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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into this 29th day of December 2021, among Centene Corporation and each of its subsidiaries ("Centene"), including but not limited to, Nebraska Total Care, Inc. ("Total Care"), Centene Management Company, ("CMC"), and Envolve Pharmacy Solutions, Inc., ("Envolve") (collectively referred to as "Centene Entities"), and the Attorney General on behalf of the State of Nebraska, the Nebraska Department of Health and Human Services, and all other state departments and divisions, agencies, bureaus, plans, and/or programs of the State of Nebraska for which the Centene Entities provided any pharmacy benefit or service, or which paid or reimbursed any Centene Entity for providing such a pharmacy benefit or service (hereinafter collectively referred to as "Attorney General," "State of Nebraska" or the "State") (the Centene Entities and the State of Nebraska, collectively referred to as the "Parties" or "Settling Parties"). This Settlement Agreement and Release is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle all potential claims arising from or in any way related to the pharmacy business of the Centene Entities in Nebraska during the defined time period running from January 1, 2016, to the execution of this Settlement Agreement and Release (the "Settlement").

WHEREAS, the State has been reviewing the operations of Total Care and its Pharmacy Benefit Manager, Envolve;

WHEREAS, the Centene Entities expressly deny liability, any wrongdoing, and/or any violation of any federal or state statute or regulation or common law;

WHEREAS, the Centene Entities recognize the importance of providing high quality and cost-effective pharmacy benefit services to the State and the State's need for transparency

around the costs associated with those services;

WHEREAS, the State acknowledges Centene's good faith and responsible corporate citizenship in reaching this resolution;

WHEREAS, while the State believes that the Centene Entities have provided high quality pharmacy benefit services to the State and are qualified to continue to provide such services, the State requires full transparency from the Centene Entities around the costs and fees associated with those services paid for by the State;

WHEREAS, the Parties have investigated the facts and have analyzed the relevant legal issues regarding concerns raised during the State's review;

WHEREAS, the Parties have each considered the costs and delays associated with any continued review, and have reached an agreement to resolve any and all claims, filed, unfiled, or which could be filed, arising from or in any way relating to the Centene Entities' provision of pharmacy benefits or services in connection with any Health Care Coverage provided by Centene Entities and/or conduct that could have been alleged by the Releasers;

WHEREAS, the Parties believe the Settlement set forth herein (i) avoids the uncertainties of continued review and assures that the benefits reflected herein are obtained and (ii) is fair, reasonable and adequate and in the best interest of the people of the State of Nebraska;

WHEREAS, the State and Centene Entities agree that neither this Agreement, nor any statement made in the negotiation, thereof shall be deemed or construed to be a concession as to any claim, an admission, evidence of any violation of any statute or law, evidence of any liability or wrongdoing by one or more Centene Entities or Releasees, or evidence of the truth of any of the claims or allegations made during the review;

WHEREAS, arms-length settlement negotiations have taken place between the Centene

Entities and the State; and

NOW, THEREFORE, IT IS HEREBY AGREED by and among the State and Centene Entities, by and through their respective counsel, that there is a settlement between the State and the Centene Entities as set forth below.

A. **Definitions.** As used in this Agreement, the following capitalized terms have the meanings specified below.

- a) "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release, together with any exhibits attached hereto.
- b) "Centene Entities" means Centene Corporation and each of its current and former subsidiaries, including but not limited to, Nebraska Total Care, Inc., Centene Management Corporation, and Envolve Pharmacy Solutions, Inc.
- c) "Covered Conduct" means any and all acts, conduct, omissions, events or transactions, whether known or unknown and whether discovered or undiscovered, during the period from January 1, 2016 up to and including the Effective Date, relating to the operation or delivery of, or payment for, all pharmacy benefit products by any Centene Entity as part of, or in connection with, the provision of Health Care Coverage. Pharmacy benefits and services included are the following: (i) the payment or reimbursement to or from any state departments, divisions, agencies, bureaus, plans, and programs for any pharmacy benefits or services, including but not limited to, any alleged mis-allocation or non-allocation of payments; (ii) the adjudication of pharmacy benefit claims by any Centene Entity; (iii) administrative services related to pharmacy benefits and claims; (iv) dispensing of pharmaceuticals (v) formulary development and management, (vi) utilization review and management, (vii) benefit design, (viii) over-the-counter dispensing, (ix) rebate negotiation and management, (x) pharmacy network contracting, (xi) vendor oversight, and (xii) the reporting (directly or indirectly) by any Centene Entity to any state department or division, agency, bureau, plan, program and/or political subdivision related to the foregoing. Covered Conduct does not include State tax reporting obligations and liabilities.
- d) "Effective Date" means the date upon which all of the following have occurred: (i) the Centene Entities have executed this Settlement Agreement and Release; and (ii) the Attorney General has executed the

Settlement Agreement and Release on behalf of the State with the requisite authority under State law necessary to bind all Releasers.

- e) "Execution Date" means the date on which this Agreement is executed by the last party to do so.
- f) "Parties" and "Settling Parties" means the Centene Entities and the State of Nebraska, the Nebraska Attorney General and Nebraska Department of Health and Human Services.
- g) "Health Care Coverage" means the offering or provision of health insurance or coverage of health care services in the State of Nebraska by any Releasee, including but not limited to coverage provided as part of the Medicaid managed care program, the Child Health Insurance Program, Medicare Advantage or policies offered or sold in the individual insurance market.
- h) "Releasees" means (i) Centene Corporation, Total Care, CMC and Envolve; (ii) all past and present subsidiary and affiliated United States and foreign corporations, companies, or limited liability entities owned, in whole or in part, by any of the Releasees, including RxAdvance (which is now known as NirvanaHealth); (iii) WellCare Health Plans, Inc. (including any past or present WellCare subsidiaries and related companies), to the extent such subsidiaries' or affiliated companies' activities related to or supported, directly or indirectly, the provision of pharmacy benefits or services as part of, or in connection with, the provision of Health Care Coverage; and (iv) for each of the foregoing in (i), (ii) and (iii), each of their respective past, present, and future officers, board members, directors, principals, agents, servants, employees, successors, assigns, affiliates, advisors, agents, consultants, insurers, trusts (including trusts established for the benefit of any Releasee), trustees, protectors, beneficiaries, officers, managers, members, direct or indirect owners and/or shareholders, beneficiaries of direct or indirect owners and/or shareholders, partners (general or limited), representatives, parents, subsidiaries, and transferees, attorneys and legal representatives, as well as the predecessors, successors, heirs, executors, administrators, legatees and assigns of each of the foregoing. Specifically excluded from this definition are any third-parties not related to or affiliated with the Centene Entities, including all manufacturers, distributors, or sellers of pharmaceutical products or pharmacy benefit services, as well as any non-affiliated subcontractors. (The intent of this provision is to ensure that entities unaffiliated with the Centene Entities and other Releasees are not released, even though they may have participated in the provision of pharmacy services to the health plans of the State of Nebraska pursuant to a contractual relationship with one or more of the Releasees.) Furthermore, this release shall not in any way prevent Centene Entities from seeking indemnification against its

insurers. As used in this paragraph, "affiliates" or "affiliated" means entities directly or indirectly controlling, controlled by or under common control or ownership with a Releasee.

- i) "Released Claims" means any and all claims of any nature, including the State's state and federal statutory and common law claims, in law or equity, that could have been brought by any Releasor related to or arising out of in any way the Covered Conduct both known or unknown.
- j) "Releasors" means: (i) the State and the Attorney General, and (ii) any state department or division, agency, plan, and/or program by the State 1) for which any Centene Entity provided any pharmacy benefit, or 2) which paid or reimbursed any Centene Entity for providing such a pharmacy benefit, or 3) which could have claims related to the Covered Conduct against any Centene Entity, and on whose behalf the Attorney General shall possess, or obtain, the authority to bind.
- k) "Settlement Amount" means the aggregate total of the installment payments to be made as set forth in Section B. of this Agreement.
- l) "State of Nebraska" or "State" means the Attorney General on behalf of the State, Nebraska Department of Health and Human Services, and all other departments or divisions, agencies, bureaus, plans, and/or programs of the State.

B. Settlement Amount and Other Obligations of Settling Parties.

1. Upon execution of this Settlement Agreement and Release, the Settling Parties will take all steps necessary to cause the Effective Date to be reached.
2. Each Party will be responsible for its own costs, expenses, and attorneys' fees.
3. Following the Effective Date at the times and manner set forth below, the Centene Entities shall cause payments in the total aggregate amount of Twenty Nine Million Three Hundred Forty Three Thousand Nine Hundred Seven Dollars and Ninety-One Cents (\$29,343,907.91) ("Settlement Amount") be made to the Nebraska State Treasurer for deposit in the State of Nebraska's Medicaid Managed Care Excess Profit Fund pursuant to the Nebraska Medical Assistance Act except such amount, as directed by the Attorney General, to be held in trust for the payment of any attorneys fees or expenses incurred by the State which shall be wired to such account as designated by the Attorney General. The Settlement Amount shall be paid by wire transfer in two equal installments pursuant to the Notice Provision of this Agreement. The first installment shall be paid within forty-five (45) days of the Effective Date and the second installment shall be paid no later than one year following the first installment. In no event shall the aggregate total of the amounts paid pursuant to this paragraph exceed the Settlement Amount. The Centene Entities' obligation to pay each installment of the Settlement Amount shall be fully satisfied and extinguished upon completion of the wire transfer deposit of such installment into the State account as directed by the Attorney General. The Centene Entities shall have no obligation with respect to any allocation or distribution of the Settlement Amount among Releasers or counsel.
4. It is expressly agreed by the Settling Parties that the Settlement Amount to be

paid pursuant to this Agreement is intended to return and restore to the State certain amounts previously paid to the Releasees by the State and fully and completely satisfies any repayment or reimbursement obligation (including any amount that may need to be paid to the federal government) of any Releasees that arise from or relate in any way to the Covered Conduct and the Released Claims that are being released pursuant to this Settlement.

5. The Centene Entities agree to assist the State in calculating the appropriate allocation of the Settlement Amount should the federal government assert a claim against the Settlement Amount.

6. The Centene Entities further acknowledge an obligation to comply with the requirements of Nebraska's laws when engaging in the operation or delivery of, or receiving payment for, any managed care pharmacy benefit in or affecting Nebraska, and agree that they will do so in the future with respect to any managed care pharmacy benefit operations they conduct in Nebraska, or reports they make concerning such operations to the State or any other Releasees. Pharmacy benefits and services shall continue to be delivered in the normal course of business pursuant to the terms of any contracts existing between the Parties as of the Effective Date. The Centene Entities have previously adopted certain business practices and agree to continue such business practices providing full transparency related to the adjudication and payment of all pharmacy benefit claims, including the provision of such information as is required to permit the State to discern, on a claims level, the exact amount paid to the pharmacy for each pharmaceutical claim.

7. Nothing in this Agreement shall be construed or used to prohibit the Centene Entities, or any of them, in any way whatsoever from taking legal or factual positions in litigation or other legal or administrative proceedings or from providing extrajudicial statements made in

the context of such litigation or other legal or administrative proceedings.

8. Other than as set forth in this Settlement and Release which shall be binding upon the Parties as of the Effective Date, the contracts currently existing between the parties shall remain in full force and effect.

C. **Settlement of Claims and General Release.** The Settling Parties hereby agree to settle the Released Claims. The State contends that the review was initiated to protect the legitimate interest of the State and other Releasors, and the State and other Releasors agree that settlement on these terms is in the statewide interest. The Centene Entities maintain they have operated in Nebraska in compliance with all applicable laws and regulations and that the Centene Entities provided the highest quality healthcare and added value to the Medicaid program, but also agree that settlement on these terms is in all parties' interest. On the Effective Date of the Release, Releasors hereby release the Releasees, and shall be deemed to have fully, finally, forever and permanently released, remised, acquitted, held harmless, relinquished and discharged with prejudice all Released Claims, and shall have covenanted not to sue any Releasee with respect to any such Released Claim, and shall be permanently barred and enjoined from instituting, reinstating, maintaining, commencing, or prosecuting any such Released Claim against the Releasees, and the releases as set forth herein shall be given full *res judicata* effect. Releasors shall be deemed to have released all Released Claims related to the Covered Conduct, including all claims of any and all state departments, divisions, agencies, bureaus, plans, and/or programs of the State regardless of whether any such Releasor ever seeks or obtains, by any means, any distribution under this Agreement. Releasors shall be deemed to have released all claims against the Releasees that are or could have been brought by Releasors

for the Covered Conduct, including the State's state and federal statutory, regulatory, and/or common law claims, in law or equity, and by any other person acting or purporting to act in *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer or any other capacity on behalf of any Releasor.

D. Good Faith Settlement. To the extent necessary under applicable law to extinguish claims for contribution and/or indemnity against any Releasees for the Released Claims due to a contribution or indemnity claim by a third party based on the Covered Conduct, the Releasors further agree: (i) to obtain a determination from a court of competent jurisdiction that this Settlement is a good faith settlement, and/or (ii) reduce any judgment Releasors might recover against any person or entity other than any Releasee by release and discharge in an amount, fraction, portion, or percentage necessary under applicable law to bar, eliminate, or satisfy claims against the Releasees for contribution and/or indemnity to the fullest extent permitted by applicable law that arise from, or in any way relate to the Covered Conduct released herein.

E. Enforcement of the Agreement. Any Party may bring an action in Nebraska State Court in accordance with Paragraph G.3. to enforce the terms of the Settlement (or for a declaratory order construing any such term) with respect to disputes, alleged violations or alleged breaches. It is within the Nebraska Court's discretion to enter either a declaratory or enforcement order and such order is subject to appellate review.

F. No Admission of Liability. The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them concerning the Released Claims, and it shall not be deemed an admission by any Settling Party as to the

merits of any claim or defense or any allegation made, or which could have been made, in the review. The Centene Entities each deny any wrongdoing and any civil or criminal liability with respect to any review or inquiry by any Releasor.

G. Termination. This Agreement shall terminate on the date that is sixty (60) days after the Execution Date if the Effective Date shall not have occurred by such date, unless otherwise agreed in writing by the Settling Parties.

H. Miscellaneous Provisions.

1. Use of Agreement as Evidence. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the Covered Conduct, or of any wrongdoing or liability of Releasees; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement or as otherwise required by law, and except that the Releasees may file this Agreement in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

2. Voluntary Settlement. This Settlement Agreement and Release was negotiated

in good faith and at arms-length and the exchange of the Settlement Amount for the release set forth herein is an exchange of reasonably equivalent value.

3. **Resolution of Disputes.** Any disputes between or among the Centene Entities and the State (or their counsel) concerning matters regarding the Settlement Agreement and Release shall, if they cannot be resolved by negotiation and agreement in the first instance, be referred to the Nebraska Courts for resolution. Prior to any referral to the Courts, any dispute must first be raised in a written notice and the parties must engage in good faith negotiations. No filing with the Courts can occur prior to at least 30 days after the presentation of such written notice.

4. **Authorization to Enter Settlement Agreement and Release.** The undersigned representatives of the Centene Entities represent and warrant that they are fully authorized to enter into and to execute this Agreement on behalf of Centene Corporation, Total Care and Envolve, respectively, and the Centene Entities have the power and authority to enter into and perform this Settlement Agreement and Release, and the execution and performance of this Settlement Agreement and Release has been duly authorized by all requisite corporate or other legal action. The Attorney General, on behalf of the State, represents and warrants that he is expressly authorized by the State and all state departments, divisions, agencies, bureaus, plans, programs, and/or programs of the State, to take all action required or permitted to be taken pursuant to this Agreement to effectuate its terms and to enter into and execute this Settlement Agreement and Release binding upon all Releasors.

5. **Notices.** All notices to counsel under this Agreement shall be in writing. Each such notice shall be given either by (i) e-mail; (ii) hand delivery; or (iii) registered or certified

mail, return receipt requested, postage pre-paid; and shall be addressed to counsel at their addresses set forth on the signature page hereof.

6. **Press Statement.** The Centene Entities and the Attorney General may each issue a press release that positively describes the Settlement.

7. **Tax.** All amounts paid (or actions taken) by the Centene Entities pursuant to this agreement are for restitution or to come into compliance with the law within the meaning of those terms under 26 USC section 162(f) and Treas. Reg. § 1.162-21. No portion of any amount paid under this agreement constitutes a fine, penalty, punitive damages, disgorgement of profits beyond restitution, or an amount paid in settlement of any claim for any of the foregoing.

8. **Non-Appealable and Binding Agreement.** This Agreement shall constitute a final resolution upon the Effective Date. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

9. **Confidentiality.** The terms of the Agreement will remain confidential until such time as the Execution Date. Nothing herein prevents the Settling Parties from disclosing the terms of the Settlement to those necessary in connection with normal business reporting practices and to obtain the necessary authority to execute the Agreement.

10. **Choice of Law.** Any dispute arising from or in connection with the completion and execution of the Settlement Agreement and Release shall be governed by Nebraska law without regard to its choice of law provisions.

11. **No Conflict Intended.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this

Agreement. Further, where the context so requires, terms used in the singular in this Agreement shall be deemed to include the plural and vice versa.

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

13. **Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by all the Settling Parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall have the same force as a fully executed original Agreement.

15. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

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IN WITNESS WHEREOF, the State of Nebraska, including but not limited to, the Nebraska Department of Health and Human Services and all Releasers, has executed this Settlement Agreement and Release as of the date indicated below.

**THE STATE OF NEBRASKA
and the NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

Attorney General of NEBRASKA

By:  Date: 12/29/21

Approved as to Form:



Special Counsel for the State of Nebraska

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IN WITNESS WHEREOF, the Centene Entities have executed this Settlement Agreement and Release as of the date indicated below.

CENTENE CORPORATION, on behalf of itself and each of its subsidiaries, including but not limited to, Nebraska Total Care, Inc., Centene Management Corporation, and Envolve Pharmacy Solutions, Inc.:

By: Christopher A. Koster Date: 12/29/2021
Christopher A. Koster (Dec 29, 2021 16:05 EST)

Printed Name: Christopher A. Koster

Title: Executive Vice President, General Counsel and Secretary

Approved as to Form:



James G. Martin
Dowd Bennett LLP
7733 Forsyth Blvd., Suite 1900
St. Louis, MO 63105
Counsel for the Centene Entities

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COUNSEL RETENTION AGREEMENT

This Counsel Retention Agreement ("Retention Agreement") is made and entered between the State of Nebraska (sometimes referred to herein as the/this "State"), by and through the Office of the Attorney General (hereinafter sometimes referred to as the "Attorney General") and Liston and Deas, PLLC (hereinafter referred to as the "Attorneys").

RECITALS

A. **WHEREAS**, the State of Nebraska, by and through the Attorney General, has the authority and responsibility to enforce and preserve the public trust and to take measures to effectively and efficiently manage, protect, and supervise the use of the resources of Nebraska consistent with and in promotion of the general welfare and best interests of the People of this State; and

B. **WHEREAS**, the State, acting for itself and *parens patriae* for and on behalf of the People of the State of Nebraska, has determined that the State may have claims, and the constitutional mandate to pursue such claims, for damages, declaratory relief, injunctive relief and other rights and remedies against Centene Corporation including its Pharmacy Benefit Managers ("PBMs"), Medicaid Managed Care Organization ("MCO") contracting or interacting with the State and its various agencies related to and caused by the failure to adhere to their contractual or legal obligations to the State and any associated claims, causes of action, demands, disputes, controversies or issues involving or arising from such conduct (the "Claims"), including but not limited to, violations of state statutes, regulations or other laws related to the provision of pharmacy services to the State; and

C. **WHEREAS**, The Attorney General has determined that the investigation, research, litigation and all related or other dispute resolution procedures and processes associated with or arising from the Claims will require, over an extended period of time, the expenditure of large sums of money and the work of numerous lawyers, consultants, experts and accountants (including their respective professional staffs and resources) who have particularized knowledge of and are familiar with the Claims and who have experience and expertise in the contractual, analytical and legal issues pertaining thereto; and

D. **WHEREAS**, the Attorney General has further determined that the Attorneys have the requisite experience and expertise and that it is, and will be, in the best interests of the State to retain and empower the Attorneys to pursue the Claims; and

E. **WHEREAS**, the State has requested the Attorneys to represent the State on a contingent fee basis and to take any actions reasonably necessary or appropriate, subject to the

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supervision of and in association with the Attorney General, to pursue and resolve the Claims, including all proceedings or processes referenced in Paragraph No. III. hereof; and

F. **WHEREAS**, the Attorneys have agreed to accept representation of the State of Nebraska, in association with the Attorney General, in relation to the Claims and pursuant to the provisions hereof.

NOW, THEREFORE, in consideration of the matters set forth in the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed by the parties, the State of Nebraska, by and through the Attorney General, and the Attorneys agree as follows:

I. **The Client.** The Client shall be the State of Nebraska, represented by its duly authorized agent and counsel, the Attorney General, as follows:

The State of Nebraska
c/o _____
The Office of the Attorney General
Telephone:
E-mail:

II. **The Attorneys.** The Attorneys, as referenced herein, are:

Liston and Deas PLLC
605 Crescent Blvd., Ste. 200
Ridgeland, MS 39157
Telephone: 601.981.1636
E-mail: Lawrence@listondeas.com
William@listondeas.com

and such law firm's attorneys, who, as private outside counsel, are hereby authorized and duly empowered by, and to act for and in conjunction with the Attorney General for the purposes of investigation, researching, filing, prosecuting and handling the Claims as set forth in Paragraph Nos. III. and IV. hereof. This Retention Agreement is entered between the State of Nebraska and the Attorneys specified herein only; provided, however, that, except for, or in addition to, the terms or conditions set forth in Paragraph No, IV,(E) hereof, nothing contained in this Retention Agreement shall limit or prohibit the Attorneys from associating additional counsel or other personnel as part of a litigation team, or "Counsel Group" as may be necessary or appropriate to handle and staff the work to be performed within the scope of the representation set forth herein.

III. Retention. Scope of Retention and Representation of Attorneys. The State of Nebraska, through the Attorney General, hereby retains the Attorneys to perform legal services, and the Attorneys agree to perform such services faithfully and with due diligence, in relation to all proceedings, processes or transactions with reference to which the services are to be performed for purposes of the investigation, initiation, prosecution and resolution of any and all lawsuits, arbitral or administrative proceedings, transactional matters, negotiations, analyses and all related or other proceedings or processes associated with or arising from the Claims as defined in the Recitals herein.

IV. Nature of Contingency; Staffing and Fees and Expenses. The contingency upon which compensation of the Attorneys is to be paid is the recovery of any monetary sum, benefit or value, or the establishment of a right, interest or entitlement of the State of Nebraska, whether for itself or for or on behalf of its agency, branch, department or division identified in Paragraph No. I or for or on behalf of the People of the State, to receive any monetary payments, funds or damages or other sum(s), benefit(s) or value(s) of any kind or character (any or all of which shall be referred to herein and in Exhibit "A" hereto as "Recovery"), as a result of or arising from the resolution of the Claims, subject to the following terms and conditions:

(A) The Attorney General does not relinquish any constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle the Claims on behalf of the State of Nebraska. The Attorneys shall consult with the Attorney General and obtain approval of the Attorney General on all material matters pertinent to the Claims, and any litigation or other formal or informal proceedings or processes arising therefrom or associated therewith, and the Attorney General shall cooperate with the Attorneys and, consistent with the constitutional mandate and statutory duties and powers set forth in the Recitals herein, use best efforts to secure the cooperation of other governmental departments, branches or agencies of the State of Nebraska. The Attorney General is not, however, required to assign any members of the staff of the Attorney General to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a staff member(s) or appointed special assistant to monitor these Claims, and the Attorneys shall keep the Attorney General and any designated staff member(s) or appointed special assistant(s) fully informed of all matters pertaining to the Claims.

(B) The Attorney General and the Attorneys both recognize that the Claims present numerous factual and legal obstacles, and that no assurance of success or recovery on the Claims has been or can be made.

(C) The Attorney General shall maintain responsibility for the public distribution or dissemination of information concerning this matter. All press or media inquiries shall be referred to the Attorney General for comment and response.

(D) Notwithstanding the potential difficulties associated with handling and resolution of the Claims, the Attorneys have agreed to represent the agency, branch, department or division of the State of Nebraska identified in Paragraph No. I, and the Attorney General hereby agrees that the Attorneys will be compensated for their legal services, work, expenditure of time or money, and all other efforts from and after the effective date of this Retention Agreement, on the following bases:

(1) Fee Agreements. Attorneys shall receive and be paid an aggregate fee based upon the applicable specified percentage(s), as set forth on Exhibit "A" annexed hereto, of any Recovery (as defined herein) awarded, paid, owed or attributed to and/or allocated, recovered or received by, the State of Nebraska, or its agency, branch, department or division identified in Paragraph No. I, as a result of or arising from any litigation, transactional arrangement(s), arbitration or other proceedings or processes of any kind or character culminating in the resolution of the Claims, whether by judgment, award, compromise and settlement, contract, compact, administrative, regulatory, or legislative action or otherwise based solely upon the schedule of structured contingent fees reflected on Exhibit "A" which are incorporated herein by reference; provided, however, consistent with the terms and conditions of this paragraph and Paragraph No. V hereof, nothing in this Retention Agreement will prohibit the Attorneys, whether or not acting for, on behalf of or with the approval of the Attorney General, from obtaining an award of fees and expenses from any Court or other judicial or quasi-judicial body of competent jurisdiction.

(2) Out-of-Pocket Expenses. All reasonable and necessary costs and expenses of litigation or other dispute resolution procedures or processes, including, but not limited to, court costs, travel expenses, witness fees, costs for court reporters, costs for copies or reprographic services, delivery, mailing(s) and overnight courier services, on-line legal or other research costs, fees and expenses for experts, consultants, accountants, arbitrators, mediators and/or other providers of technical or scientific or other services and all other or related costs, expenses or expenditures made or incurred in relation to any proceedings or processes referenced in or contemplated by Paragraph No. III hereof ("out-of-pocket expense"), as may be approved by the Attorney General and the Attorneys, shall be initially borne or funded entirely by the Attorneys, but shall be reimbursed to the Attorneys exclusively from funds or other elements of value comprising the gross proceeds or payments made or to be made to, or the benefits or values conferred or

VI. Right to Termination. Either party shall have the right to terminate this Retention Agreement at any time, with or without cause, upon written notice ("Termination Notice"), and such termination shall be effective within thirty (30) days from the date of the Termination Notice. If this Retention Agreement is terminated by either party, for any reason other than Attorneys' material breach of the provisions of this Retention Agreement, the Attorney General will be obligated to pay Attorneys out of the recovery a reasonable attorney's fee on a *quantum meruit* basis for all services provided and to reimburse Attorneys out of the recovery for reasonable costs and expenses advanced. If there is no recovery, or the recovery is insufficient to reimburse Attorneys in full for costs and expenses advanced, Attorneys will bear the loss. No expenses incurred after Attorneys' receipt of the State's Termination Notice shall be eligible for reimbursement. Within fifteen (15) days of the Termination Notice, Attorneys shall submit a summary of its expenses incurred in the investigation and/or prosecution of the Claims.

VII. Effective Date. This Retention Agreement shall be effective as of the date reflected below; however, for purposes of determining amounts and apportionment of fees and expenses of the Attorneys, this Retention Agreement shall encompass and relate to all legal services, work, expenditure of time or money and all other efforts of the Attorneys for all periods commencing on, and occurring from and after, June 1, 2021.

WITNESS OUR SIGNATURES this the 29th Day of December, 2021,

ATTORNEYS:

Liston and Deas, PLLC

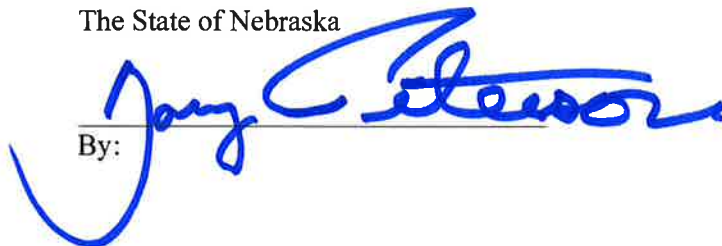
By:


William Liston III

CLIENT:

The State of Nebraska

By:



to be conferred upon, or for the benefit of, the State by virtue of any Recovery before deduction of fees owed or paid to the Attorneys pursuant to Paragraph No. IV.(D)(1) hereof; provided, however, that the Attorneys shall be consulted by, and will have joint authority and control with, the Attorney General over the selection and payment of experts, consultants, arbitrators, mediators or other providers of professional services.

(3) Scope of Fee and Expense Arrangement(s). Subject to the terms and conditions of Paragraph No. V hereof, the Attorneys shall receive no compensation or reimbursement directly from the State of Nebraska in any amount or by any other means other than as set forth herein above.

(E) With the approval of the Attorney General, the Attorneys may associate other attorneys at their own expense and at no cost to the State of Nebraska. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, and the commitments of Attorneys, including any associated attorneys, are not delegable without the express, written approval of the Attorney General.

V. Court-Awarded or Other Alternative Fee and Expense Arrangements. Notwithstanding any term, condition or other provision of any numbered, unnumbered or alphanumerically designated Paragraph or sub-paragraph herein, the Attorneys shall be entitled to receive, and shall not be precluded by operation of this Retention Agreement or otherwise from requesting and recovering from any Court or other Judicial or quasi-judicial body of competent jurisdiction, an award of all out-of-pocket expenses (where applicable) and of any and all fees greater than, or in addition to, the contingent fees set forth in Paragraph No. IV.(A) (1) (such additional expenses and fees being referenced herein as "Court-awarded expenses" and "Court-awarded fees," respectively); provided, however, that, in the event that any judgement, award, compromise and settlement, administrative, regulatory, legislative or other action, ruling, arrangement or agreement, including, *inter alia*, any structured settlement, results in a recovery which includes as an element, component, term, assumption or provision thereof, an award of attorneys' fees and/or expenses, the Attorneys shall be entitled to, and shall receive, an aggregate fee and/or reimbursement of expenses based upon either (a) such award or (b) the fees set forth in Paragraph No. IV. (A)(1), whichever amount is greater. As to Court-awarded fees only, in the event that the Attorneys receive fees greater than the contingent fees set forth in Paragraph No. IV.(A)(1), the State shall be entitled to its percentage share of such additional fees based upon the applicable Recovery percentages set forth on Exhibit "A" hereto; provided, however, that it is understood and agreed that the State will not be entitled to receive or demand any portion of Court-awarded expenses.

Exhibit "A"
(Counsel Retention Agreement)

The following structure contingent fee schedule shall apply and govern compensation of the Attorneys:

<u>Amount of Recovery</u>	<u>Fee</u>
Up to \$10,000,000	25%
\$10,000,000 to \$15,000,000	20%
\$15,000,000 to \$20,000,000	15%
\$20,000,000 to \$25,000,000	10%
Greater Than \$25,000,000	5%

Explanatory Note & Illustration of Fee Computation

The structured contingent fee schedule set forth herein is intended to, and shall, operate cumulatively so that, in relation to each successive category or level of Recovery (*e.g.*, "for Recovery Up to \$100,000,000.00," *etc.*), there shall be a specified percentage or percentages governing the amount or valuation of the aggregate contingent fee in each such category. So that the Attorneys shall be entitled to receive, and shall be paid, an aggregate sum or value equivalent computed by multiplying the percentage applicable to each such successive category or level of Recovery by the incremental dollar amount falling within each such category and the separate products so derived by multiplying these factors in each category shall be added together to compute the aggregate fee to be paid to the Attorneys. By way of illustration only, the cumulative contingent fee structure shown on this Exhibit "A" shall be computed utilizing the following method:

Example

Assume Recovery of a monetary sum, benefit, or value equal to \$30,000,000.

The Attorneys' contingent fee will be computed by adding together the specified, applicable percentage of each category or level, as follows:

- 25% of the first \$10,000,000 (*i.e.*, 25% of any sums or values between 0 and \$10,000,000)

Plus

- 20% of the next \$5,000,000.00 (*i.e.*, 20% of all sums or values between \$10,000,000 and \$15,000,000)

Plus

- 15% of the next \$5,000,000.00 (*i.e.*, 15% of all sums or values between \$15,000,000 and \$20,000,000)

Plus

- 10% of the next \$5,000,000 (*i.e.*, 10% of the difference between \$20,000,000 and the amount of the award greater than that sum or value, or in this example, \$25,000,000)

Plus

- 5% of any portion of such recovery exceeding \$25,000,000.