

PUBLIC DEFENSE SERVICES COMMISSION

REQUEST FOR PROPOSALS

FOR

PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

BEGINNING

JANUARY 1, 2016

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PART I - GENERAL INFORMATION

1.1 Request For Proposals (RFP) Description

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide legal services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense. Proposals must demonstrate that the legal services meet Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.

PDSC is accepting proposals for all categories of cases in all counties. The contracts awarded may have one-year, two-year, or four-year terms beginning January 1, 2016, or other such length of term and beginning date as determined by PDSC.

This RFP contains the applicable procedure, instructions and requirements for proposals. It is organized in four parts:

- Part I General Information
- Part II Proposal Application Instructions and Requirements
- Part III Proposal Application Summary and Proposal Outline
- Part IV Contract General Terms

1.2 Applicable Contracting Procedure

ORS 151.216 authorizes PDSC to adopt policies and procedures for the contracting of public defense services. As part of the Judicial Branch, PDSC is not subject to the Department of Administrative Services administrative rules and procedures that govern contracting for personal services contracts. PDSC adopts the policies, procedures, instructions, requirements and other provisions of this RFP as the PDSC procedures for contracting for personal services. The model rules of the Oregon Attorney General do not apply to PDSC contracting but will be reviewed each time the Attorney General modifies them to determine whether PDSC should modify the policies and procedures contained herein.

1.3 Authority

ORS 151.219 authorizes the PDSC executive director to contract for legal services for financially eligible persons in proceedings in which:

- 1) a state court or magistrate has the authority to appoint counsel to represent the financially eligible person, and
- 2) the PDSC is required to pay compensation for that representation.

PDSC may contract with individual attorneys, groups of attorneys, private firms, and full-time, not-for-profit public defender organizations for these services.

Awarding these contracts is a proprietary function of PDSC. All such contracts are:

- 1) subject to PDSC's express approval under ORS 151.216(1)(d), and
- 2) contracts with independent contractors for personal services.

PDSC reserves the right to reject any or all proposals received by reason of this RFP or to negotiate separately in any manner necessary to serve the best interests of the PDSC and the state. PDSC reserves the right to seek clarifications of proposals and to award a contract(s) without further discussion of the proposals submitted. PDSC reserves the right to amend or cancel this RFP without liability if it is in the best interest of the state and public to do so.

1.4 Funding Source

The Legislature appropriates funds to the Public Defense Services Commission to pay attorney compensation and other expenses related to the legal representation of financially eligible persons for which PDSC is responsible, including contract payments under ORS 151.219.

1.5 Minorities, Women and Emerging Small Businesses

Pursuant to ORS 200.035, PDSC shall provide timely notice of RFPs and contract awards to the Advocate for Minorities, Women and Emerging Small Businesses if the estimated value of the contract exceeds \$5,000.

As noted in Governor Kitzhaber's Executive Order 12-03: "Minority-owned and women-owned businesses continue to be a dynamic and fast-growing sector of the Oregon economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of Oregon's Minority Business Enterprise [MBE] and Women Business Enterprise [WBE]. Emerging Small Business [ESB] firms are also an important sector of the state's economy."

Oregon MWESB certified firms, as defined in ORS 200.055, have an equal opportunity to participate in the performance of contracts financed in whole or in part with state funds. By submitting its proposal, proposed contractor certifies that it will take all necessary and reasonable steps to ensure that MWESB certified firms are provided an equal opportunity to compete for and participate in the performance of any contract resulting from this procurement. Proposed contractor further certifies and agrees that it has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin, and it has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

It is the expectation of PDSC, that the proposed contractor will develop an effective and thoughtful approach to the solicitation of MWESB certified firms to perform work on this project.

1.6 Schedule of Events

Release of RFP	May 1, 2015
Proposal Submission Deadline (<i>Received via email by 11:59pm</i>)	June 26, 2015
Commission review of statewide contracting plan	July 30, 2015
Commission review of death penalty contracting plan	September 17, 2015

Notice of intent to award contracts
Commission review of proposals and
award of contracts

October 15, 2015
October 23, 2015

PDSC presently intends to award public defense legal services contracts according to the above time schedule. By publishing this schedule, PDSC does not represent, agree, or promise that any contract will be awarded on a specified date or any other time in any particular county or judicial district. PDSC intends, however, to adhere to these time frames as closely as possible.

PDSC will provide notice of its intent to award contracts to all applicants at least seven (7) days before the award of contracts, unless exigent circumstances require a shorter period of notice.

1.7 General Proposal Review Procedures

The instructions and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications, their review by the affected court(s), and any other information available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications must be received by PDSC by 11:59 p.m. on the submission deadline date. The following events will then occur.

A. Inadequate Proposals

PDSC may immediately reject proposals that do not meet the minimum RFP requirements. If a proposal is unclear or appears inadequate, PDSC may give the applicant an opportunity to further explain or provide additional information. If PDSC finds the explanation or additional information inadequate, PDSC's decision to reject the proposal will be final and not subject to appeal.

B. Facially Adequate Proposals

PDSC will evaluate proposals that meet the administrative and contractual minimum requirements as set forth in Part II of the RFP. PDSC will evaluate each proposal based on its total characteristics and any other information available to PDSC. During the evaluation period, PDSC may:

- 1) request additional information from applicants to clarify information or material in the proposal;
- 2) consult with judges, court administrative staff, and others who have knowledge of the applicant or the local caseloads and practices to aid in the review of the proposal's merits; and
- 3) request individuals with experience and expertise in the proposed case types to review the apparent qualifications of the applicants, the strengths and weaknesses of the management plans submitted by applicants and the apparent cost-effectiveness and quality of the various proposals.

C. Negotiations

PDSC must ensure that each contract is compatible with:

- 1) the needs of the particular court(s), county(ies), judicial district(s), region(s), and the state;
- 2) other public defense contracts in place or contemplated; and
- 3) budget allocations.

During negotiations, PDSC may discuss adjustments to proposed costs, caseload types, coverage, level of services, or service providers necessary to meet these objectives.

D. Contract Awards

Award of any contract will be final only when the applicant and the PDSC have properly completed and executed the contract documents.

E. General Contract Terms

PDSC will offer all applicants the same general contract provisions. Successful applicants will enter into a contract substantively similar to the general contract document in Part IV of this RFP, unless otherwise specifically agreed by PDSC.

An applicant may request in the proposal to amend general terms of the contract. PDSC must approve any change. Applicants who do not otherwise accept the general terms contract in Part IV may be disqualified.

1.8 Proposal Evaluation Criteria

PDSC shall evaluate proposals based on the criteria listed below. PDSC reserves the right to reject any proposals that do not comply with the RFP requirements. PDSC shall be the sole determiner of the relative weight given any criterion. Although price is an important criterion, the intent is to provide financially eligible persons with effective legal representation. The applicant with the lowest cost proposed will not necessarily be awarded a contract. PDSC reserves the sole right to make this determination.

CRITERIA:

- 1) The proposal and any modification is complete and timely, in conformance with the RFP.
- 2) The applicant meets the minimum attorney qualification standards for the types of cases proposed, as specified in PDSC's Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense.
- 3) The proposed plan for delivery of services is adequate to ensure effective legal representation. Among the factors PDSC may consider are the quality of legal representation, the experience of the attorneys, staffing patterns, available support staff and other services, and caseload per attorney.

- 4) The applicant has the ability to perform the contract effectively and efficiently and to provide representation in the types of cases proposed. Among the factors PDSC may consider are financial ability, personnel qualifications, and successful experience providing public defense services under contract or on a private bar basis.
- 5) The cost for services is reasonable. PDSC may consider factors that affect the cost, including those outside the applicant's control, such as district attorney (DA) negotiation practices, local jail facilities, and court programs and procedures.
- 6) The budget is reasonable, and expenses are prorated to the proportion of applicant's time to be devoted to the contract. Among the factors PDSC may consider are the ratios of administrative cost, support services, and non-personnel expenses to direct legal services, as well as compensation, benefit, and other resource levels.
- 7) The proposal is consistent with the needs and best interests of the court(s), county(ies), judicial district(s), and region(s) involved. Among the factors PDSC may consider are the other service methods and service providers available, the applicant's ability to work with the court(s) and within its procedures, and the mix of service providers.
- 8) The proposal is consistent with the needs and best interests of the state as a whole. Among the factors PDSC may consider are the other service methods and mix of service providers available, and the applicant's ability to work with other groups affected by the contract, legislative mandates, or other directives that affect the entire statewide contracting patterns or terms.

In addition to the criteria listed above, PDSC will evaluate the available caseload, the current number of contractors or private bar providers, and the relative cost of administering current contracts and/or new contract proposals.

PDSC has the sole discretion to apportion or not to apportion caseloads between applicants AND to award or not to award contracts.

1.9 Proposal Records

Materials submitted by applicants will not be available for public review until all contracts awarded pursuant to this RFP have been fully executed.

Written inquiries on preparing applications may be directed to Caroline Meyer, Contracts Manager at OPDS at:

caroline.meyer@opds.state.or.us

PART II - PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS

This part of the RFP contains the instructions and requirements for preparing and submitting proposals for public defense legal services contracts.

2.1 Submitting Proposals

The applicant is responsible for any costs incurred in preparing or delivering the proposal. The applicant is responsible for ensuring that the proposal is received timely by the Public Defense Services Commission.

There is no implied promise to award a contract to any applicant based upon the submission of a proposal.

A. Form of Submission

Proposals MUST be submitted as an email attachment in a searchable Portable Document Format (PDF). The PDF must not be password protected nor copy protected.

Any text in the body of the transmitting email will not be reviewed and will not be considered part of the proposal.

The email should be sent to: mail@opds.state.or.us

B. Deadline

Proposals must be received by PDSC no later than 11:59 p.m. on the submission deadline date.

The submission deadline for all proposals is June 26, 2015.

If the applicant fails to submit the proposal(s) in accordance with the deadline to PDSC, PDSC will disqualify the proposal(s), unless authorization for late submission is granted in writing by PDSC. Consideration for late submission will be based on PDSC's needs, both regional and by case type, and the reason for the late submission.

2.2 Application Format

Applicants must use the attached application format for submission of all proposals and must answer all questions or state the reason why a specific question is not relevant to the particular proposal. PDSC may disqualify any proposal that is not in the required format or is incomplete.

2.3 Acceptance of RFP and General Contract Terms

- A. Applicants are responsible for reviewing the terms and conditions of the RFP and the general terms of the contract.
- B. By signing and returning the application form, the applicant acknowledges that the applicant accepts and intends to abide by the terms and conditions of the RFP. Further, the applicant accepts the terms and conditions of the general terms of the contract contained in Part IV, unless and only to the extent that the applicant proposes exceptions as described below.
- C. The applicant must clearly state in the proposal any proposed exceptions to the general terms of the contract, including reasons to support the exceptions and estimated efficiencies and/or cost savings. PDSC reserves the right to accept, reject, or negotiate exceptions to the contract terms.
- D. Any changes to the general terms of the contract terms proposed by PDSC will be provided, in writing, to each applicant.

2.4 Multiple Proposals

An applicant may submit more than one proposal. Each proposal must be complete in itself. The proposal must state whether it is in addition to or an alternative to other proposals submitted by the applicant.

2.5 Modification of Proposals

A. When Permitted

Applicants may not modify proposals after the submission deadline, unless PDSC agrees thereto, upon written request by applicant. Until that date, an applicant may modify its proposal(s) in writing. Modifications must be:

- 1) prepared on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) must state whether the new document supersedes or modifies the prior proposal.

B. Delivery

Applicants must deliver any modifications in the same manner as required by Section 2.1.A for original proposals.

C. Included in Proposal File

All documents relating to the modification of proposals will be made part of the proposal file.

2.6 Mistakes in Submitted Proposals

A. When Corrections Permitted

PDSC will permit applicants to correct mistakes on a proposal only to the extent correction is not contrary to PDSC's interest or to the fair treatment of other applicants. PDSC has sole discretion to allow an applicant to correct a mistake. PDSC will notify the applicant if and when PDSC allows corrections to proposals.

B. Procedure When PDSC or Applicant Discovers Mistake

If PDSC or the applicant discovers a mistake before the proposal deadline, the applicant may amend the error using the procedures for proposal modification in Section 2.5 above.

PDSC will proceed as follows when PDSC discovers or is notified of mistakes in proposals after the submission deadline but before contract awards are made:

1) Minor Inaccuracies

PDSC may waive or correct minor inaccuracies or insignificant mistakes. Minor inaccuracies are:

- a) matters of form rather than substance that are evident from the proposal documents; or
- b) insignificant mistakes that do not prejudice other applicants; e.g., the inaccuracy or mistake does not affect price, quantity, quality, delivery, or contractual conditions.

2) Mistakes Where Intended Correct Proposal is Evident

If the mistake and the intended correct proposal are clearly evident on the face of the proposal or can be determined from accompanying documents, PDSC may consider the proposal. Examples of mistakes that may be clearly evident on the face of the proposal are typographical errors, transposition errors, and mathematical errors.

3) Mistakes Where Intended Correct Proposal is Not Evident

PDSC may not consider a proposal in which a mistake is clearly evident on the face of the proposal but the intended correct proposal is not evident or cannot be determined from accompanying documents, including requests for correction or modification under Sections 2.5 and 2.6.

C. Included in Proposal File

All documents relating to correcting a mistake will be made part of the proposal file.

2.7 Withdrawal of Proposals

A. Request to Withdraw

An applicant may withdraw a proposal at any time by written request. Requests to withdraw a proposal from consideration must be:

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) submitted to PDSC in the same manner as required by Section 2.1.A for original proposals.

B. Included in Proposal File

All documents relating to the withdrawal of proposals will be made a part of the proposal file.

2.8 Evaluation of Proposals

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I.

2.9 Categories of Cases Available for Contract

A proposal for public defense legal services may include coverage of all, some, or any of the following categories of cases for which financially eligible persons have a right to appointed counsel payable from the Public Defense Services Account:

- Capital Murder (death penalty)
- Noncapital Murder
- Felony
- Misdemeanor
- Probation Violation
- Juvenile
- Post-Conviction Relief
- Habeas Corpus
- Civil Commitment
- Extradition
- Contempt
- Psychiatric Security Review Board
- Post-Conviction Relief and Habeas Corpus Appeals

Applicants should refer to Part IV, the General Terms of the contract, section 10 for specific definitions of the categories.

2.10 Number of Cases

A. Available Caseload

To obtain the number of contract cases and/or workload likely for a particular court, county, or case type, the applicant should contact the Office of Public Defense Services at (503) 378-2478.

B. Fixed Caseloads and Value- or Hourly-Based Workloads

PDSC will contract for:

- 1) fixed workload by value of cases for non-death penalty contracts; or
- 2) hourly-based workloads for death penalty contracts.

C. Proposed Caseload

The applicant should propose no more than the number of cases or hours for which the applicant can provide effective and efficient representation and adequate staff support resources.

2.11 Cost of Services

A. Expenses Included in Contract Price

Public defense contractors are responsible for all reasonable and necessary expenses that are ordinary and related to the proper preparation and presentation of the case.

PDSC bears the costs outside of any public defense contract for:

- 1) discovery;
- 2) transcripts;
- 3) witness fees and expenses; and
- 4) non-routine case expenses that are preauthorized (e.g., expert witnesses; psychiatric exams; and investigation requiring an investigator's services, unless applicant has staff investigator(s) for this purpose).

Applicants should not include these case-related expenses in calculating the cost of providing contract services.

B. Reasonable Expenses

Applicants should project the cost of occupancy, staff, or other contract expenses at rates no greater than customary for the community and the type of service or expense. PDSC will not pay premium rates. PDSC expects contractors to provide facilities reasonably adequate to ensure an environment conducive to providing effective and efficient legal services and to maintaining the dignity of attorney, staff, and clients.

C. Factors to Consider

In calculating overall case cost figures, applicants should consider the percentage of appointments by case type (the "mix" of cases) and the percentage of appointments that:

- 1) usually terminate before trial or contested adjudication, and at what stages and why they terminate (such as, withdrawals, dismissals, multiple cases negotiated together, and bench warrants); and
- 2) usually go to trial or contested adjudication.

The applicant may consider any other relevant factors in constructing costs, as long as these factors do not jeopardize the delivery of adequate legal services at the prices proposed. Applicants must describe in the application all factors or premises on which costs are based.

2.12 Proposal Application Format (Part III of RFP)

The application format consists of:

- 1) Application Summary;
 - a) Caseload Information
 - b) Methodology, Explanations and Benefits
 - c) Proposal Staffing Summary
- 2) Certification Form; and
- 3) Proposal Outline divided in the following sections:
 - a) Service Delivery Plan
 - b) Proposed Estimated Allocation of Contract Funds
 - c) Proposed List of Contract Attorneys
 - d) Proposed List of Contract Non-Attorney Staff
 - e) Certificate of Attorney Qualification and Supplemental Questionnaire
 - f) Proposed Contractor Certificate of Compliance with Applicable Oregon Tax Laws
 - g) Proposed Contractor Independent Contractor Certification Statement

THE FOLLOWING PAGES APPL. 1 THROUGH APPL. 16 ARE THE RFP APPLICATION AND PROPOSAL OUTLINE.

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

**(TO BE COMPLETED AND SUBMITTED TO PDSC
BY APPLICANTS WHO DO NOT CURRENTLY CONTRACT WITH PDSC)**

PART III - PROPOSAL APPLICATION SUMMARY AND OUTLINE

3.1 APPLICATION SUMMARY

APPLICANT INFORMATION	
County or Counties to be served: _____	
Formal Name of Applicant: _____	
Contact Person for Proposal: _____	
Address: _____ _____	
Telephone: _____	Fax: _____
Email (required): _____	
Fed. I.D. No.:	or S.S.N.:
Type of Business Entity (<i>e.g. LLC, Non-Profit, Corporation</i>): _____	

A. CASELOAD INFORMATION

Case Types Covered: All case types as defined in the general terms of the contract document that are subject to this RFP excluding:

Complete the section below:

Case Types	Value	# of Cases	Total Value
First Year			
	\$		\$
	\$		\$
	\$		\$
	\$		\$
First-Year Total			\$
Second Year			
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Second-Year Total			\$
Contract Total			\$

(Add additional years if necessary.)

B. METHODOLOGY, EXPLANATIONS AND ESTIMATES

1) Service Cost Basis. For the types of cases, extent of coverage, and services proposed, explain how costs were projected and the premises underlying the projection.

2) Case Costs.

Explain:

- a) how the various case types were weighted;
- b) how the cost varies by case type; and
- c) how staff investigator, paralegal, and/or interpreter costs were factored.

Estimate:

- d) what percentage of each case type is disposed by jury trial, court trial, plea, dismissal, withdrawal, and bench warrant;

- e) the average number of hours required for each case type proposed;
 - f) the cost of providing contract counsel at arraignments to advise defendants regarding plea offers or resolution of probation violation or contempt matters if a program were established to facilitate early resolution of cases. Describe the time required and the potential number of cases involved; and
 - g) the percentage of attorney time and staff time required for administrative duties, CLE, and other professional duties not related to a particular case.
- 3) Other Information. Include any other relevant information that PDSC should consider in evaluating proposal costs.

C. PROPOSAL STAFFING SUMMARY ("FTE" means "full-time equivalent"; e.g., four attorneys each committing 50% of their full time to contract work equals two FTEs.)

Number of Attorneys _____ / FTE_____

Number of Secretarial/Receptionist Staff _____ / FTE_____

Number of Paralegals/Legal Assistants _____ / FTE_____

Number of Administrative Staff _____ / FTE_____

Number of Investigators _____ / FTE_____

Number of Interpreters _____ / FTE_____

Number of Other Staff _____ / FTE_____

Identify "Other Staff" type: _____

3.2 CERTIFICATION FORM

I hereby certify that I have the authority to submit this proposal on behalf of the applicant and that I have read and understand the terms and conditions of the general terms of the contract.

Signature

Date

Typed or Printed Name of Authorized Representative

Title or Representative Capacity

Applicant Name

3.3 PROPOSAL OUTLINE

The following is an outline of the information each applicant must provide. All questions must be answered and all requested information must be completed. If a certain question or requested information is "Not Applicable" to the applicant's proposal, please note "NA."

A. SERVICE DELIVERY PLAN

The purpose of a public defense legal services contract is to provide cost-effective delivery of legal services that meet Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice. Please describe, in detail, applicant's service delivery plan and how it will ensure effective and efficient legal representation. Include information on the following:

1. Contractor Staff Services. Describe legal, support, and other services to be provided under the contract. Include any express limitations on the range of services.

In addition to providing the information requested above, each attorney included within applicant's proposal must complete a Certificate of Attorney Qualification and Supplemental Questionnaire, to be included with applicant's proposal (see pages Appl. 12-14).

2. Case Services. Describe the caseload and case types to be covered. Include any limitations in coverage by case type. Include any differing values per type of case that applicant proposes.
3. Service Delivery. Describe how applicant will provide timely, effective, and efficient case-related services. Include:
 - a) how the court would assign cases to applicant;
 - b) how applicant would ensure representation at first appearances;
 - c) how applicant would assign cases to attorneys;
 - d) how applicant would provide for interviews with both in-custody and out-of-custody clients in accordance with the general terms of the contract;
 - e) how applicant would process cases from assignment through reporting to PDSC; and
 - f) how applicant would work with the court to coordinate services with other contractors and with the court.
4. Facilities. Describe applicant's office(s). Include information on:
 - a) office sharing arrangements;
 - b) conference room(s);
 - c) library (size and contents);
 - d) disabled access (if none, describe alternative arrangements for meeting disabled clients or witnesses) (if applicant is a consortium, describe the disabled access or alternative arrangements for each consortium member's office); and
 - e) number of separate law firms/sole practitioners included.

Does each of applicant's attorneys have his/her own office?

Are any offices housed in a residence?

Does applicant or any of its members own or have an interest in the office building(s)?

If yes, please explain: _____

5. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.
6. Professional Education and Supervision Plan. Describe plans for professional development and supervision of all attorneys, direct support, and administrative staff. Include:
 - a) training;
 - b) CLE;
 - c) educational methods to maintain current awareness of new developments in criminal and public defense-related case law and procedures; and
 - d) supervision and development of less experienced attorneys.
7. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available. Include information on positions that need to be filled and equipment or facilities that need to be procured. If positions need to be filled, describe recruitment procedures and affirmative action plans.
8. Local Factors. Identify and discuss, in detail, local factors that affect caseload and case processing that may affect cost.
9. Board of Directors. Contractor shall be governed by a board of directors that includes at least two independent members who do not provide services under the entity's contract and are not elected by those who do. In lieu of a board of directors, Contractor shall demonstrate effective and appropriate financial safeguards and quality assurance mechanisms. Describe either the composition of applicant's board of directors, or the financial safeguards and quality assurance mechanisms.
10. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.
11. Contract Terms. Include any requests to modify terms in the general terms of the contract. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

B. PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

All applicants must complete the forms contained on the following five pages and estimate how contract funds would be allocated to cover service costs.

If applicant is a consortium, submit a separate form for each firm or member. In addition, you must compile all members' estimated allocations into one, overall consortium contract fund allocation form. To arrive at allocation figures, each member should estimate by line item the amount of funds reasonably necessary to perform the public defense services contemplated under the proposal. Generally, an attorney who would be spending 50 percent of his/her total billable time on public defense contract cases may allocate no more than 50 percent of total rent and other overhead costs to the proposed allocation.

Under no circumstances will the PDSC fund any lobbying or other political activities for a public defense contractor.

Each consortium must provide expense information in the allocation categories for all members, not just for the umbrella corporation or other umbrella entity. Any nonprofit organization or consortium that has expenses related to its Board of Directors' or Trustees' meetings should include that expense information with the proposed estimated allocation as well as any other expenses not otherwise listed.

APPLICANT'S PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

Directions: Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. **Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work.** (Use additional pages if needed for longer-term proposals.)

1. GROSS SALARIES	<u>First Year</u>	<u>Second Year</u>
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) _____ # _____ FTE	_____	_____
Secretarial/Reception/Clerical Staff _____ # _____ FTE	_____	_____
Paralegal/Legal Assistant Staff _____ # _____ FTE	_____	_____
Investigation Staff _____ # _____ FTE	_____	_____
Other Staff (identify _____) _____ # _____ FTE	_____	_____
SUBTOTAL:	_____	_____
2. STAFF BENEFITS		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health and Other Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
SUBTOTAL:	_____	_____
3. STAFF EXPENSES		
Malpractice Insurance check _____ PLF or _____ NLADA	_____	_____
Other Professional Insurance (describe _____) _____)	_____	_____
OCDLA--Membership Dues	_____	_____
OSB--Membership Dues	_____	_____
Other Membership Dues Necessary to Contract (explain _____) _____)	_____	_____

3. STAFF EXPENSES (continued)

First Year **Second Year**

Professional Licenses/Certificates
(explain _____)

Education Training/CLE's--Attorneys _____

Education Training--Other Staff
(explain _____)

Attorney Travel _____

Other Staff Travel _____

SUBTOTAL: _____

4. OVERHEAD (OCCUPANCY)

Office Rent/Lease _____

Office Insurance _____

Building Utilities _____

Building Maintenance _____

Real Estate Taxes (if separate from rent) _____

SUBTOTAL: _____

5. OVERHEAD (OPERATIONS)

Phone Services (Equipment/Local Calls) _____

Long Distance Calls _____

Office Supplies _____

Postage _____

Outside Photocopying/Printing _____

Library _____

Subscriptions _____

Other Case Expenses
(explain _____)

SUBTOTAL: _____

6. OVERHEAD (NONCAPITAL EXPENSES)

Furniture & Equipment Leases	Annual Cost	_____	_____
Description			

6. OVERHEAD (NONCAPITAL EXPENSES) (continued)

First Year

Second Year

Equipment Repairs/Maintenance _____

SUBTOTAL: _____

7. OVERHEAD (OTHER)

Personal Property Taxes _____

Professional Contract Services (specify) _____

Miscellaneous (specify) _____

SUBTOTAL: _____

8. TOTAL OPERATIONS (total of 1-7) _____

9. CAPITAL (Items costing over \$500 each and funded separately)

Computer--Hardware _____

Description	Quantity	Unit Cost

Computer--Software _____

Description	Quantity	Unit Cost

Office Furniture _____

Description	Quantity	Unit Cost

Office Equipment _____

Description	Quantity	Unit Cost

SUBTOTAL: _____

GRAND TOTAL* (total of 8 and 9): _____

*** Grand total must equal total proposed annual contract price.**

C. PROPOSED LIST OF CONTRACT ATTORNEYS

Directions: List every attorney performing work under the 2016-17 contract, by firm where applicable, the number of projected annual cases (both criminal and juvenile) to be assigned under the contract, and the amount expected annually from contract funds. List vacant positions as well. Additionally, Contractor certifies that each attorney performing services under the 2016-17 contract is listed in Appendix A, that the percentage of contract work and annual funds represented on Appendix A is true and accurate to the best of their knowledge, and that each attorney listed satisfies the qualification standards that PDSC has established for the types of cases to which that attorney is or will be assigned.

Firm or Office	Attorney Name (Last, First)	Bar #	Annual Projected Caseload		Annual Hours Dedicated to Other Work		Current Annual Projected Distribution of Contract Funds (dollar amount)
			Criminal	Juvenile	Type of Work (i.e. contract administration, retained work, pro-tem judge)	Hours	

D. PROPOSED LIST OF CONTRACT NON-ATTORNEY STAFF

Directions: List every non-attorney position performing work under the 2016-17 contract, by firm where applicable, the name of the employee in each position, the percentage of their time annually allocated to work under the contract, and the amount they receive annually from contract funds. List vacant positions as well. Contractor certifies that each non-attorney performing services under the 2016-17 contract is listed in Appendix B, and that the percentage of contract work and annual funds represented on Appendix B is true and accurate to the best of their knowledge.

Firm or Office	Employee Name (Last, First)	Position Title	FTE Contract Work	Current Annual Projected Distribution of Contract Funds (dollar amount)
-----------------------	--	-----------------------	------------------------------	--

Total FTEs: _____

E. CERTIFICATE OF ATTORNEY QUALIFICATION AND SUPPLEMENTAL QUESTIONNAIRE FOR NON-CAPITAL CASES

(Submit one certificate and questionnaire for each attorney proposed to provide contract services.)

Name: _____ Bar Number: _____
 Address: _____ Email: _____
 _____ Foreign language fluency in: _____
 Phone Number: _____ Years of Experience: _____
 Fax Number: _____ Practice of Law _____ Criminal _____
 Cell/Pager: _____ Juvenile _____ Appellate _____

For appointments in the following county(ies): _____

TRIAL LEVEL

- Murder
 - Lead Counsel _____
 - Co-counsel _____
- Major Felony _____
- Lesser Felony _____
- Misdemeanor _____

- Juvenile Delinquency
 - Major Felony _____
 - Lesser Felony _____
 - Misdemeanor _____
- Juvenile Dependency _____
- Juvenile Termination _____

- Civil Commitment _____
- Contempt _____
- Habeas Corpus _____

- Post-Conviction Relief
 - Murder _____
 - Other Criminal _____

APPELLATE LEVEL

- Murder
 - Lead Counsel _____
 - Co-counsel _____
- Major Felony _____
- Lesser Felony _____
- Misdemeanor _____

- Juvenile Delinquency
 - Major Felony _____
 - Lesser Felony _____
 - Misdemeanor _____
- Juvenile Dependency _____
- Juvenile Termination _____

- Civil Commitment _____
- Contempt _____
- Habeas Corpus _____

- Post-Conviction Relief
 - Murder _____
 - Other Criminal _____

Please check only one box below:

___ I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. 5-21-09) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 2.B, I have submitted supporting documentation and explained how I am qualified for those case types.

or

___ I certify that the above-named attorney will be working at a public defense organization as described in Standard III.2.C, which has provided the information required under Standard V.3.B.

Signature

Date

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:

5. Number of years and location(s) of legal practice outside Oregon:

6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)

7. What percentage of your present practice involves handling public defense cases?

8. Briefly describe the nature and extent of your work experience in the area(s) of law which you have certified and any related areas of law.

9. Before which courts and judges have you regularly appeared in case proceedings which you have certified?

10. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?

11. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.

12. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.

13. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)

14. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.

15. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?

16. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.

17. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

SIGNATURE

DATE

F. PROPOSED CONTRACTOR CERTIFICATE OF COMPLIANCE WITH APPLICABLE OREGON TAX LAWS

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: (X)

_____ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

_____ authorized to act in behalf of _____,
(name and address of firm, corporation, or partnership [PLEASE TYPE])

_____ hereby certify under penalty of perjury that _____
(name of firm, corporation, or partnership [PLEASE TYPE])

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Federal ID # or
Social Security #: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____

G. PROPOSED CONTRACTOR INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657 and 670:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- A. You work primarily at a location separate from your residence.
- B. You have purchased commercial advertising, business cards, or have a trade association membership.
- C. You use a telephone listing and service separate from your personal residence listing and service.
- D. You perform labor or services only pursuant to written contracts.
- E. You perform labor or services for two or more different persons within a period of one year.
- F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.

I hereby certify that the above information is correct.

Signature _____ Date _____

Entity _____

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

PART IV

CONTRACT GENERAL TERMS

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
GENERAL TERMS**

JANUARY 1, 2016 TO DECEMBER 31, 2017

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GENERAL TERMS

1 DEFINITIONS AND CASE CREDIT RULES

1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Definitions

1.4.1 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.4.2 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.4.3 Public Defender

A "public defender" is a nonprofit organization employing attorneys and other staff established to provide contract services to persons qualifying for court-appointed legal representation.

1.4.4 Law Firm

A "law firm" is a sole practitioner, partnership, or professional corporation which provides contract services to persons qualifying for court-appointed legal representation and which may also engage in non-court-appointed legal representation.

1.4.5 Consortium

A "consortium" is a group of attorneys or law firms that is formed for the sole purpose of providing contract services to persons qualifying for court-appointed legal representation. In addition to participating jointly to provide contract services, Consortium members retain their separate identities and may engage in non-court-appointed legal representation.

1.4.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.7 Appointment

An "appointment" is the assignment of a contractor to represent or advise an eligible person on any matter under the terms of this contract.

1.4.8 Case

A "case" is any action in this state in which Contractor has been appointed to represent a client under the terms of this contract in a matter to which there is a right to appointed counsel at state expense. Specific definitions of case types are listed in Section 10.

1.4.9 Credit

A "credit" is an event or circumstance which counts toward Contractor's satisfaction of this contract.

1.4.10 Value

The "value" of a credit is the rate by type of credit as set forth in the Caseload and Case Value Matrix.

1.4.11 Complex Case

A "complex case" is an appointment on a case type valued at \$2,600 or more. Withdrawal or substitution for any reason from a complex case changes the credit type to "Other" (OTHR).

1.5 Rules for Counting Appointments

An appointment is credited, according to the following provisions:

1.5.1 Criminal Complex Case Credit

An appointment to a client indicted on a complex case is one credit. No extra credit may be taken for multiple incident dates or charges.

1.5.2 Criminal Appointment Case Credit (Non-Complex Case Credit)

- (a) An appointment on criminal charges alleged to have occurred on specific calendar days is one credit for each count charged in the charging instrument alleged to have occurred on different specific calendar days, regardless of the number of victims involved, up to a maximum of five credits per case.
- (b) An appointment on criminal charges alleged to have occurred on indeterminate dates (e.g., "on or between January 1, 1996, and July 1, 1996") is a credit for each count charged in the charging instrument which can be determined to allege different calendar days, up to a maximum of five credits per case.
- (c) Separate counts in a charging instrument that allege alternative theories of criminal liability on the same date are only one credit.
- (d) One additional OTHR credit may be claimed when Contractor is appointed on a criminal matter that includes one or more counts of criminal forfeiture.
- (e) No additional credit may be taken due to the following circumstances:
 - (i) more than one charging instrument (including Uniform Traffic Citation) is filed; or
 - (ii) more than one case number is assigned.

1.5.3 Case Type Credit

Unless Section 1.4.11 applies, the case type credited is for the most serious offense alleged to have occurred on a specific calendar day, even if the charge is later changed to a different case type. For cases in which the most serious charge is a Class C felony, the most serious offense is assault IV domestic violence, DUII felony, or Class C felony, in this order.

1.5.4 Credit for Recommended Representation

Except for complex cases, if a contract case proceeding has been interrupted for the following reasons and time intervals, Contractor receives a new credit if:

- (a) **365 Days After Aid and Assist Delay**
More than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or
- (b) **180 Days After Bench Warrant**
More than 180 days have passed since a bench warrant was issued; or
- (c) **18 Months with Repeated Bench Warrants**

More than 18 months have passed since Contractor was originally appointed and the case is recommenced and no additional credit has been received because of Section 1.5.4(b); or

(d) 180 Days After Dismissal

More than 180 days have passed since a dismissal of a case; or

(e) After Appeal or Post-Conviction Relief

A new trial or sentencing follows an appeal or post-conviction relief; or

(f) After Interlocutory Appeal

A case resumes at the trial level, following an interlocutory appeal by the state; or

(g) After Mistrial or Hung Jury

A new trial is scheduled after a mistrial or hung jury.

1.5.5 Probation Violation Credit

An appointment on a probation violation proceeding arising out of a criminal or civil contempt sentencing(s) is one probation violation credit for each court case number to which Contractor is appointed. Provided, however, that if Contractor is appointed to more than one case number, additional credit is received only for those case numbers in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

1.5.6 Show Cause Hearing for Diversion or Conditional Discharge Agreement

An appointment for a show cause hearing to address non-compliance issues related to a diversion agreement, conditional discharge agreement or any other type of deferred or delayed adjudication agreement is an SCDV credit if:

- (a) Contractor did not receive a credit for the underlying charge; or
- (b) more than 180 days have passed since Contractor represented the eligible person at a previous court appearance.

1.5.7 Juvenile Case Credit

1.5.7.1 General Provisions

A petition which is amended from or to a delinquency or dependency petition or the dismissal of one type of petition and refiling of another type of petition is not a new credit.

1.5.7.2 Prepetition Matters

The prepetition appointment to represent a youth in a delinquency matter or a child in a dependency matter continues through disposition on any petition that is later filed on the prepetition allegations and no additional case credit is received.

1.5.7.3 Delinquency Petitions

An appointment on a delinquency case is credited under the provisions set out in Sections 1.5.2 - 1.5.4.

1.5.7.4 Dependency and Termination Petitions

An appointment to represent children, parents, or legal guardians on a dependency petition is one credit regardless of the number of petitions filed (see Section 1.5.7.4.1 for exceptions). Case credit in a dependency proceeding covers representation from appointment to the court's entry of the dispositional order required under ORS 419B.325, or as otherwise authorized by PDSC. An appointment to represent children, parents, or legal guardians on a termination of parental rights petition is always one credit.

1.5.7.4.1 Representation of Multiple Children

An appointment to represent two or more related children in a dependency proceeding is a maximum of two credits if:

- (a) the petition names as parents different mothers of different children; or
- (b) the petition names as parents different fathers of different children, not including any putative father unless the putative father also appears in the case; or
- (c) the children are living in more than one location.

1.5.7.4.2 Maximum Credit for Representing Parents

The maximum number of credits that may be counted when a Contractor attorney represents more than one parent or legal guardian in a dependency proceeding is one.

1.5.7.5 Postdispositional Juvenile Hearings

A postdispositional juvenile hearing is limited to a hearing before the court or Citizen Review Board (CRB) that is held after the juvenile court enters the dispositional order required under ORS 419B.325 or ORS 419C.440, or as otherwise authorized by PDSC. Postdispositional juvenile matters are a new credit for each hearing attended by Contractor. A single postdispositional hearing, even if it involves matters relating to more than one original juvenile petition, counts as only one postdispositional credit. Postdispositional hearings do not include probation violation hearings.

1.5.7.6 Juvenile Probation Violation Hearings

Juvenile probation violation hearings are governed by Section 1.5.5.

1.5.7.7 Waiver Proceedings

Contractor shall receive one additional "Juvenile Other" (JUDO) credit beyond that assigned for the original appointment for each waiver proceeding under ORS 419C.349.

1.5.8 Mental Health Case Credit

An appointment to represent an allegedly mentally ill, pursuant to ORS 426.070, or a person alleged to have an intellectual disability, pursuant to ORS 427.235, is one credit. The appointment ends at the original disposition of that matter.

1.5.9 Contempt Case Credit

An appointment to represent a client on a contempt case is one credit. Contractor receives no additional credit for appointments on new allegations of contempt if the original contempt allegation on which Contractor was appointed has not been adjudicated.

1.5.10 Post-Conviction Relief Case Credit

An appointment to represent a client on petitions filed at the same time or petitions with sequential numbers counts as one credit for each separate prosecution that is challenged by the petitions, with a maximum of five credits. The appointment ends at the original disposition of that matter.

1.5.11 Habeas Corpus Case Credit

An appointment to represent a client on a petition for a writ of habeas corpus is one credit if Contractor does not represent the petitioner on the charge to which the habeas corpus case is related. Petitions filed at the same time or petitions with sequential numbers count as one credit. The appointment ends at the original disposition of that matter.

1.6 Appointments That Do Not Qualify for Credit

1.6.1 Verification Removal

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case credit where:

(a) Finding of Ineligibility

The court finds, after screening or verification, that the client is not financially eligible for appointed counsel at state expense; or

(b) Withdrawal of Application for Counsel

The court withdraws counsel because the client withdraws the application for appointed counsel before the court completes verification.

1.6.2 Client Retains Counsel

An appointment to represent a client who later retains Contractor or, in the case of a consortium, retains the same consortium member, on the same case does not qualify for credit.

1.6.3 Reassignment Within Consortium

If a case is reassigned within a consortium for any reason, no new credit may be claimed.

2 MUTUAL RIGHTS

2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

3.3 PDSC Rights for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - i. for repeated instances of failure to comply; or
 - ii. for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document.
(See Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of any duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services; provided, however, that good faith actions of counsel undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate legal services under this contract or fulfill the obligations of this contract.

3.5.2 No Appointments After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the probable number of available cases increases substantially;
- (b) Contractor demonstrates that it has a sufficient number of attorneys and other staff to manage the additional workload; and
- (c) PDSC determines that renegotiation is in the state's interest.

PDSC will not pay Contractor for credits in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor's assignment to such excess cases.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval. PDSC and its agents will comply with the American Bar Association's "Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor" (2002) when conducting any fiscal or performance audit or review.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.4, 4.5 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.

3.10 Return of Equipment Purchased with Contract Funds

Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;
- (b) had an original dollar value of \$500 or more; and
- (c) whose useful life exceeds the term of this contract.

3.11 Limit on Return of Equipment to PDSC

Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Court Appointments Outside Contract

Contractor may accept additional court appointments to cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional appointments do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

4.3 Request for Additional Credit

Contractor may make a written request for additional credit for cases Contractor believes required an extraordinary amount of time, effort, or expense, on cases closed since the preceding periodic review (see Section 5.7). Only PDSC may approve additional credit for cases assigned under this contract. Contractors shall not make requests of the court or court staff to approve additional credit.

4.3.1 In General

Contractor shall submit in writing any materials needed to show extra services beyond the contract and the amount of additional credit proposed.

4.3.2 Complex Cases in Which Contractor Withdraws

Contractor shall submit any materials needed to show extra services performed prior to a withdrawal for any reason on a complex case and the amount of additional credit proposed beyond one OTHR credit.

4.4 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

- (a) privileged because of the attorney/client relationship; or
- (b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.5 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279B.220, 279B.230, and 279B.235 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

- (a) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (b) become effective for willful breach not less than 14 days from delivery; and
- (c) become effective not less than 60 days from delivery for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Caseload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

5.6 Renegotiation Shall Minimize Reductions in Staff

PDSC shall renegotiate with all Contractors affected by case decreases to apportion decreases in a manner that minimizes reductions in staff. Such renegotiations shall:

- (a) reduce the total number of cases for the contract period and adjust the monthly payments to Contractor accordingly; or
- (b) have Contractor refund or otherwise repay to the State any moneys saved.

5.7 Periodic Review

At the request of either party, PDSC and Contractor will periodically review case assignment trends, requests for additional credit and any other matters needed to determine contract compliance or any necessary contract modifications.

5.7.1 Review of Assignments to Multiple Contractors and Mixture of Cases

In counties where more than one Contractor provides legal services, periodic review shall include a review by PDSC of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates and the rates contemplated under the contracts, PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected, to the extent total cases are available. Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, PDSC shall notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

5.7.2 Fungibility

The parties agree that PDSC is contracting for the provision of legal representation by Contractor, as measured by value, and that the estimated workload, by case type, is the parties' expectation as to the distribution of the cases which may be available during the contract period. The parties expressly agree that Contractor may substitute one type of case for another, for the purposes of contract performance, with cases being fungible, except as specifically provided to the contrary in this contract.

5.8 Other Contractors and Vendors

PDSC may undertake or award other contracts for additional or related work. Contractor shall cooperate with PDSC and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for public defense services.

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

5.9 Management Conference

Contractor's administrator or administrator's designee shall attend an educational conference on the topic of public defense management each year one is sponsored by either the Oregon Criminal Defense Lawyers Association, the Office of Public Defense Services (OPDS) or another sponsor approved by PDSC. If no representative of Contractor is available to attend such a conference, Contractor will make arrangements, in consultation with the assigned OPDS contract analyst to ensure that the community served by Contractor is represented at such a management conference.

6 OBLIGATIONS OF PDSC

6.1 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers, including the private bar. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the requirement to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of

counsel to meet prevailing performance standards and rules of professional conduct. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.2 Contract Payment

Payment under this contract shall be based on the Payment Schedule included in the Specific Terms.

6.3 Payments in Addition to Contract Price

PDSC shall pay for the following case expenses from funds available for the purpose:

- (a) **Discovery**
Discovery expenses include material provided by DHS or a county juvenile department for representation in a juvenile case. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, district attorney or court files pertaining to the underlying case;
- (b) **Preauthorized Non-Routine Expenses**
Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:
 - (i) medical and psychiatric evaluations;
 - (ii) expert witness fees and expenses;
 - (iii) interpreters who charge a rate above the guideline amount as shown in the payment policy, or interpreters for services other than attorney/client communication;
 - (iv) polygraph, forensic and other scientific tests;
 - (v) investigation expenses; and
 - (vi) any other non-routine expenses PDSC or other authority designated to approve non-routine expenses preauthorizes and finds necessary and reasonable for the investigation, preparation, negotiation, and presentation of a case;
- (c) **Lay Witness Fees**
Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;
- (d) **Copying Clients' Files**
The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;
- (e) **Copying Direct Appeal Transcripts for PCR Trial-Level Representation**
The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;
- (f) **Records**
Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and
- (g) **Process Service**
The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

7 OBLIGATIONS OF CONTRACTOR

7.1 Performance Obligations of Appointed Counsel

7.1.1 Standard of Representation

Appointed counsel shall fulfill applicable state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center and National Legal Aid and Defender Association. Counsel shall also satisfy applicable state and federal constitutional requirements for the

provision of adequate and effective assistance of counsel, and meet state and federal statutory requirements for counsel in the applicable proceedings. And counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

7.1.2 Representation at all Stages of a Proceeding

Contractor shall provide representation in all proceedings related to the legal matter that is the subject of the representation, including but not limited to proceedings below. Representation under this contract does not include related Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations and probate proceedings, and other civil proceedings not otherwise provided for under this contract.

7.1.2.1 Pre-appointment representation

Subject to the express prior approval of PDSC, where an individual would be eligible for appointed counsel at state expense if charged with a crime or served with a petition in juvenile court but exigent circumstances preclude an appointment order, contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of a client.

7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation at all scheduled arraignments, shelter hearings and other initial appearances in criminal and juvenile cases.
- (b) Notwithstanding subsection (a), Where PDSC has approved in writing other arrangements for representation at first proceedings, contractor is not required to provide representation.
- (c) Contractor shall establish and follow procedures to ensure prompt notification to the court and client of the specific attorney assigned to each case.

7.1.2.3 Representation following the commencement of proceedings

Contractor shall provide representation, meeting the standard of representation set forth in Section 7.1.1 of the contract, during the pendency of a case through judgment or other final order of the court on the case, including but not limited to:

- (a) Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions;
- (b) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705;
- (c) Filing a petition for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,

To the extent ethically permitted, representing a client at a show cause hearing to determine the client's financial eligibility for appointed counsel.

7.1.2.4 Post-judgment proceedings

Following the entry of judgment or other final order in a case, counsel shall:

- (a) Seek modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- (b) Complete questionnaires, forms or other process necessary to obtain appellate counsel for clients requesting an appeal;
- (c) Seek court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- (d) Consult with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
- (e) Upon request, provide copies of the entire file to appellate or post-conviction relief counsel.

7.1.3 Client Contact

7.1.3.1 In-custody Initial Contacts

Contractor shall, whenever possible, speak to and conduct initial interviews in person with in-custody clients:

- (a) Within 24 hours of appointment; or
- (b) By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a holiday.

7.1.3.2 Out-of-Custody Contacts

Within 72 hours of the appointment, Contractor shall arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what the client must do to schedule an interview time.

7.1.4 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall consult Oregon State Bar Formal Ethics Opinion 2005-34, in conjunction with state and federal constitutional provisions, in determining what course to follow if Contractor learns that a client is ineligible for state-funded legal services under this contract.

7.1.5 Withdrawal From Case Only on Court Approval

Contractor may withdraw from representation following appointment by the court only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course. Contractor shall ensure continuous representation of a client until withdrawal is approved and then assist in the prompt establishment of a new attorney/client relationship.

7.2 Quality Assurance Obligations of Contract Administrator

7.2.1 Training and Supervision

Contractor shall establish and implement, as appropriate for contractor's entity structure, written quality assurance procedures consistent with the practices set forth in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010), including but not limited to procedures for recruiting high quality attorneys and staff, procedures for training and supervising contract attorneys and staff, regular performance evaluations of contract attorneys and staff, procedures to receive and promptly address complaints about the performance of contract attorneys and staff, and procedures to remedy performance deficiencies by contract attorneys and staff.

7.2.2 Case Assignment and Workload

Contractor shall ensure that the attorney assigned to represent a client under this contract:

- (a) Possesses the qualifications for representation of the case-type involved, as set forth in the PDSC's Qualification Standards for Court-Appointed Counsel, and has been approved for appointment to the applicable case type by PDSC. Contractor shall provide to PDSC the name and current qualifications, including a Certificate of Attorney Qualification and Supplemental Questionnaire, of any attorney providing representation under this contract, including attorneys who begin providing representation during the term of the contract.
- (b) Has a current workload, including private practice cases not covered by this contract, that will not interfere with competent and diligent representation that fulfills the Standard of Representation set forth in Section 7.1.1 of this Contract.
- (c) Will provide continuous representation by the same attorney, when possible, from the commencement of proceedings continuously until the final disposition of the case.

7.2.3 Continuing Legal Education Requirements

Contractor shall ensure that all contract attorneys providing representation under this contract:

- (a) Obtain 12 hours of continuing legal education credits related to the practice of juvenile law during each year of this contract, if the attorney is handling juvenile court cases;
- (b) Obtain 12 hours of continuing legal education credits related to the practice of criminal law during each year of this contract, if the attorney is handling criminal court cases; and
- (c) For attorneys with mixed caseloads including both juvenile and criminal cases, obtain 12 hours of continuing legal education credits during each year of this contract, apportioning those credits between

programs related to juvenile and criminal law according to the percentage of the attorney's cases assigned under this contract in each of those practice areas.

7.2.4 Report to PDSC

Upon request, Contract shall provide to PDSC copies of its written quality assurance procedures, including documentation demonstrating current compliance with those procedures; provided, however, that PDSC shall not have access to client information that is privileged because of the attorney/client relationship, or confidential personnel information, unless the client or Contractor personnel expressly, knowingly, and voluntarily provides such access in writing or unless such permission is not legally required.

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 656 and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Malpractice Insurance

During the entire contract period, and at the Contractor's own expense in whole or in part from contract funds, Contractor shall ensure that each of its attorneys has malpractice insurance coverage in the minimum amount required by the Oregon State Bar. Contractor shall provide proof of such insurance to PDSC on request.

7.3.7 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly receipted, expended, and accounted for.

7.3.8 Oregon Judicial Case Information Network (OJCIN)

For juvenile cases, Contractor shall limit use of OJCIN, including the Oregon Judicial Information Network (OJIN) and the Oregon eCourt Case Information Network (OECI) to access only those cases that involve parties Contractor represents.

7.3.9 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Staff and Equipment

7.4.1 Staffing Levels

Contractor shall secure, at its own expense in whole or in part from contract funds, all personnel or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support staff to perform its contract obligations.

7.4.2 Certification to PDSC

Contractor shall provide a certification from any attorney added during the contract that the attorney has read this contract, including the payment schedules and other specific terms, and understands the obligations of attorneys providing services under the contract and the duties and responsibilities of the contract administrator.

7.4.3 Interpreters

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(9)(c), or who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. For in-court interpretation, Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

7.5 Record Keeping

7.5.1 Case Records

Contractor shall preserve all case documents, notes, files, physical evidence or any other items created or received in the course of the representation of a client in an orderly and organized manner such that it can readily be made available to successor counsel, if one is appointed or retained. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by PDSC, or PDSC's designee or agent.

7.5.2 Financial Records

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

7.5.3 Retention Period

For purposes of this contract only, Contractor agrees to preserve all appointment, service and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to preserve all case files a minimum of ten (10) years from the date the case is closed for all cases except aggravated murder and Measure 11 cases. Case files in aggravated murder and Measure 11 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to PDSC

7.6.1 Case Inventory

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly case inventory report for the preceding month. Contractor may submit amended case inventory reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly case inventory report to be amended.

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by PDSC, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor shall maintain data on other case activity upon the request of PDSC. Contractor shall make the data available for PDSC review upon request.

7.6.3 Caseload Reports

Contractor shall maintain data, at the request of PDSC and in a format authorized by PDSC, on the current number and type of open cases of each contract attorney, including any private practice noncontract cases. Contractor shall make the data available for PDSC review upon request.

7.6.4 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment until PDSC receives the report and supporting documentation.

7.6.5 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.7 Costs, Expenses and Client Clothing

7.7.1 Costs and Expenses

Except for the expense items listed in Section 6.4, Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial; and
- (c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.

7.7.2 Client Clothing

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available. (Contact PDSC for a current list.) If Contractor receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case.

7.8 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in staff attorney names, staffing levels and office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.8.2 Specific Notices and Responses Required

7.8.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 - 7.3.6 and immediate notice of the cancellation of any such policies.

7.8.2.2 Staffing

Contractor shall provide, to PDSC and the affected court, notice of the names of attorneys who are hired or leave Contractor's employ and any other substantial staffing changes. Upon request by PDSC, Contractor shall provide a current list of attorneys and staff positions by full time equivalent, and provide timely responses to PDSC surveys or other inquiries concerning the diversity of attorneys and staff employed by or otherwise performing services for Contractor.

7.8.2.3 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall demonstrate to PDSC its continued ability to meet contract requirements or shall propose reductions in caseload and/or value if Contractor is unable to meet contract requirements because of such organizational change.

7.8.2.4 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

- (a) Criminal Charges
A member of Contractor's attorney or investigator staff has been charged with a crime.
- (b) Criminal Conviction
A member of Contractor's attorney or investigator staff has been convicted of a crime.
- (c) Formal Bar Complaint
A formal accusation of misconduct has been filed by the Oregon State Bar against a member of Contractor's attorney staff.
- (d) Bar Discipline
Disciplinary action is taken by the Oregon State Bar against one of Contractor's attorney staff.
- (e) Uninsured Practice of Law
A member of Contractor's attorney staff has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

7.8.2.5 Nonassignment of Available Cases or Early Quota

Contractor shall notify PDSC immediately upon determining that:

- (a) the court is not assigning Contractor to cases available for appointment; or
- (b) Contractor will reach its total contract quota before the expiration of the contract.
Within forty-five (45) days of notification to PDSC that the court is not assigning Contractor to cases available for appointment, PDSC shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract without PDSC authorization;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) accept or keep credit for a case for which Contractor's attorney is subsequently retained.

7.10 Independent Audit Required

Contractor shall, from contract funds, be subject to an annual independent audit by a CPA firm and shall provide a copy to PDSC.

7.11 Limits on Full Time Public Defender Attorneys

Attorneys employed full time by nonprofit public defender offices shall not accept employment for legal services on a retained basis and shall not accept appointment to a public defense case outside this contract without the authorization of PDSC.

7.12 Limits on Pro Bono Work

Nonprofit public defenders may provide pro bono representation only for:

- (a) cases covered by contractor's or another's malpractice insurance; and
- (b) cases that are:
 - (i) related to cases to which contractor's attorneys have been appointed; or
 - (ii) unrelated to contract cases, provided the pro bono services are rendered outside of the contract.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR

9.1 Refund for Shortage

If Contractor's actual caseload value, at the expiration or termination of the contract, is less than the workload value set forth in this contract, Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

9.2 Wind-Down Procedures

Unless PDSC agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall complete timely and adequate legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination.

9.2.1 Negotiations

If the contract expires or terminates, PDSC and Contractor shall negotiate wind-down procedures. Whenever possible, Contractor shall wind down pending cases within three months of contract expiration or termination by completing or, with PDSC's agreement, reassigning the cases.

9.2.1 Negotiations

Except when PDSC terminates the contract for cause under Section 3.5 and unless otherwise agreed, the parties shall, whenever possible, agree on wind-down procedures before the contract expires or terminates. If the parties cannot agree on wind-down procedures, PDSC alone shall decide what state funds, if any, will finance wind-down procedures based on what PDSC reasonably believes is necessary to ensure that the clients' right to adequate assistance of counsel and that Contractor's legal obligations are met.

9.2.2 Reduction in Contractor's Caseload

If Contractor's caseload or contract amount is reduced significantly resulting in layoffs, whether as a result of contract modification or contract renewal, PDSC and Contractor may negotiate wind-down procedures.

10 APPOINTMENT TYPE DEFINITIONS

() denotes the applicable appointment code.

10.1 Criminal Cases

10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)

For all criminal cases, Contractor shall report separately on cases where Contractor is first appointed:

- (a) after the defendant enters into a diversion or conditional discharge agreement or any other type of deferred or delayed adjudication agreement, and
- (b) when the court orders the defendant to show cause why the agreement should not be terminated.

Contractor shall report these cases as SCDV rather than as the original case type.

10.1.2 Capital Murder Case (CMUR)

A capital murder case is any appointment to represent a person charged with aggravated murder as defined by ORS 163.095 except as provided under paragraph 10.1.3., below.

Key: Public Defender

Consortium or Law Firm

10.1.3 Noncapital Murder Case (MURD)

A noncapital murder case is any appointment to represent a person charged with:

- (a) murder as defined by ORS 163.115; and
- (b) aggravated murder where the person is a juvenile under 15 years of age who is waived to circuit court on the charge (a convicted juvenile cannot be sentenced to death or life without parole under ORS 161.620) or aggravated murder where the person was 15, 16 or 17 years of age on the date the crime is alleged to have occurred (no death sentence may be imposed under ORS 137.707(2)).

10.1.4 Felony Case

A felony case is any appointment to represent a person charged with one or more crimes described by ORS 161.525, excluding capital murder and noncapital murder. It includes manslaughter and negligent homicide. A case is a felony case if it includes a felony charge at any time after defendant appears in circuit court, even if later reduced to a misdemeanor.

10.1.4.1 Measure 11 Felony (AM11, BM11, JM11)

Other than murder, a felony that is the subject of ORS 137.700 or ORS 137.707. AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15-, 16- or 17-year-old is indicted as an adult in circuit court.

10.1.4.2 Class A Felony (AFEL)

A Class A felony is a crime that a statute expressly designates as a Class A felony, other than an AM11 case.

10.1.4.3 Class B Felony (BFEL)

A Class B felony is a crime that a statute expressly designates as a Class B felony, other than a BM11 case.

10.1.4.4 Class C Felony (CFEL)

A Class C felony is a crime that a statute expressly designates as a Class C felony, other than a DUII felony (DFEL), or domestic violence Class C felony (DVIO).

10.1.4.5 DUII Felony (DFEL)

A DUII felony is a DUII case in which an element of the crime charged is that the defendant has at least three prior DUII convictions within the past ten years (ORS 813.010(5)).

10.1.4.6 Domestic Violence Class C Felony (DVIO)

An Assault IV case which is elevated to a Class C felony under ORS 163.160(3).

10.1.4.7 Unclassified Felony (UFEL)

A felony crime that the statute(s) do not expressly designate as a Class A, B, or C Felony.

10.1.5 DUII (DUIS)

A DUII case is any appointment to represent a person charged with driving under the influence of intoxicants, other than DUII felony (DFEL).

10.1.6 Misdemeanor Case (MISS)

A misdemeanor case is any appointment to represent a person charged with one or more crimes described by ORS 161.545 or by local ordinance as a misdemeanor, excluding DUII, misdemeanor contempt and the misdemeanor traffic cases defined below.

10.1.7 Misdemeanor Traffic Case

A misdemeanor traffic case is any appointment to represent a person on a misdemeanor traffic charge for which a convicted defendant may be incarcerated as an original sentence under the Oregon Vehicle Code, other than a traffic offense charged as a felony or DUII. For statistical purposes, report cases in the following categories:

- (a) Misdemeanor Driving While Suspended (DWSS).
- (b) Other Traffic Misdemeanor (OTMS).

10.1.8 Extradition Case (EXTR)

An extradition case is any appointment to represent a person in a proceeding under the Uniform Criminal Extradition Act, ORS 133.743 - 133.857. It includes representation on a writ of habeas corpus filed in a pending extradition proceeding.

10.2 Probation Violations

10.2.1 Probation Violation

A probation violation is any appointment or reappointment to represent a person in a proceeding concerning an order of probation, including but not limited to the revoking thereof, arising out of a criminal or civil contempt conviction(s) and sentencing(s), under Section 1.5.5. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

10.2.1.1 Felony Probation Violation (FPV)

A felony probation violation case is any appointment to represent a person in a probation proceeding arising out of a felony conviction.

10.2.1.2 Misdemeanor Probation Violation (MPV)

A misdemeanor probation violation case is any appointment to represent a person in a probation proceeding arising out of a contempt case, or a misdemeanor conviction, except DUII.

10.2.1.3 DUII Probation Violation (DPV)

A DUII probation violation is any appointment to represent a person in a DUII probation proceeding arising out of a DUII conviction.

10.3 Contempt Cases

10.3.1 Contempt Case

A contempt case is any appointment to represent a person charged with contempt of court. For statistical purposes, report cases in the following three categories:

10.3.1.1 Family Abuse Prevention Act (FAPA)

Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.735) restraining order.

10.3.1.2 Support (SUPP)

Contempt for failure to comply with an order or judgment in domestic relations or juvenile court proceeding for the payment of suit money, attorney's fees, spousal support, child support, maintenance, nurture, or education.

10.3.1.3 Contempt (CONT)

Misdemeanor contempt or any other contempt that is not a FAPA or SUPP contempt.

10.4 Civil Commitment Cases

10.4.1 Civil Commitment Case (MHMI)

A civil commitment case is any appointment to represent a person in a proceeding brought under ORS Chapter 426 or 427.

10.5 Juvenile Cases

10.5.1 Juvenile Case

A juvenile case is any appointment or a reappointment to represent a person(s) in a proceeding brought under ORS Chapter 419B or 419C. For statistical purposes, report juvenile cases in the following categories:

10.5.1.1 Juvenile Felony (JUDF)

If committed by an adult, alleged act would constitute a felony.

10.5.1.2 Juvenile Misdemeanor (JUDM)

If committed by an adult, alleged act would constitute a misdemeanor.

10.5.1.3 Juvenile Other (JUDO)

- (a) if committed by an adult, alleged act would constitute a violation or infraction;
- (b) alleged act is a status offense;
- (c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);
- (d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340);
- (e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);
- (f) appointments under ORS 181.823(12) (Relief from reporting requirement; juvenile offenders); and
- (g) appointment to a juvenile case for which no other juvenile case type applies.

10.5.1.4 Probation Violation or Motion to Modify (JPV)

Proceeding based on allegation(s) that the child has violated the terms of probation or a proceeding based on a motion to modify a disposition.

10.5.1.5 Juvenile Dependency Case

A juvenile dependency case is any appointment to represent a person based on a new petition alleging that a child is within the jurisdiction of the juvenile court under ORS 419B.100(1)(a) - (h).

- (a) Parent (JDEP): Appointment to represent parent(s) or guardian(s).
- (b) Child (JDEC): Appointment to represent child(ren).

10.5.1.6 Postdispositional Proceeding

A postdispositional proceeding is any appointment in a juvenile court proceeding to represent a person at a court or CRB review hearing and shelter care hearings held after the original disposition. It does not include probation violation proceedings or family unity meetings. Probation violation proceedings are a separate category under delinquency.

- (a) Parent (JPDP): Appointment to represent parent(s) or guardian(s).
- (b) Child (JPDC): Appointment to represent child(ren).

10.5.1.7 Termination of Parental Rights Case

A termination of parental rights case is any appointment to represent the parent or child in a proceeding under ORS 419B.498 - 419B.530 or in a contested adoption matter under ORS 109.330 and *Zockert v. Fanning*, 310 Or 514 (1990) or in a contested permanent guardianship proceeding under ORS 419B.365. Guardianship proceedings under ORS Chapter 125 are excluded.

- (a) Parent (JUTP): Appointment to represent parent(s) or guardian(s), including contested adoption proceedings.
- (b) Child (JUTC): Appointment to represent child(ren), including contested adoption proceedings.

10.6 Other Civil Cases

10.6.1 Habeas Corpus Case (CVHC)

A habeas corpus case is any appointment to represent a person in a proceeding for a writ of habeas corpus under ORS 34.355, excluding:

- (a) habeas corpus petitions filed in a pending extradition proceeding; and
- (b) habeas corpus petitions filed for a client whom Contractor represents on a related matter (not a separate appointment under the contract).

10.6.2 Post-Conviction Relief Case (CVPC)

A post-conviction relief case is any appointment to represent a person under ORS 138.510 - 138.686.

10.6.3 Psychiatric Security Review Board Case (PSRB)

A Psychiatric Security Review Board case is any appointment by the PSRB to represent a person under ORS 161.346(11).

10.7 Other Cases (OTHR)

Another case is: a complex case from which Contractor withdraws; an appointment under ORS 136.611 (Material Witness Order); an appointment under ORS 137.771(2) (Sexually Violent Dangerous Offenders); an appointment under ORS 138.694 (DNA testing); a criminal forfeiture credit; or an appointment to a case for which no other case type applies.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

NANCY COZINE, EXECUTIVE DIRECTOR **DATE**
PUBLIC DEFENSE SERVICES COMMISSION

CONTRACTOR **DATE**

TITLE OR REPRESENTATIVE CAPACITY

CONTRACT BETWEEN PDSC AND CONTRACTOR PAYMENT SCHEDULE

End of Month (Unless noted)	Monthly Payment
January 2016	
February 2016	
March 2016	
April 2016	
May 2016	
June 2016	
July 2016	
August 2016	
September 2016	
October 2016	
November 2016	
December 2016	
<i>First-Year Subtotal</i>	\$0
January 2017	
February 2017	
March 2017	
April 2017	
May 2017	
June 2017	
July 2017	
August 2017	
September 2017	
October 2017	
November 2017	
December 2017	
<i>Second-Year Subtotal</i>	\$0
<i>Total Payments</i>	\$0

CONTRACT BETWEEN PDSC AND CONTRACTOR CASELOAD AND CASE VALUE MATRIX

Case Types 1/1/16 - 12/31/16	Value	Number of Cases	Total Value
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
First-Year Total		0	\$0
1/1/17 - 12/31/17			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0