire work product, information and experience from similar suits. The Firms will do this with or without front line participation by the staff of the Department of Law, as the Attorney General may determine.

## **2.2            *Conduct of Representation.***

The Firms shall perform all services necessary and appropriate to carry out the Representation and as requested by the Attorney General, including but not limited to the following:

- a.        Providing counsel, claim assessment, identification of claims, determination of appropriate monetary and non-monetary relief including calculation of damages and/or penalties, claim preparation, litigation, trial and appellate services to carry out its Representation of the State, including, but not limited to preparation and filing of any and all complaints; responding to motions, including motions to dismiss; drafting and responding to discovery requests propounded to the State or any of its agencies or employees; tracking documents obtained in discovery; preparing relevant witnesses for depositions; taking and defending depositions; preparing and responding to motions for summary judgment or other pretrial dispositive motions; representing the State in trial or in any settlement negotiations that may occur; representing the State in responding to post-trial motions; representing the State in any appeal(s) related to the Representation, including appeals of any judgments or verdicts rendered in litigation and, if applicable, the remand(s) from any appeals;
- b.        Preparing and providing to the Attorney General all documents and information that the Firms and/or the Attorney General deem necessary or appropriate;
- c.        Hiring consultants and experts;
- d.        Consulting with individuals and groups as requested by the Attorney General;
- e.        Taking action to collect any recovery resulting from settlement of or judgment entered in the matter; and
- f.        Providing all other legal services as necessary and appropriate to successfully and fully carry out the Representation.

### **2.2.1        *Control and Management of Litigation.***

The Attorney General at all times will direct and control the Representation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be made in said litigation, approval and/or

rejection of settlements and the amount and type of relief to be requested. The Attorney General shall have final, sole and unreviewable authority to control all policy, strategy, and other substantive issues in regard to the Representation, including but not limited to presentation, negotiation, and resolution of claims, the content of any pleading or other court document, and in cooperation with the Firms, the selection of experts and consultants. In consideration of the Attorney General's authority to control the investigation and/or potential litigation, the Firms shall regularly consult with the Attorney General regarding all significant aspects of the Representation. At a reasonable time in advance, given the circumstances, the Firms will submit all significant matters with proposed actions for comment, approval and, in the case of pleadings and other filings, signature. Without limitation for this purpose, the following will be significant: policy issues; motions and briefs on dispositive issues; pleadings; matters involving recusal, discipline, default, sanctions, contempt or like controversy; scheduling of major depositions; content of major discovery requests and responses; the major elements of trial preparation and strategy, appeal, and settlement.

### **2.2.2 Coordination.**

The Attorney General and the Firms will each designate a Liaison for the Litigation ("Liaison," "Firm Liaison," and "Law Department Liaison" as the case may be). Both Liaisons will devote prompt, substantial attention to their communications in the conduct of the Litigation. Instructions, approvals, briefings, exchange of work product and other coordination for the Attorney General and the Firms will be conducted through the Liaisons unless a Liaison, the Attorney General or the Firms otherwise direct as to his or its part.

### **2.2.3 Communication.**

The Firm Liaison will keep the Law Department Liaison fully and currently informed about the status of the Litigation and related matters. In recognizing the vicissitudes of litigation and the public responsibility of the Attorney General, the communications will generally be informal and frequently oral, but when requested, the Firms will communicate in writing. The Firm shall give timely written notice to the Attorney General of any and all of the following events in this matter: hearings, rulings, trials, settlement negotiations, appeals or notices of appeal, motions and briefs filed by any party or entity, appellate arguments or decisions, and, enforcement efforts. In addition to informal communications and reports and notices of events, the Firms shall provide a comprehensive status report, including a description of the current status of the Representation, any significant events that have occurred since the previous report, and a prospective analysis of any significant future events, every three months and at such other times and the Attorney General may direct, and the Firms shall hold status meetings with the Attorney General at the Attorney General's request. All such communications with either outside or in-house counsel concerning prospective litigation and legal strategies will be deemed confidential, attorney-client privileged and work product pursuant to O.C.G.A. § 45-15-4, and shall be exempt from disclosure to the extent allowed under O.C.G.A. §§ 50-18-72(a)(41) and (42).

**2.2.4 Team.**

**2.2.4.1 Lead Counsel.**

The SAAG will act as Lead Counsel.

**2.2.4.2 Designated Attorneys.**

In addition to the SAAG, the following attorneys of the Firms will participate in the Representation, including any potential litigation:

Roy E. Barnes  
John F. Salter  
John R. Bartholomew  
Lance Cooper  
James B. Franklin  
Rebecca Franklin Harris  
Rhon E. Jones  
C. Gibson Vance  
J. Parker Miller  
Richard D. Stratton

The SAAG and designated attorneys may assign legal work to other individuals employed by the Firms during the course of the Representation.

The Law Department Liaison will inform the Firms which attorneys from the Law Department will participate in the Representation and appear in the signature block of pleadings. At the discretion of the Attorney General, the Attorney General or his designee(s) may directly participate in any aspect of the Representation, and the Attorney General shall have the right to substitute himself or his designee for the Firms on any aspect of the Representation.

**2.2.5 Support Staff.**

The Firms will provide sufficient support staff as necessary and appropriate to carry out the Representation.

**2.2.6 Experts and Consultants.**

The Firms shall retain and advance the costs of any, and all, experts, consultants, and other such services as may be necessary and appropriate in furtherance of the Representation. The Firms will consult with the Attorney General before employing any such services, and the Attorney General shall have the final approval of the retention of any experts, or consultants, or other such services and any fee arrangements paid to those individuals and will not unreasonably withhold approval as recommended by the Firms.

**2.2.7 Communication with State of Georgia Entities.**

The Firms will communicate with State entities and employees only as directed or permitted by the Law Department Liaison.

**2.2.8 Work Product.**

The State of Georgia, through the Attorney General, will own all work product generated for Georgia in connection with the Representation. When the Firms develop new work product for multiple clients, the work product will belong to the Firms but will be provided to the Attorney General promptly upon request at any time for such use as he determines. The Firms will make available for use in the Representation all prior work products developed by the Firms or available to them.

**2.2.9 Software Systems.**

The Firms shall use software compatible with software used by the Attorney General, including Microsoft Office, Adobe Acrobat Pro, and other case management and document management software necessary and appropriate to perform the services hereunder. The Firms shall make available, through licenses or otherwise, case management or document management software to employees of the Attorney General assigned to this matter, and the Firms shall provide appropriate training and support related to the case management or document management software to employees of the Attorney General assigned to this matter.

**2.2.10 Settlement.**

The Attorney General, in his sole discretion, may choose to resolve claims connected to the Representation through settlement, including through settlements in conjunction with, among others, the National Association of Attorneys General or the ongoing federal multidistrict litigation, *In Re: National Prescription Opiate Litigation*, MDL No. 2804 (N. D. Ohio) (“MDL”). The Firms shall confer with the Attorney General as early as practicable in any settlement negotiation process, and the Attorney General shall be included in any settlement discussions. The Firms will monitor current events affecting the Representation, including developments in other opioid investigations and litigation, and will keep the Attorney General fully informed. If directed or permitted, the Firms will assist the Attorney General in presenting the views of the State of Georgia in appropriate forums, negotiations and discussions and will conduct settlement negotiations. However, the Firms will not discuss settlement or present the position of Georgia without specific permission or direction. The Attorney General may undertake all such matters independently. Because of the importance of working collectively together in this opioid litigation, it is the Attorney General’s intent to keep the Firms advised as to all settlement matters.

**3. COMPENSATION**

**3.1 General Principle.**

The Attorney General has determined that hiring private counsel on a contingent fee basis is in the best interests of the State to ensure that adequate resources and experience in the subject matter are available to prosecute cases falling within the scope of the Representation. The only source of payment to the Firms for fees and expenses will be monies which are collected by or on behalf of the State in any litigation commenced as a part of the Representation, monies which are collected from settlement of any claims related to the Representation, or monies which are collected by the State as attorney’s

fees (“Collected Funds”). If no recovery is obtained, the State will not owe attorney’s fees, reimbursement for costs and expenses, or any other compensation. All monies collected in connection with the Representation will be paid to the Department of Law in its name alone for distribution according to law and to this Agreement. In the event of the State’s participation in any multistate or multidistrict litigation settlements, amounts assessed for common benefit fees and/or expenses shall not be considered a part of Collected Funds.

### **3.2            *Expenses.***

#### **3.2.1            *Advancement of Costs and Expenses.***

The Firms shall advance, and will be ultimately liable for, all expenses, including but not limited to travel, meals, mileage, lodging, photocopying, postage, electronic legal research fees, costs of any and all expert witnesses, consultants or other services that may be necessary to the Representation, but shall be reimbursed for certain expenses (“Approved Expenses”) as the first item in the disbursement of Collected Funds. At the conclusion of the Representation or as requested by the Attorney General, the Firms shall provide an invoice setting forth the actual costs and expenses incurred and for which reimbursement is sought. The Firms shall not be responsible for any expenses incurred by State of Georgia employees, consultants or other specialized lawyers. In the event one or more of the proposed Defendants enters into bankruptcy proceedings, the Firms and Attorney General will confer on the proper steps to ensure the State of Georgia’s interests are protected, including the retention of bankruptcy counsel to assist the State. Any such fees and expenses so approved by the Attorney General will not be governed by this Agreement.

#### **3.2.2            *Format of Invoice and Expenses.***

All expenses should be itemized to include the following information: (1) name of the attorney incurring the expense; (2) a legible copy of a receipt documenting the expense; and (3) a detailed description of the expense. No reimbursement shall be made for “miscellaneous” listings or for expenses missing any of the three requirements listed above.

#### **3.2.3            *Retention of Receipts.***

Receipts shall be retained for at least one (1) full year following the conclusion of the Representation and shall be made available to the Attorney General upon request or as otherwise set forth herein.

#### **3.2.4            *Maximum Reimbursement.***

Unless otherwise expressly approved by the Attorney General in writing prior to invoicing, the following permitted expenses shall be reimbursed only in accordance with section 3.2.2 and only as follows:

- a.        The firms shall be reimbursed for retention of outside experts and consultants, including fees and other reasonable costs, only when expressly authorized by the Attorney General. Except as expressly set

forth herein, the Firms shall not be reimbursed for retention of in-house experts or other in-house legal support staff.

- b. Approval of travel expenses for reimbursement to the Firms is subject to the State of Georgia Travel Policy as set forth by the State Office of Planning and Budget, unless the Firms can demonstrate a reasonable basis for the deviation from said policy.
- c. In-house photocopying/document imaging (including faxing, scanning and color copies) shall be reimbursed at the Firms' actual expense not to exceed twenty-five cents (0.25) per copy and is to be itemized on the invoice as "photocopies, document images, faxes or scanned pages" (number of copies @ rate per copy/image). Reasonable amounts for outside photocopying/ document imaging shall be reimbursed at actual cost if receipts are provided.
- d. Charges for priority or overnight mail and courier services shall be reimbursed only if a reasonable basis exists for using the service and only if receipts for the expense are provided. In no event shall the Firms be reimbursed for the cost of sending invoices or status reports to the Attorney General by overnight or priority mail service.
- e. There shall be no reimbursement for secretarial/administrative overtime unless expressly authorized in writing by the Attorney General.
- f. Routine expenses such as office supplies, word processing or secretarial costs are not reimbursable. Actual costs shall be reimbursed for certain extraordinary expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing, cab and bus fares, parking, and long-distance telephone calls when itemized with receipts. The Firms shall obtain the Attorney General's approval before incurring any individual expense exceeding One Thousand and 00/100 Dollars (\$1,000.00), other than airfare, as well as any other extraordinary or unusual expenses or significant category of expenses incurred in fulfilling the terms of this Agreement.

### **3.3 Contingency Fee.**

The Firms shall be paid a contingency fee based on the monetary recovery obtained by the State through settlement or judgment from any matter contemplated by this Agreement. The fee shall be equal to 8.00% of the net monetary recovery received by the State in connection with the Representation, subject to the limitations contained herein.

- a. Costs and expenses pursuant to section 3.2 will be paid to the Firms at the conclusion of the Representation out of the total gross Collected Funds received by the State.

- b. Subject to the limitations in this paragraph 3.3, the Firms shall be paid an amount equal to 8.00% of the net monetary recovery. Net monetary recovery shall be defined as the balance of Collected Funds remaining after payment of costs and expenses to the Firms.
- c. If a settlement in any case is reached with any Defendant(s) prior to the filing of a lawsuit and commencement of Fact Discovery, the Firms shall only be entitled to 75% of the contingency fee described in paragraph 3.3(b). For purposes of this subsection only, "Fact Discovery" shall mean the pursuit of information reasonably calculated to lead to the discovery of admissible evidence in the case, including information which can be compelled from third parties. The commencement of Fact Discovery shall be the time period(s) authorized by the Georgia Civil Practice Act, OCGA § 9-11-1 *et seq.* and uniform state and superior court rules (governing state court proceedings), or by the Federal Rules of Civil Procedure and any applicable Local Rules (governing federal court proceedings). The mere preparation of initial discovery requests to serve with any complaint(s) shall not be deemed as the Commencement of Fact Discovery. In the event of multiple, separate settlements or judgments against different Defendants during the course of the Representation, each settlement will be treated as a separate case for the purpose of determining the fee applicable to that settlement.
- d. Notwithstanding anything contained herein to the contrary, the maximum amount payable to the Firms in connection with the Representation, not including reimbursement for Costs and expenses, shall be \$50,000,000.00
- e. In the event Collected Funds are derived from the State of Georgia's participation in any multistate or multidistrict litigation settlements, the assessment of common benefit fees and expenses shall not diminish the contingency fee percentage provided for herein.

**4. PRESS**

The Firms shall not issue press releases or communicate with any representative of the press, including any representative of a television station, radio station, newspaper, magazine, or any other media outlet, concerning the Representation without first obtaining approval of the Attorney General. All contacts with or inquiries from the media in connection with the Representation or the services rendered under this Agreement shall immediately be referred to the Liaison and/or person(s) as may be designated by the Attorney General for response.

**5. PUBLIC RECORDS**

Records prepared and maintained or received in the course of the Representation may be subject to disclosure pursuant to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et



seq., though exceptions to disclosure may apply to certain records or in certain circumstances. Accordingly, the Firms shall maintain all records created in the course of the Representation, make such records available and provide them to the Attorney General upon request, and provide such records to the Attorney General at the conclusion of the Representation.

In the event any Firm receives a request under the Georgia Open Records Act, the request shall immediately be referred to the Attorney General. Similarly, the Firms shall be immediately apprised of any Open Records Act requests related to the opioid litigation received by the Department of Law.

## **6. CONFLICTS OF INTEREST**

The Firms represent that at this time they have no conflicts of interest with the State of Georgia, its agencies, or subdivisions that have not been fully disclosed and waived by the Attorney General. The firms agree that if a conflict of interest, potential or otherwise, arises during the Representation, the Firms will give timely written notice to the Attorney General. The Firms must obtain written authorization from the Attorney General prior to undertaking any representation against or adverse to the State of Georgia, its offices, boards, departments, or institutions during the term of this Representation.

The Firms represent that they have informed the Attorney General of all entities they represent in connection with the opioid crisis. The Firms must obtain written authorization from the Attorney General prior to undertaking representation of any additional entities in connection with the opioid crisis.

## **7. DURATION**

### **7.1 *Effective Date.***

This Agreement will take effect upon its execution by the Attorney General as the last signing party.

### **7.2 *Expiration.***

The duration of this Agreement is indefinite. This Agreement shall not constitute a debt of the State.

### **7.3 *Termination.***

The Attorney General may terminate the participation of one or more of the Firms at any time for any or no reason. In the event a firm is terminated from representation, the firm shall be reimbursed their accumulated, approved expenses from Collected Funds, if any, and to the extent a recovery is obtained, the firm shall also be entitled to a reasonable fee for the work performed prior to termination to the extent funds are available from any such recovery. Under no circumstances shall a terminated firm be entitled to fees in excess of the agreed-upon contingency fee set forth in paragraph 3.3 above. In the event the parties cannot agree on what constitutes a reasonable fee under this subsection 7.3,

they agree to submit the issue to non-binding alternative dispute resolution, including mediation.

**7.4                    *Winding Up.***

Upon any termination of the Agreement, the Firms will promptly cooperate at their expense in an orderly transfer of information, work product and discovery from the Firms to the Attorney General or his designee in order that the Attorney General may continue the Litigation without disruption due to the Firms.

**8.                    CAPTIONS**

The brief headings preceding the Agreement provisions are for purposes of identification and convenience only and should be completely disregarded in construing this Agreement.


**9.                    ENTIRE AGREEMENT; MODIFICATIONS**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior understandings or agreements, verbal or written, which may exist between the Parties. This Agreement may not be modified except by a written agreement signed by the Attorney General and the SAAG.

IN WITNESS WHEREOF the parties have set their hands as of the date indicated:

[SIGNATURES CONTINUED ON NEXT PAGE]

DEPARTMENT OF LAW

By:   
CHRISTOPHER M. CARR  
Attorney General


This 10 day of September, 2018.

BARNES LAW GROUP, LLC

By:   
NAME: John R. Boris


This 7<sup>th</sup> day of September, 2018.

THE COOPER FIRM

By:   
NAME: Lorna Cooper

This 7<sup>th</sup> day of September, 2018.

FRANKLIN LAW, LLC

By:   
NAME: Rebecca Franklin Harris

This 7<sup>th</sup> day of September, 2018.

BEASLEY, ALLEN, CROW,  
METHVIN, PORTIS & MILES, P.C.

By:   
NAME: Joseph Parker Miller

This 7<sup>th</sup> day of September, 2018.