

CONTINGENCY FEE AGREEMENT WITH OUTSIDE COUNSEL

Agreement #0000000000000000000060283

This Outside Counsel Contingency Fee Agreement ("Agreement") is between the **State of Indiana** acting by and through the **Office of the Indiana Attorney General** (the "Attorney General" or the "State") and **Liston & Deas, PLLC**, 605 Crescent Boulevard, Suite 200, Ridgeland, Mississippi 39175 ("Counsel").

WHEREAS, there is a concern that pharmacy benefit managers' policy and practices lead to a lack of transparency and increased costs to the State and its citizens; and

WHEREAS, the State wishes to engage counsel to investigate and identify potential targets and pharmacy benefit managers who are engaging in alleged unlawful or unfair conduct, or conduct which fails to conform to law or contract; and

WHEREAS, the State requires the services of a law firm to investigate and recover funds from Centene Corporation and its subsidiaries ("Centene"), including but not limited to, Indiana Managed Health Service, Inc. ("MHS"), Centene Management Corporation, ("CMC"), and Envolve Pharmacy Solutions, Inc., ("Envolve") (collectively referred to as "Centene Entities"), as a pharmacy benefit manager for both breach of contract and breach of obligations to the State of Indiana.

NOW THEREFORE, in consideration of the premises and the mutual promises herein contained, it is agreed by and between the State and Counsel as follows:

1. Duties of Counsel and Consent of the Attorney General.

A. Counsel shall represent the State regarding all potential claims arising from or in any way related to the pharmacy business of the Centene Entities in Indiana during the time period running from January 1, 2016, to the execution of any Settlement Agreement and Release, including investigation, demands, settlement discussions, initiating a complaint, trial proceedings, consent judgment or other settlement and release documents, assisting the State with any issues that may arise regarding state and federal distribution of any settlement proceeds, and consultation with the State regarding the transformation of pharmacy benefit manager practices through policy, legislation, contracting requirements or other tools (the "Legal Services"). Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the working relationship with any individual assigned to work pursuant to this Agreement, the State may request in writing the replacement of any or all such individuals and Counsel shall grant such request.

Pursuant to Ind. Code § 4-6-5-3, the Indiana Attorney General hereby appoints, employs, and hires Counsel to provide the Legal Services.

Counsel shall keep the State advised of the following:

- (1) The status and progress of the matter generally;
- (2) Any significant new issues that arise, whether procedural, legal, factual or substantive;
- (3) Any existing issues for which there are significant new developments to report;
- (4) Any filing, hearing, or imminent decision (or a decision) of dispositive motions;
- (5) Any scheduling of a matter for mediation, and the current financial disparity and issues expected to be involved in the mediation;
- (6) Any trial setting that appears likely to become the actual date upon which the matter may be tried;
- (7) As soon as is practicable, any imminent final disposition, or a final disposition, of the matter;
- (8) Any allegation of record that arises from either the tribunal or any party raising issues of ethical breach or other violation of law or disciplinary rule by Counsel, or

any person employed by or associated with the foregoing or with the Office of Attorney General.

B. The retention of counsel is to aid the Attorney General in pursuit of its claims against the Centene Entities. The Attorney General will be actively involved and will make all final decisions with respect to any material matters, including the appropriate defendants in any lawsuit, claims and legal theories to be presented, the right to review and reject any motions or other pleadings, including discovery or dispositive motions, and terms of any settlement and release of claims. Counsel has no authority to settle the State's legal claims except under the direction of the State and in accordance with Ind. Code 4-6-2-11. The State has appointed Scott Barnhart, Director of Consumer Protection Division, Matthew Whitmire, Director of Medicaid Fraud Control Unit, and Lori Torres, Chief Deputy Attorney General, as its representatives to oversee the Legal Services.

C. Counsel discloses that it shall also employ David Nutt & Associates, PC, 605 Crescent Boulevard, Suite 200, Ridgeland, Mississippi 39175; The Hurst Group, LLC, 2210 Culleywood Road, Jackson, Mississippi 39211; Cohen Milstein Sellers and Toll, PLLC, 1100 New York Avenue NW, 5th Floor, Washington, DC 20005; and Cohen Milstein Sellers and Toll, PLLC, Three Logan Square, 1717 Arch Street, Suite 3610, Philadelphia, Pennsylvania 19103 (individually and collectively) and may divide attorney fees recovered according to any separate agreement between Counsel and these firms. Counsel is solely responsible for payment of any such fees or other compensation, and nothing herein obligates the State to ensure that fees are apportioned in accordance with any such agreement.

2. Consideration and Payment.

A. This is a contingency fee contract. The parties have agreed to the following contingency fees, which do not exceed the maximum percentages permitted by Ind. Code § 4-6-3-2.5(g):

(1) Twenty-five percent (25%) of any recovery that exceeds two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000).

(2) Twenty percent (20%) of any part of a recovery of more than ten million dollars (\$10,000,000) and not more than fifteen million dollars (\$15,000,000).

(3) Fifteen percent (15%) of any part of a recovery of more than fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000).

(4) Ten percent (10%) of any part of a recovery of more than twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000).

(5) Five percent (5%) of any part of a recovery of more than twenty-five million dollars (\$25,000,000).

Pursuant to Ind. Code § 4-6-3-2.5(g), the aggregate contingency fee may not exceed fifty million dollars (\$50,000,000), excluding reasonable costs and expenses, regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

B. All recoveries shall be paid directly to the State and deposited as instructed by the Attorney General. Within 35 days of receiving a recovery, the State shall remit to Counsel the amount due to Counsel accompanied by an accounting showing the gross amount received, any costs properly attributable to the matter, and the calculation of attorney fees by the Attorney General.

C. The State, provided it approves such fees or costs in writing in advance, shall reimburse Counsel for all court costs and filing fees regardless of whether a recovery is actually made. Such reimbursement includes any fees or costs associated with the use of a process server, writ of execution, recordation, sheriff's levy, abstract, or other locater service.

D. As required by Ind. Code § 4-6-3-2.5(f) governing private attorney contingency fee contracts, Counsel shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of not greater than one-tenth (1/10) of an hour and shall, upon request, promptly provide these records to the Attorney General.

3. Term.

The term of this Agreement shall begin on September 16, 2021 and end on September 15, 2023.

4. Access to Files and Records.

The State shall have full, immediate, and unrestricted access to the work product of Counsel during the term of this Agreement. Upon termination or expiration of this Agreement, Counsel shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. Counsel acknowledges that it may be required to submit to an audit of funds paid pursuant to this Agreement, and shall maintain at its offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Any such audit shall be conducted in accordance with Ind. Code § 5-11-1-1, et seq., and audit guidelines specified by the State. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment.

Counsel shall not assign or subcontract any part of the Legal Services to be performed under this Agreement without the Attorney General's prior written consent, except as disclosed on paragraph 1.E, *supra*. Counsel may assign its right to receive payments to such third parties as it may desire without the prior written consent of the State, provided that Counsel gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

6. Changes in Work.

Counsel shall not change scope of the Legal Services to be performed pursuant to this Agreement or undertake additional work on behalf of the State unless authorized in writing by the Attorney General. No claim for additional compensation shall be made in the absence of a prior written agreement. No work targeting or anticipating litigation against other pharmacy benefit managers is contemplated within this agreement.

7. Compliance with Licensing Requirements.

A. Counsel, its partners and employees, associates or any other attorney associated with Counsel shall comply with all applicable registration and licensing requirements, rules, standards and codes of conduct governing the practice of law and the transaction of business regarding this Agreement.

B. Counsel shall immediately notify the State if any disciplinary actions are brought against it or any of its attorneys in any jurisdiction.

C. Counsel certifies, by entering into this Agreement, that neither it nor any of its partners, associates or any other attorney associated with Counsel is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana.

8. Compliance with Laws.

A. Counsel and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in Ind. Code § 4-2-6, et seq., Ind. Code § 4-2-7,

et seq. and the regulations promulgated thereunder. **If Counsel has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in Ind. Code § 4-2-6-1, has a financial interest in the Agreement, Counsel shall ensure compliance with the disclosure requirements in Ind. Code § 4-2-6-10.5 prior to the execution of this Agreement.** If Counsel is not familiar with these ethical requirements, Counsel should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If Counsel or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to Counsel. In addition, Counsel may be subject to penalties under Ind. Code §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

B. Counsel certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Counsel agrees that any payments currently due to the State of Indiana may be withheld from payments due to Counsel. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until Counsel is current in its payments and has submitted proof of such payment to the State.

C. Counsel affirms that, if it is an entity described in Ind. Code Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

D. As required by Ind. Code § 5-22-3-7:

(1) The Counsel and any principals of the Counsel certify that:

(A) The Counsel, except for de minimis and nonsystematic violations, has not violated the terms of:

- (I) IC § 24-4.7 [Telephone Solicitation of Consumers];
- (II) IC § 24-5-12 [Telephone Solicitations]; or
- (III) IC § 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) the Counsel will not violate the terms of IC § 24-4.7 for the duration of the Agreement, even if IC § 24-4.7 is preempted by federal law.

(2) The Counsel and any principals of the Counsel certify that an affiliate or principal of the Counsel and any agent acting on behalf of the Counsel or on behalf of an affiliate or principal of the Counsel, except for de minimis and nonsystematic violations,

- (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
- (B) will not violate the terms of IC § 24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.

9. Conflict of Interest.

A. Counsel represents and warrants that all attorneys and other professionals providing services under this Agreement have performed a conflicts check, and no conflict of interest under the Indiana Rules of Professional Conduct exists.

B. Counsel represents and warrants that its performance of the Legal Services will not violate the statutes and regulations relating to the ethical conduct of state employees, including but not limited to Ind. Code § 4-2-6-6 ("Present or former state officers, employees, and special state

appointees; compensation resulting from confidential information"), Ind. Code § 4-2-6-9 ("Conflict of economic interest"), or Ind. Code § 4-2-6-10.5 ("Prohibition against financial interest in contract").

C. Notwithstanding Paragraph 9.A., above, the State acknowledges that Counsel currently represents and intends to represent other entities with claims similar to State. At this time, the interests of State and these other entities align. It is possible, however, that conflicts may arise in the future, including:

- i. Counsel discovers that there is a limited pool of damages or assets from which recovery is reasonably likely, and those damages or assets must be divided among all claimants;
- ii. Centene offers an aggregate or "lump sum" settlement to all plaintiffs that does not specify the amount each claimants will receive;
- iii. Centene offers to settle, but only if a certain number, or all, of the claimants accept the proposed settlement; or
- iv. Certain claimants disagree on questions of case management, such as whether to pursue particular legal theories or strategies.

D. The State acknowledges that Counsel may be required by the Rules of Professional Conduct to share material information about State's claims and negotiating positions with Counsel's other clients and, similarly, to share their information with State.

E. If any conflicts, or perceived conflicts, arise throughout the performance of this Agreement, as provided in Paragraphs 9.C. or 9.D., above, Counsel shall immediately advise the State of same. Whether the conflict is remote or disqualifying shall be at the sole discretion of the Attorney General.

10. Continuity of Services.

Counsel recognizes that the Legal Services provided under this Agreement are vital to the State and must be continued without interruption and that, upon expiration or termination of this Agreement, a successor, either the State or another Counsel, may continue them. Counsel shall use its best efforts and cooperation to effect an orderly and efficient transition to a successor, and shall be reimbursed for all reasonable transition costs.

11. Disputes.

Counsel agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should Counsel fail to continue to perform its responsibilities as regards all non-disputed work, any additional costs incurred by the State or Counsel as a result of such failure shall be borne by Counsel, and Counsel shall make no claim against the State for such costs.

12. Drug-Free Workplace Certification.

As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, Counsel hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Counsel will give written notice to the State within ten (10) days after receiving actual notice that Counsel, or an employee of Counsel in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the Agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Agreement is in excess of \$25,000.00, Counsel certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Counsel's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) Counsel's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will: (1) abide by the terms of the statement; and (2) notify Counsel of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

13. Employment Eligibility Verification.

As required by Ind. Code § 22-5-1.7, Counsel swears or affirms under the penalties of perjury that Counsel does not knowingly employ an unauthorized alien. Counsel further agrees that:

A. Counsel shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in Ind. Code § 22-5-1.7-3. Counsel is not required to participate should the E-Verify program cease to exist. Additionally, Counsel is not required to participate if Counsel is self-employed and does not employ any employees.

B. Counsel shall not knowingly employ or contract with an unauthorized alien. Counsel shall not retain an employee or contract with a person that Counsel subsequently learns is an unauthorized alien.

C. Counsel shall require his/her/its subcontractors, who perform work under this Agreement, to certify to Counsel that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Counsel agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if Counsel fails to cure a breach of this provision no later than thirty (30) days after being notified by the State

14. Funding Cancellation.

When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this

Agreement shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

15. Governing Law.

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

16. Indemnification.

Counsel agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third-party claims and suits, including court costs, attorney's fees, and other expenses caused by any act or omission of Counsel and/or its subcontractors in the performance of this Agreement. The State shall not provide indemnification to Counsel.

17. Independent Contractor.

Counsel and the State are acting in their individual capacities and not as employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury to or claim by any persons, or damage to any property, arising out of the acts or omissions of the agents, employees of the other party.

18. Insurance.

Counsel shall secure and keep in force during the term of this Agreement Lawyers Professional Liability Insurance in such amounts and with such coverage acceptable to the State. Counsel shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees or partners. Failure to maintain insurance as required in this Agreement may be deemed a material breach of contract entitling the State to immediately terminate this Agreement.

19. Nondiscrimination.

Pursuant to the Indiana Civil Rights Law, specifically including Ind. Code § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Counsel covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Counsel certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Counsel or any subcontractor.

20. Notice to Parties.

Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Office of the Indiana Attorney General
Attn: Chief Deputy
302 W. Washington Street, 5th Floor

Indianapolis, IN 46204
lori.torres@atg.in.gov

B. Notices to Counsel shall be sent to:

Liston & Deas, PLLC
Attn: W. Lawrence Deas and William Liston
605 Crescent Boulevard, Suite 200
Ridgeland, Mississippi 39175

As required by Ind. Code § 4-13-2-14.8, payments to Counsel shall be made via electronic funds transfer in accordance with instructions filed by Counsel with the Indiana Auditor of State.

21. Penalties/Interest/Attorney's Fees.

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, Ind. Code § 5-17-5, Ind. Code § 34-54-8, IC §34-13-1 and Ind. Code § 34-52-2-3.

22. Public Record.

Counsel acknowledges that the State will not treat this Agreement as containing confidential information and will post this Agreement on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Agreement shall not be considered any act of the State.

23. Severability.

The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions.

24. Taxes.

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied upon Counsel as a result of this Agreement.

25. Termination.

This Agreement may be terminated, in whole or in part, by the Attorney General whenever, for any reason, the Attorney General determines that such termination is in the State's best interest. Termination of services shall be affected by delivery to Counsel of a Termination Notice at least fifteen (15) business days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. Neither the State nor the Attorney General will be liable for legal services performed after effective date of termination. Counsel may terminate this Agreement as provided by Rule 1.16, Indiana Rules of Professional Conduct.

26. Travel.

No travel expenses will be reimbursed pursuant to this Agreement unless specifically agreed to by the Attorney General in writing and in advance of the travel.

27. Waiver of Rights.

No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right.

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Binding Authority; Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is Counsel, or that the undersigned is the properly authorized partner or member of Counsel. Further, to the undersigned's knowledge, neither the undersigned nor any other partner, member, employee, representative, agent or officer of Counsel, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Agreement, Counsel attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Agreement by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Agreement to the State of Indiana. I understand that my signing and submitting this Agreement in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Agreement and this affirmation. I understand and agree that by electronically signing and submitting this Agreement in this fashion I am affirming to the truth of the information contained therein. I understand that this Agreement will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:
https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCT S.GBL

In Witness Whereof, the Counsel and the State by their duly authorized representatives have executed this Agreement as of the dates set forth below.

LISTON & DEAS PLLC

By: *Lawrence Deas*
B9CA277E843B4B4...

Title: Partner

Date: 1/3/2022 | 09:27 PST

Office of the Indiana Attorney General

By: *Loni A Torres-00075*
FBCE6524D5AB42E...

Title: Chief Deputy Attorney General

Date: 1/3/2022 | 12:38 EST

Electronically Approved by: Department of Administration By: _____ (for) Rebecca Holw erda, Commissioner	
Electronically Approved by: State Budget Agency By: _____ (for) Zachary Q. Jackson, Director	Approved as to Form and Legality: Office of the Attorney General By: _____ (for) Theodore E. Rokita, Attorney General