

**PERSONAL SERVICE CONTRACT FOR
LEGAL SERVICES – JOHNSON & JOHNSON**

BETWEEN

**THE COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL**

AND

KEITH, MILLER, BUTLER, SCHNEIDER & PAWLIK

224 South Second St
Rogers, AR 72756

AND

WAGSTAFF & CARTMELL

4740 Grand Avenue, Ste. 300
Kansas City, MO 64112

AND

JONES WARD PLC

Marion Taylor Building
312 South Fourth St., Sixth Floor
Louisville, KY 40202

This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, **Office of the Attorney General** (“the Commonwealth”) and **Keith, Miller, Butler, Schneider & Pawlik, PLLC** and **Wagstaff & Cartmell** and **Jones Ward PLC** (“the Contractor”) to establish a contract for Legal Services relating to Johnson & Johnson and Ethicon Inc regarding surgical mesh devices. The initial PSC was effective from November 9, 2016 through June 30, 2018. Under KRS 15.100(3), the Attorney General deems the original contract for legal services and all renewals necessary and advisable.

Per the solicitation, this contract may be renewed at the discretion of the agency for as many additional two year terms as needed for the purpose of and to the extent that said renewals are necessary to permit the Contractor to conclude any work on any cases in progress pursuant to the RFP.

RFP 040 1700000049

INITIAL CONTRACT: PON2 040 1700000785 – 11/9/2016 -06/30/2018

This renewal is effective from July 1, 2018 through June 30, 2020.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

As a contractor for legal services, work done on behalf of the Commonwealth and the Office of the Attorney General is subject to the attorney/client and work product privileges.

The OAG at all times will direct the litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be made in said litigation, approval and/or rejection of settlements and the amount and type of damages to be requested.

Legal services will include, but may not be limited to:

Performing an assessment of the Kentucky OAG's litigation against Johnson & Johnson, Ethicon, Inc., its subsidiaries, partners, contractors, subcontractors, and/or any other related entities or individuals regarding these surgical mesh devices.

Continuing investigation and litigation against potentially responsible parties, if any. Contractor will assist in all phases of the investigation and litigation, including preparation of complaint(s), filing of complaint(s) and service of summons, responding to motions, including motions to dismiss; drafting and answering discovery propounded upon the Commonwealth or any of its agencies; tracking documents obtained in discovery; coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation; taking depositions; defending depositions noticed by the defendants; preparing relevant witnesses for depositions; responding to motions for summary judgment or other pretrial dispositive motions; identification of experts to testify in favor of the Commonwealth of Kentucky or other state agencies; preparation of expert witnesses for deposition or trial testimony; assessing the strength of legal arguments propounded by the litigants; preparation of legal arguments on motions; dealing with discovery disputes; representing the Commonwealth of Kentucky in trial or in any settlement negotiations that may occur; representing the Commonwealth of Kentucky in responding to post-trial motions; representing the Commonwealth of Kentucky in the appeal(s) of any judgment or verdict rendered in any such action(s), and, if applicable, the remand from appeal(s); seeking appropriate injunctive relief.

Preserving and making available to the Office all pertinent records. When the contract is completed or if the contract is completely or partially terminated for whatever reason, all records relating to the work shall be preserved and made available to the Office for a period of at least five (5) years from the date of final statement or until the litigation is completed, whichever occurs last.

Warranting that any representations made by them in the proposed agreement are true and accurate; that the Contractor is in all ways in compliance with state and federal laws which may govern the subject matter of this Agreement; and that the party executing this Agreement on the Contractor's behalf is duly authorized to do so.

Contractor shall not have any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

Contractor and all attorneys working for or at the direction of vendor on this matter shall be in good standing with the Kentucky Bar Association or another bar association in the United States and shall maintain good standing throughout the pendency of performing the services hereunder.

Contractor and all people working for or at the direction of vendor on this matter shall conduct themselves with the utmost of professionalism related to this matter through the pendency of performing the services hereunder.

Contractor shall use software compatible with software used by OAG, including Microsoft Office, Adobe

Acrobat Pro, and other case management and document management software necessary to perform the services hereunder. Vendor shall make available, through licenses or otherwise, case management or document management software to employees of the OAG assigned to this matter. Vendor shall provide appropriate training and support related to the case management or document management software to employees of the OAG assigned to this matter.

Contractor shall provide detailed information regarding hours worked, services performed and costs incurred in said litigation on a quarterly basis and upon request.

II. Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award shall create a valid contract between the Parties consisting of the following:

- >This written renewal agreement and any subsequent written amendments to this agreement;
- > Any prior written renewal agreements
- > The original contract
- > Any addenda to the Solicitation;
- >The Solicitation and all attachments thereto; including PSC Standard Terms and Conditions;
- >Any Best and Final Offer;
- >Any clarifications concerning the Contractor's proposal in response to the Solicitation;
- >The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the contract, the order of precedence shall be as enumerated above.

III. Negotiated Items

Not Applicable.

IV. Pricing

Contractor agrees to a contingency based fee of eighteen percent (18%) of any monetary recovery plus reasonable expenses incurred directly in the prosecution and pursuit of the Commonwealth's claims.

1. The Commonwealth's obligation to pay attorneys' fees for the services described in the Contract is contingent upon a recovery by the Commonwealth. If the Commonwealth does not recover money from the Defendants, it will have no obligation to pay attorneys' fees to the Contractor. However, if the Commonwealth obtains relief or other non-monetary consideration, the Commonwealth agrees that the Contractor firms may apply to the applicable court for any award of attorneys' fees if available or permitted by applicable law. If fees are awarded by the Court in that event, the Contractor firms would then be entitled to the full amount of fees awarded by the Court.

2. The Commonwealth will have no obligation to advance or pay out of pocket any costs or litigation expenses associated with this matter. The Contractor firms will advance all necessary costs and litigation expenses incurred after the execution of the contract for representation between the Commonwealth and the Contractor. If there is no recovery of money by the Commonwealth, the Commonwealth will have no obligation to reimburse the Contractor firms for the costs of litigation expenses incurred in representation. If there is a recovery of money by the Commonwealth, the Commonwealth will agree to reimburse the Contractor firms, out of the recovery, all reasonable costs and litigation expenses reasonably incurred directly in the prosecution and pursuit of the Commonwealth's claims. Such reimbursement of costs will occur first from any recovery, and the contingent fee percentage will then be calculated and applied from the remainder of the recovery after the reimbursement of such costs and litigation expenses.

3. Costs and litigation expenses incurred directly in the prosecution and pursuit of the Commonwealth's claims could include any or all of the following:

- o Filing fees paid to a court;
- o Subpoena and witness fees;
- o Deposition transcript expenses (for depositions taken in pursuit of the Commonwealth's claims and not for "common benefit" purposes that are subject to "common benefit" reimbursement under an MDL or other consolidation's participation and common benefit agreement);
- o Expert witness fees and expenses (for expert services performed in pursuit of the Commonwealth's claims and not for "common benefit" purposes that are subject to "common benefit" reimbursement under an MDL or other consolidation's participation and common benefit agreement);
- o Reasonable travel expenses (for necessary travel performed in pursuit of the Commonwealth's claims and not for "common benefit" purposes that are subject to "common benefit" reimbursement under an MDL or other consolidation's participation and common benefit agreement);
- o Reasonable and necessary expenses paid to document repositories, e-discovery or document vendors, trial consultants, jury consultants, Westlaw or other legal research providers (for products or services in pursuit of the Commonwealth's claims and not for "common benefit" purposes that are subject to "common benefit" reimbursement under an MDL or other consolidation's participation and common benefit agreement);
- o Any other reasonable litigation expenses necessary to the pursuit of the Commonwealth's claims, subject to prior approval under the terms and conditions of the Contract.

V. Invoicing

At the conclusion of all actions and upon award or settlement and appeals of the matter, the contractor shall provide an invoice to the OAG setting forth the hours worked and actual costs and expenses, travel performed in pursuit of Commonwealth recovery, expert witness fees, court reporters and transcript costs, filing fees and other approved reasonable costs and expenses for which reimbursement is sought.

Personal Service Contract Standard Terms and Conditions May 2018

Whereas, the first party, the Office, has determined that the contingency fee is both cost-effective and in the public interest, that sufficient and appropriate legal and financial resources do not exist within the Office, that the experience desired for the particular kind of legal services to be provided does not exist within the Office, and that this contract for legal services is necessary and advisable; and

Whereas, the second party, the Contractor, is available and qualified to perform such function; and

Whereas, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

NOW THEREFORE, the following terms and conditions are applicable to this contract:

1.00 Effective Date:

This contract is not effective until July 1, 2018, with the approval of the Attorney General or his authorized designee and the signatures of all named parties. The Office enters into this agreement as a necessary part of the Attorney General's constitutional duty to bring actions to protect the legal rights of all Kentucky citizens. Notwithstanding any contrary language in any prior agreement(s) between or among these parties, the Attorney General is not required to seek or obtain approval of this contract by the Secretary of the Finance and Administration Cabinet or the Legislative Research Commission, Government Contract Review Committee ("LRC").

2.00 Renewals:

Upon expiration of the initial term, the contract may be renewed in accordance with the applicable terms and conditions in the original solicitation. Notwithstanding any language in the original solicitation to the contrary, as stated above, renewal is not subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee

3.00 LRC Policies: [Not applicable to contingency fee contracts]

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

4.00 Choice of Law and Forum:

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

5.00 Cancellation:

The state agency shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail.

6.00 Funding Out Provision:

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the Contractor thirty (30) calendar days' written notice of termination of the contract due to lack of available funding.

7.00 Reduction in Contract Worker Hours: [Not applicable to contingency fee contracts.]

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

8.00 Authorized to do Business in Kentucky:

The Contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

Registration with the Secretary of State by a Foreign Entity:

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate

within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>.

9.00 Invoices for fees:

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government. The invoice must conform to the method described in Section V of this contract.

Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.

*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

10.00 Travel expenses, if authorized:

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of this contract or authorized in advance and in writing by the Commonwealth. Either original or certified copies of receipts must be submitted for airline tickets, hotel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.

11.00 Other expenses, if authorized herein:

The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of this contract or authorized in advance and in writing by the Commonwealth.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

12.00 Purchasing and specifications:

The Contractor certifies that he/she will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he/she attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of-interest laws and principles, "he/she" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he/she" is construed to mean any person with an interest therein.

13.00 Conflict-of-interest laws and principles:

The Contractor certifies that he/she is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract, he/she will not be violating either any conflict of

interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

14.00 Campaign finance:

The Contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The Contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

15.00 Access to Records:

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

The Contractor shall maintain detailed current records of expenses, disbursements, charges and credits, underlying receipts and invoices, and any other financial transactions that occur under the contract. These records shall become public records subject to the Kentucky Open Records Act after a judgment or agreement is entered in the case and all appeals have been exhausted, but shall not be public records until that time. Any information that is subject to an evidentiary privilege shall be redacted before any public disclosure of these financial records.

16.00 Protest: [Not applicable at the renewal stage.]

Pursuant to KRS 45A.285, the Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective vendors in connection with the solicitation or selection for award of a contract.

Any actual or prospective vendor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and, in any event, within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

William M. Landrum III, Secretary
Commonwealth of Kentucky
Finance and Administration Cabinet
Room 383, New Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

17.00 Social security: (check one)

_____ The parties are cognizant that the state is not liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

_____ The parties are cognizant that the state is liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

18.00 Violation of tax and employment laws:

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the contract shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the contract shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination, as described above, or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and their disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

_____ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

19.00 Discrimination:

This section applies only to contracts disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336,

and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

VI. Approvals

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of

counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

Office of the Attorney General:

Signature

Title

Printed Name

Date

Keith, Miller, Butler, Schneider & Pawlik:

Signature

Title

Printed Name

Date

Wagstaff and Cartmell:

Signature

Title

Printed Name

Date

Jones Ward:

Signature

Title

Printed Name

Date

As to Form and Legality:

Signature

Assistant Attorney General

Title

Printed Name

Date