

AGREEMENT GOVERNING DISTRIBUTIONS OF PRESCRIPTION OPIOID IMPACT FEE FUNDS AND PRESCRIPTION OPIOID SETTLEMENT FUNDS

WHEREAS, this Agreement Governing Distributions of Prescription Opioid Impact Fee Funds and Prescription Opioid Settlement Funds (the “**Agreement**”) is hereby entered on [insert date], by and between the Behavioral Health Consortium (the “**BHC**”), on behalf of itself and the Prescription Opioid Settlement Distribution Commission (the “**Commission**”), and [insert entity’s legal name] (“**Recipient**”);

WHEREAS, Recipient has been approved to receive a distribution from the Prescription Opioid Impact Fund (the “**Impact Fund**”) established under 16 *Del. C.* § 4803B and/or the Prescription Opioid Settlement Fund (the “**Settlement Fund**,” and together with the Impact Fund, the “**Opioid Funds**”) established under 16 *Del. C.* § 4808B;

WHEREAS, Recipient acknowledges that Recipient is receiving restricted State funds from one or both of the Opioid Funds in an effort to address the ongoing opioid crisis in the State of Delaware (the “**State**”) and agrees to abide by the terms of this Agreement, as well as the terms of Recipient’s application (designated as [insert number assigned to application]) (the “**Application**”), the guidelines governing the Application, and the grant award (the “**Award**”) issued in respect of the Application, all of which are expressly incorporated herein in their entirety and deemed an integral part of this Agreement; and

NOW, THEREFORE, the Parties agree that the following terms and conditions shall govern the distribution of Opioid Funds to Recipient:

1. General Provisions.

- a) Recipient’s statements, disclosures and representations made in seeking, disbursing or reporting on proceeds of an Opioid Fund have been made by an individual with actual or apparent authority to bind Recipient. Recipient acknowledges that submission of false or misleading information related to such activity may give rise to civil liability or criminal prosecution.
- b) The BHC shall provide Recipient with a grant from one or both of the Opioid Funds in the total amount of \$[insert amount], with the funding to be distributed after the execution of this Agreement. Recipient is receiving these funds for the specific project or purpose identified in the accompanying Award. The BHC and the State shall have no further obligation to disburse more than the amount listed above.
- c) Recipient shall expend the funds in accordance with Recipient’s proposed budget, the Award, the guidelines approved by the Commission, and applicable laws and regulations. Any funds remaining after [insert date] shall be returned to the BHC in accordance with this Agreement.

2. *Audit and Inspection.*

- a) *State Auditing Rights.* Recipient shall hold the Recipient's, and any applicable agent, subcontractor, or subconsultant's work and records open at all times for the inspection and/or audit by the State, including, any private firm of certified public accountants engaged by the State. This applies to any books, documents, papers, financial and accounting reports, schedules and records, and any other material of the Recipient and any applicable agent, subcontractor, or subconsultant which relate to Opioid Funds. The location of the inspection and/or audit will be at the State's discretion and the inspection may be preceded by the State's demand for the production of documents. Such access for an on-site inspection and/or audit shall be granted by Recipient during its normal business hours after receipt at least ten (10) business days advance written notice. This provision shall survive termination or cancellation of the grant or other award.
 - b) *Mandatory Record Retention.* Recipient, and any applicable agent, subcontractor, or subconsultant retained by Recipient, must retain all books, documents, papers, financial and accounting reports, schedules and records, and any other material pertaining to costs incurred under the grant or other award for not less than 6 years after the State makes final payment and all other pending matters are closed and shall make the material available upon request for inspection and/or audit by the State.
 - c) *Financial Statements.* If requested, Recipient shall provide the State with financial statements (audited, if available) for the most recent two accounting years.
 - d) *Tax Record Retention and Production.* If requested, Recipient shall provide the State with any and all tax returns, employee or contractor tax documents and any other tax records for the State's inspection and/or audit of the Recipient's use of Opioid Funds. Such tax returns, employee or contractor tax documents and other tax records include, but are not limited to, annual tax returns, payroll tax returns, quarterly unemployment tax filings, and other employee or contractor tax-related information. If Recipient is a non-profit entity with tax-exempt status, Recipient shall immediately provide to the BHC any information concerning a change in its tax-exempt status.
- 3. *Subcontracting and Assignments.*** To the extent that subcontracting or assignments are authorized by an Award, Recipient agrees that each of its reporting, auditing, invoicing, and certification requirements shall be expressly required of any such subcontractor or assignee.

4. **Public Access to Audit Materials.** While confidential business information (as defined by the State's Freedom of Information Act) shall remain entitled to protection and shall not be disclosed to members of the public by the State unless required by law or court order, Recipient and its approved subcontractors and assignees shall expect that invoices, reports, certifications, and any State-generated audit report regarding Recipient's performance may be made available to the public.
5. **Customized Reporting Obligations.** Recipient shall issue certified reports as required by the BHC regarding compliance with all terms and conditions applicable to any grant or other distribution. Such certified reports will allow for active transactional oversight by the State and shall be tailored to the specific obligations covered by this Agreement.
6. **Non-Compliance is a Material Breach of Contract.** Recipient acknowledges that any failure to comply with the terms and conditions listed herein shall constitute a material breach of contract.
7. **Non-Waiver.** The delay or failure by the BHC or the State to exercise or enforce any of its rights under a grant or other governing document shall not constitute or be deemed a waiver of the State's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
8. **Severability.** If any term or provision included herein is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms, conditions or provisions hereof, but such term, condition, or provision shall be deemed modified to the extent necessary in the court's opinion to render such term, condition, or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the State as set forth herein.
9. **No Third-Party Beneficiary Rights.** This document and any related grant or other governing document is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any grant or other transaction contemplated hereby.
10. **Jurisdiction and Venue.** Recipient irrevocably consents and submits to the exclusive jurisdiction of the State courts of the State of Delaware and waives any objection based on venue or *forum non conveniens* with respect to any cause of action, claim or defense arising under or related to this Agreement.
11. **Governing Law.** All claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to the Agreement shall be governed by, and

enforced in accordance with, the internal laws of the State of Delaware, including its statutes of limitations, without regard to its conflict of law principles.

- 12. *Return of Unspent Opioid Funds.*** In the event Recipient is unable to use Opioid Funds in accordance with the Agreement, Recipient shall notify the BHC and immediately return all unexpended Opioid Funds, with or without a demand from the BHC. In the event the BHC notifies Recipient of a material breach of this Agreement, Recipient shall not expend any Opioid Funds unless and until expressly authorized to do so by the BHC in writing. In the event the breach remains uncured for a period exceeding five (5) business days, Recipient shall immediately return all unexpended Opioid Funds, with or without a demand from the BHC.
- 13. *Warranty.*** Recipient hereby warrants that all services provided with the use of Opioid Funds will be performed in a good and workmanlike manner, technically sound and in conformance with all applicable federal, state and local statutes, codes, ordinances, resolutions and other regulations applicable to the services.
- 14. *Indemnification.*** Recipient shall indemnify and hold harmless the BHC, the Commission, the State, and their respective members, officers, employees, attorneys and agents, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), arising out of (a) the negligence or other wrongful conduct of Recipient or Recipient's employees, agents or approved subcontractors, or (b) Recipient's breach of any material provision of the Agreement that is not cured after notice and opportunity to cure.
- 15. *Insurance.*** If requested by the BHC, Recipient must obtain at its own cost and expense, and keep in force and effect during the term of the Award (including during the term of all extensions), an insurance policy with the minimum coverage limits (as may be specified by the BHC) and issued by a carrier satisfactory to the BHC. Any insurance policy required by the BHC shall contain a provision that requires the carrier to provide the BHC with written notice of cancellation in the event that such policy is cancelled prior to its original expiration date. Before any distribution of Opioid Funds, the certificate of insurance and/or complete copies of all required insurance policies shall be provided to the BHC. The certificate holder shall be listed as the "State of Delaware." In no event shall the BHC, the Commission or the State be named as an additional insured on any policy required under this Agreement.
- 16. *Limitation of Liability.*** Neither the BHC, the Commission or the State, nor any officers, members, employees, agent, or attorneys of the foregoing, shall have any liability to Recipient or any other party for fees (including attorneys' fees), expenses, suits, actions, claims or damages, whether direct or indirect, compensatory or punitive, actual or consequential, in or for actions, claims, causes of action or rights, including

indemnification rights, arising out of or related in any way to a distribution or use of Opioid Funds.

17. Miscellaneous Provisions.

- a) Notwithstanding anything to the contrary herein, no provision of these terms and conditions or any grant or other governing document shall constitute a waiver or limitation of any right held by the State that may exist under applicable statutory or common law.
- b) Notwithstanding anything to the contrary herein, to the extent available under applicable law, the State and their respective officers, members, employees and attorneys, expressly reserve all rights, claims, arguments, defenses and immunities, including, without limitation, claims or defenses based on sovereign immunity, qualified immunity and other statutory or common law rights, claims, defenses or immunities.

18. Interest Earned. Interest earned must be tracked and reported to the BHC as provided in the Award. Any interest earned in excess of \$500 is considered an increase to the overall Award. These funds must be spent solely on transactions authorized by the Award and will be subjected to the same reporting and compliance measures as the initial Award.

19. Certification. Recipient hereby represents and certifies that the funds received for this Agreement were not already paid for or otherwise available through other sources, such as appropriations, government contracts, or grants.

Signature Page Follows

The Parties agree to be bound by the terms and conditions set forth above as established by affixing the signatures of their duly authorized representatives as follows:

**BEHAVIORAL HEALTH CONSORTIUM, on behalf of
itself and the PRESCRIPTION OPIOID SETTLEMENT
DISTRIBUTION COMMISSION**

By: _____

Name: _____

Title: _____

Date: _____

[RECIPIENT]

By: _____

Name: _____

Title: _____

Date: _____