

## CONTINGENCY FEE AGREEMENT WITH OUTSIDE COUNSEL

### Agreement #0000000000000000000079416

This 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 the law firm of Taft Stettinius & Hollister LLP with an office at One Indiana Square, Suite 3500, Indianapolis, IN 46204 ("Counsel"). Counsel and the State shall be referred to as the "parties" herein.

**WHEREAS**, the State requires the services of a law firm to assist in evaluating, investigating, and pursuing potential causes of action against organizations or individuals utilizing, developing or manufacturing chemicals containing per-and polyfluoroalkyl substances ("PFAS").

**WHEREAS**, Counsel specializes and has experience in providing legal services pursuing the matters and potential causes of action of concern to the State herein.

**WHEREAS**, Ind. Code § 4-6-3-2.5 allows the Attorney General to solicit and enter into contingency fee contracts with outside counsel to provide legal services and conduct litigation in areas where the Attorney General determines that Counsel holds the requisite knowledge, expertise, experience and labor to conduct litigation.

**NOW THEREFORE**, the parties agree as follows:

#### 1. Scope of Legal Services.

A. Counsel shall represent the State in pursuing potential causes of action to aid the State in pursuing its legal rights to recover equitable relief, damages, compensation, fines, penalties, fees, and costs to which the State may be entitled from certain potential defendants, including but not limited to, 3M Company, AGC Chemicals Americas, Inc., Archroma U.S. Inc., Arkema, Inc., Buckeye Fire Equipment Company, Carrier Fire & Security Americas Corporation, Carrier Global Corporation, ChemDesign Products, Inc., Chemguard, Inc., Clariant Corporation, Corteva, Inc., DuPont de Nemours and Company, Dynax Corporation, EIDP, Inc. (f/k/a E. I. du Pont de Nemours and Company), Kidde PLC, National Foam, Inc., The Chemours Company, TYCO Fire Products LP, and/or others ("Defendant(s)") for breach of the standard of care, failure to disclose or inform, breach of professional responsibility, or any other applicable rule, law, or regulation (the "PFAS Litigation Matters"). 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, subject to paragraph 24 below.

In the event that a Defendant in any PFAS Litigation Matter(s) files a bankruptcy petition, at the State's request, Counsel may but is not obligated to agree to represent the State in such bankruptcy as part of this Agreement and subject to the overall fee arrangement included herein.

B. Pursuant to Ind. Code § 4-6-5-3, the Indiana Attorney General hereby appoints, employs, and hires Counsel to represent it in the PFAS Litigation Matters.

C. Counsel shall keep the State advised of the following:

- (1) The status and progress of the matter generally;
- (2) Provide a quarterly report that includes progress on the matter and any significant updates or developments in the case;
- (3) Regular updates and reporting concerning the lawyer and nonlawyer staffing utilized to litigate the matter and the amounts of hours and costs incurred in the investigation and litigation;
- (4) Any significant new issues that arise, whether procedural, legal, factual or substantive;

- (5) Any existing issues for which there are significant new developments to report;
- (6) Any material developments relating to the negotiation of a settlement prior to litigation;
- (7) Any filing, hearing, or imminent decision (or a decision) of dispositive motions;
- (8) Any scheduling of a matter for mediation, and the current financial disparity and issues expected to be involved in the mediation;
- (9) Any trial setting that appears likely to become the actual date upon which the matter may be tried;
- (10) As soon as is practicable, any imminent final disposition, or a final disposition, of the matter; and
- (11) 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.

D. Failure to comply with any of the provisions in Paragraph 1.C. may result in the withdrawal of the Attorney General's consent.

E. The Attorney General's Office shall vet and approve all experts, investigators, and contractors prior to their retention by Counsel.

F. The retention of Counsel under this Agreement is intended to aid the Attorney General in representing the State of Indiana against the Defendant(s). The Attorney General will be actively involved in all stages of matters and will be the ultimate decision-maker on all material aspects and issues, including (but not limited to) whether and when to file suit; whom to sue; what claims to assert in any suit; and whether and on what terms to settle or proceed to trial. The State shall maintain unrestrained veto power over any decision made by Counsel and, in the context of litigation, this power shall include the right to review and reject any motions or other pleadings. At the discretion of the Attorney General, the Attorney General shall be co-counsel of record in any litigation undertaken. Any decision, whether or not litigation is involved, with respect to the State shall be made at the State's sole discretion after consultation with Counsel. Counsel has no authority to settle any aspect of the potential claims on behalf of the State except under direction of the State in accordance with Ind. Code § 4-6-2-11. The State has appointed Cory C. Voight to personally oversee this representation ("State Representatives"). The State Representatives shall be apprised of all pertinent information relating to the PFAS Litigation Matters and all settlement conferences or mediations relating to the State and, at their option, may attend and participate in same.

G. The Attorney General's Office may, by provision of written notice, instruct Counsel to suspend performance on any or all of the PFAS Litigation Matters for a specified period of time.

## **2. Consideration and Payment.**

### **A. Definitions**

(i) "Gross Recovery" means the then present value received by the State of all Cash Recoveries plus Non-Cash Recoveries actually paid to or obtained by the State from the Defendants whether by Settlement or Final Judgment in any PFAS Litigation Matter(s).

(ii) "Net Recovery" means the then present value of the Gross Recovery after any and all Costs as defined below are deducted and any recovered attorneys' fees and/or court-awarded attorneys' fees and Costs that have been previously paid to Counsel in connection with the corresponding PFAS Litigation Matter(s) are deducted.

(iii) "Costs" must be reasonable and shall include, but are not limited to, court filing fees, deposition expenses, expert fees and expenses, consultants' fees, investigation expenses,

reasonable travel and hotel expenses, messenger service fees, e-discovery expenses, photocopying expenses, legal research expenses, and process server fees.

(iv) "Cash Recovery" means, without limitation, the total monetary amount received by the State paid to or obtained by the State from the Defendants or their insurance carriers in a Settlement or Final Judgment arising from any PFAS Litigation Matter(s), including interest of any kind received by the State.

(v) "Non-Cash Recovery" means, without limitation, the fair market value of any property, the provision of services, an equitable order, or the receipt of other non-monetary benefits by the State, including but not limited to, any environmental clean-up required or performed, any services rendered for the State's benefit, and any other non-cash benefit obtained by the State from the Defendants or their insurance carriers whether by Settlement or Final Judgment in any PFAS Litigation Matter(s).

(vi) "Final Judgment" means any final, non-appealable court order or judgment terminating any PFAS Litigation Matter(s) filed pursuant to this Agreement and finally determining the rights of any parties to such PFAS Litigation Matter(s) such that no issue is left for future consideration or appeal.

(vii) "Settlement" refers to any voluntary agreement executed by the State and any Defendant, whether resulting from a settlement conference, mediation, or court stipulation, terminating any PFAS Litigation Matter(s) filed pursuant to this Agreement and finally determining the rights of any parties to such PFAS Litigation Matter(s) such that no issue is left for future consideration or appeal.

(viii) "Reasonable Attorneys' Fees" means Counsel's then-applicable standard hourly rates for particular attorneys who provided legal services in any PFAS Litigation Matter multiplied by the hours worked in each corresponding PFAS Litigation Matter.

B. This is a contingency fee contract. Counsel agrees to seek payment from any applicable fee fund established as a result of settlement or judicial action before seeking payment from the State. Payment from any applicable fund shall be deducted from the amount owed by the State. The State agrees to pay Counsel a Contingency Fee, as specified below, of any Net Recovery obtained by Counsel for the State through any PFAS Litigation Matter(s), whether such recovery occurs as a result of a Final Judgment or Settlement, or some combination thereof. The Contingency Fee will be calculated on the total Net Recovery after the deduction of Costs for each separate PFAS Litigation Matter. State and Counsel 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) Zero percent (0%) of any Net Recovery that is two million dollars (\$2,000,000) or less.
- (2) Twenty-five percent (25%) of any Net Recovery that exceeds two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000).
- (3) Twenty percent (20%) of any part of a Net Recovery of more than ten million dollars (\$10,000,000) and not more than fifteen million dollars (\$15,000,000).
- (4) Fifteen percent (15%) of any part of a Net Recovery of more than fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000).
- (5) Ten percent (10%) of any part of a Net Recovery of more than twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000).

- (6) Five percent (5%) of any part of a Net 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, regardless of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

C. The State shall receive and hold all Cash Recoveries received and deposited as instructed by the Attorney General. The State shall remit to Counsel the amount due to Counsel under Paragraph 2.B in accordance with the timing and the procedures regarding submission of invoices set forth in Paragraph 2.H-I and accompanied by an accounting showing the gross amount received, any reasonable Costs properly attributed to the matter, and the calculation of the Contingency Fees.

D. 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 Cash 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.

E. Other than as provided in Paragraph 2.C, Counsel shall advance all Costs on behalf of the State as defined above. Counsel will provide updates on Costs and fees incurred on a quarterly basis or with such frequency as the parties may agree.

In the event of any Cash Recovery by the State in connection with this Agreement, the State agrees that Counsel shall then be paid first for all such advanced Costs from the State's share of recovery. In the event a PFAS Litigation Matter is dismissed, or the State recovers an amount that does not exceed the reimbursable Costs detailed herein, or the State recovers nothing, the State agrees it may seek a legislative appropriation to reimburse reasonable Costs. Counsel understands and acknowledges that the State's obligation to pay for such Costs under said circumstances is entirely subject to and conditioned upon a legislative appropriation outside the control of the State, and Counsel may seek a recovery for such costs and expenses only from funds so appropriated.

F. The State acknowledges that Counsel represents or may have represented other plaintiffs or claimants in similar litigation or settlements against the Defendant(s) and that Costs for the State and other plaintiffs or claimants may overlap. To the extent possible, Counsel agrees to reasonably apportion such overlapping Costs among the relevant clients; however, Costs incurred specific to State shall be paid solely by the State and shall not be apportioned.

G. 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 notify the Attorney General pursuant to the parameters outlined in paragraph 1(c). Counsel shall follow generally accepted accounting principles for all financial records related to the matter.

H. All payments, if required, shall be made thirty-five (35) days in arrears in conformance with State Fiscal policies and procedures and, as required by IC § 4-13-2-14.8, by electronic funds transfer to the financial institution designated by Counsel in writing unless a specific waiver has been obtained from the Indiana Comptroller of State (formerly the Auditor). No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC § 4-13-2-20.

**3. Term.** The term of this Agreement shall begin upon approval of the last State signatory and be effective for a period of five (5) years. This Agreement may be renewed for a period not to exceed the original term upon written agreement by both parties.

**4. Access to Files and Records.** The State shall have full, prompt access to the files and work product of the Counsel created exclusively in connection with its representation of the State during the term of this Agreement. Upon request and upon termination of this Agreement, Counsel shall, at no cost to the State, turn over to the State all files relating to the work performed by Counsel exclusively for the State under this Agreement. Counsel shall not be required to turn over any records relating to its representation of any other parties, nor shall any files, records, or work product of Counsel already existing and pre-dating this Agreement become or be considered the files or records of the State for any purpose. 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 and Co-Counsel.** Counsel shall not assign or subcontract any part of the legal services to be performed under this Agreement to any other law firm ("Co-Counsel") without the Attorney General's prior written consent. At the time of signing this Agreement, Counsel has disclosed and the State has approved of the law firms listed on Exhibit "A," which is attached hereto and incorporated herein by reference, to serve as Co-Counsel with Counsel under this Agreement. Counsel and Co-Counsel may assign their right to receive payments to such third parties as they may desire without the prior written consent of the State, provided that such Counsel or Co-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.** State and Counsel shall not change the scope of the legal services to be performed pursuant to this Agreement unless mutually agreed upon by written agreement.

**7. Compliance with Licensing Requirements.**

A. Counsel, its partners and employees 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 working for the State under this Agreement.

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.

D. The name of the State of Indiana or the Indiana Attorney General's Office shall not be used in any advertising or other promotional context by Counsel without prior written consent of the Attorney General's Office. Counsel shall not respond to media inquiries regarding the legal services in PFAS Litigation Matters being performed by Counsel for the State under this Agreement and shall immediately inform the Attorney General's Office of any such inquiries.

**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, after due and diligent inquiry, it is satisfied that it has no Conflict of Interest (as that term is defined in the Indiana Rules of Professional Conduct) that will preclude it from providing the legal services with the understanding that Counsel is now representing the State of Indiana. The Attorney General acknowledges that Counsel and Co-Counsel represent other governmental entities, to include states and waterworks utilities, storm/wastewater and sewer systems, airports, and others owned by, in whole or part, state or local governments in the same or similar matters. The Attorney General has been informed of any said entities in Indiana prior to execution of this Agreement and will be informed when Counsel undertakes representation in the future of any said entities in Indiana. At this time, Counsel, Co-Counsel and the Attorney General reasonably believe that Counsel will be able to

provide competent and diligent representation to each affected client. Despite any potential or actual conflict, the Attorney General consents to Counsel's and Co-Counsel's representation of another aforementioned entity in the same or similar matters. Counsel, Co-Counsel and the Attorney General agree that each may modify or withdraw its consent to representation of any or all clients should either party determine that continued representation is not appropriate or might violate applicable rules of professional conduct.

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 8.A., above, the State acknowledges that Counsel and C-Counsel currently represent and intend 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:

- (1) 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;
- (2) Defendant(s) offers an aggregate or "lump sum" settlement to all plaintiffs that does not specify the amount each claimants will receive;
- (3) Defendant(s) offers to settle, but only if a certain number, or all, of the claimants accept the proposed settlement; or
- (4) Certain claimants disagree on questions of case management, such as whether to pursue particular legal theories or strategies.

D. The State acknowledges that Counsel and Co-Counsel may be required by the Rules of Professional Conduct to share material information about State's claims and negotiating positions with Counsel's and Co-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 8.C or 8.D, above, Counsel shall immediately advise the State of same. Whether the conflict is waivable, remote, or disqualifying shall be at the sole discretion of the Attorney General.

F. The State understands that Counsel and Co-Counsel represent other entities asserting claims against Defendants arising from PFAS contamination in Indiana and in other states. The State understands that Counsel and Co-Counsel would not take on this engagement if it required Counsel and Co-Counsel to forgo or withdraw from representation in such other matters. However, the State understands that damages collected from one or more of the same Defendants in other suits prosecuted by Counsel and Co-Counsel could potentially reduce the amount of money available from these same Defendants. The State has determined that it is in the State's best interest to waive such a potential or actual conflict of interest resulting from damages collected from Defendants in other similar litigations prosecuted by Counsel and Co-Counsel in this and other states, and will act reasonably and in good faith regarding other potential or actual conflicts of interest that may arise as a result of Counsel's and Co-Counsel's current and continuing representation of other public and/or private entities in similar litigations. The State consents to and agrees that Counsel and Co-Counsel may continue to handle such work, and may take on new clients in similar matters provided Counsel and Co-Counsel each complies with the rules of professional conduct and provides the additional notice required under paragraph 8.A of this Agreement for such additional entities within Indiana.

G. The State further understands that one or more of Counsel and/or Co-Counsel have certain practice groups that from time to time represents private clients in matters involving various State agencies, such as the Department of Environmental Management, Department of Natural Resources, Department of Administration, and other agencies of the State, which do not involve PFAS issues but involve other issues, such as telemarketing, robo-calling, nursing home investigations, advertising, antitrust, deceptive trade practice, privacy, and/or related consumer protection matters, which may be adverse or potentially adverse to the State and are the same or similar to matters presently known to the State or otherwise commonly handled by such Counsel and/or Co-Counsel practice groups. This waiver does not apply to dissimilar matters brought against the State by private clients that are politically sensitive and not "ordinary course" disputes routinely involving State agencies. Counsel and Co-Counsel may continue to represent such clients in these types of investigations and proceedings, but will not undertake any such matter that is related to such law firm's representation of the State under this Agreement. To the extent that any of such law firm(s) represent(s) interests potentially adverse to the State, such law firm(s) shall take appropriate measures to protect confidentiality, including screening information that, if known to such other client, could be used in any such other matter by such client to the State's disadvantage, and screening disqualified lawyers from participation in any PFAS Litigation Matter(s).

H. The State has had the opportunity to confer with separate and independent counsel about this matter and has determined that it is in the State's own best interest to waive any and all potential and actual conflicts that have been disclosed herein.

**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.** As required by Financial Management Circular 3.3 and IC § 5-22-17-5, 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 Contract, this Contract shall be canceled. A determination by the Director of 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, reasonable attorney's fees, and other reasonable expenses caused by the intentional or tortious acts or omissions of Counsel and/or its subcontractors in the performance of this Agreement. The State shall not provide indemnification to Counsel. To avoid any coverage issues which this indemnity might otherwise create, it is agreed that no portion of this indemnity shall be deemed to broaden or expand the liability of Counsel beyond that imposed by applicable law or covered by Counsel's insurance, or to deprive Counsel of any rights or defenses provided by applicable law.

**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, Co-Counsel, 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 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 an amounts of \$5 million. 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:

Taft Stettinius & Hollister LLP  
Attn: Jonathan Polak and Robert Bilott  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204  
[jpolak@taftlaw.com](mailto:jpolak@taftlaw.com) bilott@taftlaw.co

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 Comptroller 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 an 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 on Counsel as a result of this Agreement.

**25. Termination.**

A. 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 effected 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.

B. Should the State terminate this Agreement in accordance with Paragraph 23.A, above, or should the term of this Agreement expire without being extended, if the State subsequently obtains any monetary recovery from the Defendant(s), Counsel is entitled to receive a fair and reasonable portion of the recovery, based on its percentage of work in the evaluation of potential claims or negotiation on behalf of the State, in accordance with Paragraph 2, above, plus unreimbursed reasonable Costs. In any contract with subsequent counsel, the State will require substitute counsel to share on a pro-rata basis with counsel terminated any attorneys' fees recovered, according to each counsel's reasonable percentage of time and work spent on the matter, or as otherwise agreed to by substitute counsel and terminated counsel. Substitute counsel's obligation to share fees with Counsel will only arise if there is a recovery by settlement or judgment.

**26. Travel.** No reasonable 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.

**THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK**

**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://secure.in.gov/apps/idoa/contractsearch/>.

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

**TAFT STETTINIUS & HOLLISTER LLP**

**Office of the Indiana Attorney General**

By:   
F61A80E0259147F...

By:   
FBCE6524D5AB42E...

Title: Partner

Title: Chief Deputy Attorney General

Date: 12/13/2023 | 09:53 EST

Date: 12/13/2023 | 10:49 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

## **EXHIBIT “A” – Approved Co-Counsel**

### **List of Approved Co-Counsel:**

- 1) Kelley Drye and Warren LLP