



# Attachment 4



To: Per Ramfjord, Chair, Public Defense Services Commission  
Members, Public Defense Services Commission  
Cc: Steve Singer, Executive Director, Office of Public Defense Services  
From: Eric Deitrick, General Counsel  
Re: Changes to Public Defense Contract Language  
Date: April 6, 2022

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This memorandum is intended to summarize proposed changes to the 2022-23 public defense contracts. Not all grammatical or stylistic changes are included. Rather, the memorandum provides a substantive update on changes made to the language in proposed contracts, as compared to existing contracts.

Per HB 5030 (2021), the agency is required to separate public defense contracts into adult criminal contracts (which will include criminal, contempt, and civil commitment cases) and juvenile contracts (which will include juvenile dependency and delinquency cases). There are also certain jurisdictions in which the legislature has funded the Parent Child Representation Program, which has separate programmatic requirements, and therefore a separate contract.

The general terms for adult criminal and juvenile contracts are largely identical, although some changes have been made to address specific differences between the two case types. Below is a summary of changes to the general terms for adult criminal contracts. Next is a short summary of the differences between the adult criminal and juvenile contracts. Finally, there is a short summary of changes to the PCRCP contracts.

## Changes to Adult Criminal Contracts

### Section 1

- Several definitions removed, including definitions of “public defender,” “law firm,” “consortium,” “FTE/Workload model,” “caseload,” and “workload.”
- Term “full time” renamed “attorney full time equivalent.”
- Term “caseload guidelines” renamed “caseload standards” for consistency.

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### Section 3

- Previous section 3.3, titled “De Minimis Changes to Reports/Documents” was deleted.
- 3.5 was modified to require attorneys to accept appointment to all case types for which they are qualified. It also requires contractors to prioritize the acceptance of court appointments for the most serious case types for which it has qualified attorneys.
- 3.5 was modified to require attorney to accept appointments in counties, if the jurisdiction is not more than 100 miles away, as measured from the courthouse in contractor’s jurisdiction and the courthouse in the adjacent county. Contractor shall not unreasonably refuse appointments in counties more than 100 miles away. The “not unreasonably refuse” language comes from the PCRCP contracts. Weighting for out of county cases will be evaluated on a case-by-case basis, with those more than 100 miles away receiving additional credit.
- 3.5 was clarified to state that 1.0 FTE attorney cannot engage in any paid work, rather than legal work, unless OPDS agrees in writing.
- 3.5 was modified to tether the caseload increase/decrease discussion to a change in 15%, or an addition of a specialty court.
- 3.6 was amended to give the agency discretion to allow contractors to take cases on an hourly rate basis.
- Deleted reference in section 3.7 to “ABA’s Standards for Monitoring and Evaluation of Providers of Legal Services to the Poor.”

### Section 4

- 4.2 amended from “court appointment outside contract” to “work outside contract.” By precluding contract attorneys from taking hourly conflict cases, the intent of this section was no longer needed. But since section 4 is about the “right of contractors,” this was a good place to insert their rights and expectations regarding non-contract work. The rest of the section was deleted and moved to section 3.5.

### Section 5

- Mutual obligation of collaboration and professionalism inserted.

### Section 6

- Previous section 6.3, regarding payments in addition to contract price, deleted, as these expenditures are covered by the PDSC’s Public Defense Payment Policy.

## Section 7

- 7.1 amended to make it a material breach for a contractor to not handle arraignments, shelter hearings, or detention hearings.
- 7.1 amended to make it clear that attorneys have an obligation to handle restitution and file motions for a new trial, consistent with their ethical obligations.
- 7.1 amended to add language as to when attorneys can close a case.
- 7.1 amended to add new language on withdrawal.
- 7.1 amended to add new language on attorney obligations with caseload when they leave a contractor but continue to do OPDS funded public defense work.
- 7.1 amended to establish contractual obligations regarding former clients and reappointment.
- 7.1 amended to return to prior contract provision that attorneys speak to and conduct initial interviews within 24 hours of appointment.
- 7.2 amended to reclarify expectation on non-contract work, which mirrors language in 4.2.
- 7.2 amended, removing the “reporting” language, and moving it to 7.6
- 7.4 amended to establish procedures on contractor attorney and staff vacancies and leaves, and the flow of agency funding to those contractors when that occurs.
- 7.4 amended to add support staff language and obligations. This came from the contracts workgroup. It establishes a material breach if staffing requirements are not met.
- 7.4 amended to require contractors to have offices. It establishes a material breach of the contract to not have an office.
- 7.6 amended, changing the heading from “case inventory” to “caseload reports,” and changing the reporting requirement from the 20<sup>th</sup> day of the month to the 10<sup>th</sup> day of the month.
- 7.6 amended, inserting generic reporting obligations of contractors regarding data and information, including information about non-contract work to ensure contract compliance.
- 7.6 amended, modifying the penalty for late reports from. The provision makes the withholding of payments discretionary, but contemplates a tiered withholding penalty, rather than the removal of all funding.
- 7.8 amended to add “unforeseen events” language to notice obligations.
- Previous section 7.11, defining the limits on non-profit public defense attorney, deleted, as those concerns are addressed in section 7.2.
- Previous section 7.12, defining the limits on pro bono work, deleted.
- 7.13 amended, taking the quarterly meeting requirements from former 7.6 and establishing a minimum of three meetings per year between the agency and the contract administrator.

## Section 9

- “Risks of contractor” renamed “wind-down procedures,” as the section was all about wind-down procedures. Redundant language eliminated.

## Section 10

Entire section eliminated and replaced. Section 10 was a list of case definitions, which was necessary for the case credit model, but is no longer necessary or helpful. Section replaced with caseload standards and weighting, which will be presented in detail at the next meeting. This section needs additional work on the specific standards and case weighting. Section 10:

- Defines terms
- Establishes caseload standards and case weighting
- Allows attorneys to request additional weight in extraordinary cases and gives the agency discretion over whether to apply additional weight.

### **Juvenile Contract**

The juvenile contract language is largely identical to the adult criminal language, with some minor language changes to reflect the difference between adult criminal and juvenile work. The following sections have more substantive differences:

- 7.1.2.2 – Appearance at first proceedings
- 7.1.2.3 – Representation following the commencement of proceedings
- 7.1.2.4 – Post-judgment proceedings
- 7.1.2.5 – Case Closure
- 7.6 – Language added to address reporting requirements to accommodate Title IV-E
- Section 10 – Caseload Standards and Case Weighting

### **PCRCP Contract**

Previously, the PCRCP contract was a small document that outlined its specific programmatic requirements, used as a supplement to the general terms of the agency’s public defense contract. The new PCRCP contract incorporates the general terms described above with the programmatic requirements of PCRCP, merging them into one document.

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT  
TERMS FOR CRIMINAL CASE TYPES**

**July 1, 2022 to June 30, 2023**

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## GENERAL TERMS

### 1 DEFINITIONS AND 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 term or provision held to be invalid.

#### 1.4 Definitions

##### 1.4.1 State of Oregon

- (a) Public Defense Services Commission (PDSC) is the commission established under ORS 151.213.
- (b) Office of Public Defense Services (OPDS) is the office established by the PDSC under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system.

##### 1.4.2 Contractor

“Contractor” is an entity that provides public defense services for eligible individuals, and includes Contractor’s agents, employees, members, officers, representatives, and successors. A contractor does not include subcontractors.

##### 1.4.3 Client

A “Client” is a person whom OPDS or a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

##### 1.4.4 Case

Any action in this state in which a Contractor has been appointed to represent or advise a client under the terms of the Public Defense Services Contract in a matter to which there is a right to appointed counsel at state expense.

Contractor’s Initials \_\_\_\_\_

#### **1.4.5 Attorney Full Time Equivalent (FTE)**

Attorney FTE is the unit of measurement equivalent to an individual attorney's public defense client representation based on the caseload standards adopted by the PDSC.

#### **1.4.6 Caseload Standards**

These standards represent the maximum number of cases for which a 1.0 FTE public defense provider can provide legal services to in a one-year contract period. The Caseload Standards are listed in section 10.

### **1.5 Financial Verification Required for Court Appointment**

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

## **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, OPDS may agree in writing to alternative measures.

## **3 RIGHTS OF PDSC**

### **3.1 Subcontracts and Assignment of Contract**

Contractor shall not subcontract for or delegate any of the services required under this contract or assign Contractor's interest in this contract without obtaining OPDS' prior written consent. Prior written consent must be obtained in each case a subcontract is sought. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

### 3.2 PDSC Rights for Failure to Obtain Workers' Compensation

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

- (a) Withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) Suspend this agreement until Contractor complies; or
- (c) Terminate this contract.

### 3.3 Termination by PDSC for Cause

#### 3.3.1 Reasons for Contract Termination

OPDS may terminate this contract for cause, for any or one of 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; 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 inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing standards of performance and rules of professional conduct; or
- (e) Some other cause which has substantially impaired Contractor's ability to provide constitutionally adequate legal services under this contract or fulfill the obligations of this contract.

#### 3.3.2 No Appointments After Notice

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

### 3.4 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within the 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. OPDS may propose to modify, suspend, or terminate this contract if OPDS reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and OPDS has complied with the procedures set out below in Section 6.1 (State Funding Shortfall).

### 3.5 Contractor Workload

#### 3.5.1 Court Appointments

All attorneys under contract shall accept court appointments to all criminal case types for which they are qualified pursuant to the PDSC's Qualification Standards. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

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- (a) Contractor shall accept appointments to cases in counties other than those specified in this Contract. Contractor shall accept conflict and overflow appointments from jurisdictions within 100 miles, as measured from the courthouse in contractor's jurisdiction to the courthouse in the adjacent jurisdiction. Contractor shall not unreasonably refuse conflict and overflow appointments from jurisdictions more than 100 miles from Contractor's jurisdiction. These appointments will count toward the Contractor's overall contracted caseload and will be evaluated for weighting on a case-by-case basis. OPDS will provide additional weight to cases more than 100 miles from Contractor's jurisdiction.
- (b) No public defense contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (c) No one funded as a 1.0 FTE may engage in any other paid work, unless OPDS otherwise agrees in writing.
- (d) Nothing in this section precludes a contractor from engaging in pro bono legal services.

**3.5.2 Capacity Increase or Decrease**

When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. OPDS may adjust the number of FTE in the contract to meet the changing needs of the jurisdiction if:

- (a) The probable number of available cases increases or decreases substantially, such that the proposed FTE amount no longer corresponds with caseload needs;
- (b) The introduction or discontinuation of a specialty court; or
- (c) OPDS determines that an increase or decrease in FTE capacity is in the state's interest.

**3.6 Review, Verification, and Inspection of Records**

**3.6.1 Request**

OPDS 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 OPDS deems necessary during the contract term.

**3.6.2 Production of Records and Access to Facilities**

OPDS may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. On OPDS's request, Contractor shall provide access to its facilities and make records available to OPDS or agent at all reasonable times, and promptly respond to requests for information in connection with fiscal or performance audits. OPDS will not remove Contractor's original office records or other property from Contractor's premises without Contractor's approval. Contractor shall keep such data and records in an accessible location and condition.

**3.6.3 Other Information**

Upon OPDS's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality and personnel confidentiality (Sections 4.3), Contractor shall provide any other information that OPDS deems necessary.

## 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 Work Outside Contract

Contractor may engage in additional paid work outside of this contract, but only to the extent that the additional paid work does not interfere with Contractor's ability to fulfill this contract.

Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.

### 4.3 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 or confidential 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.

### 4.4 Personnel Records

Contractor grants no right to OPDS or designee of OPDS 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 OPDS or OPDS's designee reasonable access to other information, including 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 Professionalism

Contractor and OPDS shall work collaboratively and professionally on all aspects of contract administration.

### 5.2 Successors in Interest

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

### 5.3 Compliance with Applicable Law

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.

#### **5.4 Notice of Contract Modification, Suspension, or Termination**

A notice to modify, suspend, or terminate this contract shall be in writing and:

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

#### **5.5 Modification or Termination Due to Legislative Action or Court Interpretation**

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

#### **5.6 Periodic Review**

At the request of either party, OPDS and Contractor will periodically review case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides legal services, periodic review shall include a review by OPDS of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates contemplated under the contracts, OPDS shall notify the court and Contractors that appointment rates must be adjusted and corrected.

#### **5.7 Other Contractors and Vendors**

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

### **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.

## 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. Counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

#### 7.1.2 Representation at all Stages of a Proceeding

Contractor shall comply with 7.1.1 and 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, probate proceedings, and other civil proceedings not otherwise provided for under this contract.

##### 7.1.2.1 Pre-appointment representation

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 shall commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written request from OPDS. In determining whether to authorize pre-appointment representation, the agency will consider whether:

- (a) The individual is a clear target of the investigation;
- (b) The agency has a good faith basis to conclude the individual seeks counsel;
- (c) It is reasonable for the agency to believe the person qualifies for public defense counsel; and
- (d) The case is of a magnitude for which pre-indictment/petition appointment is reasonable.

##### 7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation at all arraignment and first appearance hearings, unless OPDS agrees in writing otherwise. Failure to provide such representation is a material breach of this contract.
- (b) Contractor shall work with OPDS and the court to determine schedules for providing representation at arraignments and first appearance hearings in jurisdictions in which there is more than one Contractor.
- (c) Contractor shall provide 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 during the pendency of a case through judgment or



other final order of the court on the case, including, but not limited to:

- (a) Providing representation at all scheduled hearings and court proceedings.
- (b) Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
- (c) Filing petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,
- (d) 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 provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- (a) Seeking 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) Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- (c) Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- (d) Seeking 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;
- (e) Filing a motion for new trial;
- (f) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705, when requested by a former Client;
- (g) Consulting with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
- (h) Upon request, providing copies of the entire file to appellate or post-conviction relief counsel.

#### **7.1.2.5 Case Closure**

Contractor may close the case when:

- (a) The final judgment has been entered into the court register, and the attorney has met all other contractual obligations:
  - 1. If the case is a probation violation, the attorney may close the case upon final disposition of the probation violation;
  - 2. A judgment of dismissal constitutes a final judgment;
  - 3. An attorney may not close a case that has been entered into a deferral, diversion, or conditional discharge agreement until the final judgment has been entered into the court register;
- (b) A judge has signed an order removing the attorney from the case; or

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- (c) A bench warrant for a client's failure to appear has been active for 180 days.

#### **7.1.2.6 Reappointment to Prior Clients**

The original contract attorney shall accept reappointment to a previous client when:

- (a) A case was dismissed without prejudice and has been refiled;
- (b) A case is reactivated following service of a bench warrant after contractor closed the file pursuant to 7.1.2.5; or
- (c) A case is remanded to circuit court following an appeal unless specific circumstances warrant assignment of a different attorney.

### **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 court recognized 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**

#### **7.1.5.1 Withdrawal from Case Only with Court Approval**

Contractor shall comply with rule 1.16 of the Oregon Rules of Professional Conduct and 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 Contractor shall notify OPDS in writing. Consistent with the Oregon Rules of Professional Conduct, the Contractor shall ensure continuous representation of a client until withdrawal is granted and then assist in the prompt establishment of a new attorney/client relationship.

#### **7.1.5.2 Prohibition on Withdrawal**

When a public defense attorney leaves a Contractor, they may not move to withdraw from their

cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

## 7.2 Quality Assurance Obligations of Contract Administrator

### 7.2.1 Quality Assurance Procedures

Contractor shall ensure that persons providing client representation under this contract, including any subcontractors OPDS approves, meet the standards of representation set forth in Section 7.1.1 of this contract. Contractor shall comply with quality assurance programs adopted by OPDS. Contractor shall establish and implement, as appropriate for Contractor's entity structure, quality assurance procedures consistent with the practices recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010).

### 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 PDSC's Qualification Standards for Court-Appointed Counsel) and has been approved for appointment to the applicable case type by OPDS. Contractor shall provide to OPDS 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 other paid work 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. No contract attorney funded as a 1.0 FTE may take on any other paid work. Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.
- (c) Provides continuous representation from the commencement of proceedings 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 and/or constitutional 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.

Contractor's Initials \_\_\_\_\_

### 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, OPDS, 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 subcontractors, 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 subcontractors, 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 VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, 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 Chapter 659A, and all regulation and administrative rules established pursuant to those laws.

Contractor's Initials \_\_\_\_\_

### **7.3.5 Contractor Insurance to Protect State of Oregon**

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide OPDS 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, OPDS, 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 OPDS 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.

Contractor's Initials \_\_\_\_\_

### 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 Capacity and Equipment

### 7.4.1 Number of Persons Providing Services

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

- (a) Contractor shall not require any attorney performing the services required by this contract to sign a noncompete agreement;
- (b) Contractor shall retain an FTE attorney within 30 days of any vacancy, or OPDS may remove those funds from the contract. The 30 days may be extended with written agreement by OPDS. Contractor shall fill the vacancy as soon as practicable with an attorney who possesses equal or greater qualifications as defined in the PDSC Qualification Standards unless OPDS otherwise agrees in writing. Contractor shall immediately notify OPDS of a vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor shall notify OPDS when a contract attorney is on leave for more than 30 days or is otherwise unavailable to accept appointments. Contractor shall provide the date that the leave begins and the contractor's plan to cover the attorney's caseload while the attorney is on leave.
- (d) Contractor must retain a minimum of 0.5 support staff per 1.0 attorney FTE to assist the attorneys on the contract in a manner detailed in the contract's specific terms. Support staff are persons who provide support for attorneys and clients through administrative, clerical, communicative, technical, or similar work. Support staff does not include contracted services such as answering services or photocopying services. Contractor shall immediately notify OPDS of any support staff vacancies and shall fill the vacancy within 30 days. Failure to retain a minimum number of support staff is a material breach of this contract.

### 7.4.2 Certification to OPDS

Contractor shall provide an updated attorney certification form for all attorneys providing legal services pursuant to the contract within 30 days of the contract's execution, excepting attorneys who have submitted an updated attorney certification form within the past 12 months of the contract's effective date. Contractor shall also provide certifications for any attorneys added during the contract. Contractor shall certify that the attorney added 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.

Contractor's Initials \_\_\_\_\_

### **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(8)(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.

### **7.4.4 Contractor Offices**

Contract attorneys shall maintain an office in the judicial district in which they have contracted to provide legal services. If a contractor has contracted to provide services statewide, then contractor shall maintain an office in a location of their choice within Oregon. If a contractor has contracted to provide services in more than one judicial district, then contractor shall maintain an office in one of the judicial districts in which they have contracted to provide legal services. A failure to maintain an office is a material breach of this contract.

## **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 OPDS, or OPDS'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 OPDS**

### **7.6.1 Caseload Reports**

Within ten (10) days of the end of each month, Contractor shall provide to OPDS, in a format specified by OPDS, a monthly caseload report for the preceding month. Contractor may submit amended caseload reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly caseload report to be amended. Contractor must be current

Contractor's Initials \_\_\_\_\_

on case reporting at the time of their review meetings with their analyst.

### **7.6.2 Case Activity, Disposition, and Withdrawal Data**

Contractor shall maintain data, using codes specified by OPDS, 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 OPDS. Contractor shall make the data available for OPDS review upon request.

### **7.6.3 Other Reports**

Contractor shall comply with OPDS requests for information and data. Contractor shall provide information and data to OPDS in a reporting form that the agency develops, including information and data on non-contract work, to the extent permitted by the Oregon Rules of Professional Conduct. Contractor shall comply with any due dates established by OPDS. Information and data may include information related to Contractor's non-contract work to the extent permitted by the Oregon Rules of Professional Conduct.

### **7.6.4 Penalty for Late Reports**

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports. If Contractor fails to submit a reasonably accurate report on the due date, OPDS may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until OPDS receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current.

- (a) Not received by due date: 10% of contract funds
- (b) 30 days late: 25% of contract funds
- (c) 60 days late: 50% of contract funds
- (d) 90 days late: 100% of contract funds

### **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 6.3, 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.

### **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

Contractor's Initials \_\_\_\_\_



available. (Contact OPDS 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 OPDS 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;
- (b) Contractor’s ability to accept appointments;
- (c) Contractor’s ability to meet financial obligations; and
- (d) Matters affecting Contractor’s ability to provide services to clients.

### 7.8.1 Time Requirement for Notices

All notices shall be provided to OPDS 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 Persons Providing Services Under the Contract

Contractor shall provide, to OPDS and the affected court, notice of the names of attorneys providing services under this contract and any changes in the number of persons providing services under this contract. Upon request by OPDS, Contractor shall provide a current list of attorneys and non-attorneys providing services under this contract and provide timely responses to OPDS surveys or other inquiries concerning the diversity of attorneys and others performing services for Contractor.

#### 7.8.2.3 Events Which Could Impair the Contract

Contractor shall notify OPDS in writing within forty-eight (48) hours of when Contractor learns that one of the following has occurred:

(a) **Criminal Charges**

An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been charged with a crime.

(b) **Criminal Conviction**

An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been convicted of a crime.

(c) **Formal Bar Complaint**

A formal accusation of misconduct has been filed by the Oregon State Bar against an attorney performing services for Contractor.

Contractor’s Initials \_\_\_\_\_

- (d) **Bar Discipline**  
Disciplinary action is taken by the Oregon State Bar against an attorney performing services for Contractor.
- (e) **Uninsured Practice of Law**  
An attorney performing services for Contractor has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.
- (f) **Unforeseen Events**  
An attorney performing services for Contractor experienced an event that impacts their ability to perform services under this contract, including, but not limited to events such as fire, flood, burglary, embezzlement.

**7.8.2.4 Nonassignment of Available Cases**

Contractor shall notify OPDS immediately upon determining that the court is not assigning Contractor to cases available for appointment. OPDS shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

**7.8.2.5 Contractor Shut-Off**

If Contractor is unable, or believes it will be unable, to accept court appointments to public defense cases, Contractor shall notify OPDS immediately and provide at least 30 days' notice before refusing court appointments.

**7.9 No Dual Payments for Contract Work**

Contractor shall not:

- (a) Expend funds under this contract for work performed outside this contract without OPDS 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 Solicit or accept payment from a client for legal services on a matter on which Contractor has been appointed by the court.

**7.13 Contract Administrator Duties**

Contract Administrator is responsible for contract administration. Contract administration shall include, without limitation, selection of prospective contract attorney members, assigning cases and oversight of case assignments, timely and accurate tracking and reporting of caseloads to OPDS, management and disbursement of contract funds, working with OPDS to organize regular meetings to review data and ensure sufficient support to achieve program expectations, consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing, corresponding with OPDS regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations, maintaining records of all case reporting, financial and other records regarding contract members and making such records available to OPDS upon request, negotiating new contracts and contract changes with OPDS as necessary, actively participating in system improvement initiatives

including multi-disciplinary training and partner meetings, and providing training and mentorship to contract attorneys and staff. Contract administrators and OPDS will meet a minimum of three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

## 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 WIND-DOWN PROCEDURES

Unless OPDS agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall continue to provide legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination. OPDS and contractor shall negotiate wind-down terms that allow for contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay attorneys at the existing PDSC authorized hourly rate to wind-down their contract caseload.

## 10 CASELOAD STANDARDS AND CASE WEIGHTING

### 10.1 Caseload Standards

10.1.1 The caseload of a full-time public defense attorney should not exceed the caseload standards specified below:

- a. Adult Murder/Jessica Law:
- b. Adult BM11 Cases:
- c. Adult A and B Felonies:
- d. Adult C Felonies:
- e. Adult Misdemeanors:
- f. Probation Violations:
- g. Civil Commitments:

10.1.2 General considerations in applying caseload standards:

- a. Caseload limits reflect the maximum caseloads for full-time public defense attorneys.

Contractor's Initials \_\_\_\_\_

- b. Caseload limits assume a reasonable even distribution of cases throughout the year.
- c. If a public defense attorney is carrying a mixed caseload, including cases from more than one category of cases, these standards should be applied proportionally to determine a full-time caseload.
- d. When public defense attorneys work less than full-time, their maximum caseload shall be based on the percentage of time that the lawyer devotes to public defense.

10.1.3 Specialty Courts: When an attorney is assigned to represent or advise clients in Specialty Courts, the attorney’s maximum caseload should be reduced proportionally by the amount of time they spend preparing for and appearing at such dockets.

**10.2 Case Weighting**

The following case weights shall be assigned to case types listed, in order to determine if the attorney is compliant with the caseload standards described in section 10.1:

**ADULT CRIMINAL CASES, CONTEMPT, AND CIVIL COMMITMENTS**

CASE TYPE	CASE WEIGHT
Murder and Jessica’s Law	
Measure 11	
Class A and B Felonies	
Class C Felonies	
Misdemeanors and Contempt	
Probation Violations	
Civil Commitments	

**10.3 Murder 1 Cases**

All Murder 1 cases shall have co-counsel.

**10.4 Extraordinary Cases and Other Circumstances**

10.3.1 This policy does not apply to Aggravated Murder cases, at the trial, appeal, or post-conviction relief stage, where the imposition of the death penalty remains an option.

10.3.2 The assigned attorney or contract administrator may request that OPDS adjust the assigned case weight upwards for substantial work or extraordinary cases where the count assigned does not reflect the complexity or time and effort involved in the representation. OPDS retains discretion on whether to adjust the case weight.

**SPECIFIC TERMS**

**1 PARTIES TO CONTRACT**

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission (“PDSC”) and \_\_\_\_\_ (“Contractor”).

**2 TERM OF CONTRACT**

The contract term shall be from July 1, 2022 through June 30, 2023.

**3 NOTICE**

Each party shall provide to the other all notices regarding this contract:

- (a) In writing, and
- (b) Delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:  
mail@opds.state.or.us

Contractor: \_\_\_\_\_  
(Contract Administrator email address)

**4 TOTAL VALUE AND PAYMENT SCHEDULE**

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$\_\_\_\_\_ during the term of this contract. PDSC shall pay the total value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

**5 CASES, FTE, AND STAFF**

Contractor shall provide legal representation in the Circuit Court of \_\_\_\_ County. Contractor shall procure \_\_\_\_\_ FTE to provide legal services pursuant to this contract, in accordance with the Caseload Standards in Section 10 of the General Terms of this contract. This includes \_\_\_\_\_ FTE for the following specialty court programs:

- (a) \_\_\_\_\_

The total contract value per attorney FTE is \_\_\_\_\_

Contractor shall procure \_\_\_\_\_ FTE investigators. Contractor shall maintain an additional support staff ratio to attorney of at least 0.5:1. The minimum number of FTE support staff for this contract is \_\_\_\_\_.

Contractor’s Initials \_\_\_\_\_

**6 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT**

Contractor may not distribute funds based upon a fixed-fee per case model. All attorneys providing legal services pursuant to this contract must comply with all OPDS requests for data and information, including but not limited to monthly caseload reports. In addition to section 7.1.1 of the general terms of the contract, attorneys providing legal services pursuant to this contract must comply with section 1.7 of the Oregon Rules of Professional Conduct.

**7 MERGER CLAUSE**

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT AND ALL ATTORNEYS PERFORMING LEGAL SERVICES PURSUANT TO THIS CONTRACT HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

---

Steve Singer, Executive Director Date  
Office of Public Defense Services Public Defense Services Commission

---

**Contractor** **Date**

---

**Title or Representative Capacity**

Contractor's Initials \_\_\_\_\_

CONTRACT BETWEEN PDSC AND XXXX PAYMENT SCHEDULE

Contractor's Initials \_\_\_\_\_

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT  
TERMS FOR JUVENILE CASE TYPES**

**July 1, 2022 to June 30, 2023**



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## GENERAL TERMS

### 1 DEFINITIONS AND 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 term or provision held to be invalid.

#### 1.4 Definitions

##### 1.4.1 State of Oregon

- (a) Public Defense Services Commission (PDSC) is the commission established under ORS 151.213.
- (b) Office of Public Defense Services (OPDS) is the office established by the PDSC under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system.

##### 1.4.2 Contractor

“Contractor” is an entity that provides public defense services for eligible individuals, and includes Contractor’s agents, employees, members, officers, representatives, and successors. A contractor does not include subcontractors.

##### 1.4.3 Client

A “Client” is a person whom OPDS or a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

##### 1.4.4 Case

“Juvenile case” means any case initiated under ORS chapter 419B or ORS chapter 419C or as required in a contested adoption proceeding consistent with *Zockert v. Fanning*, 310 Or 514, 524 (1990).

##### 1.4.5 Attorney Full Time Equivalent (FTE)

Attorney FTE is the unit of measurement equivalent to an individual attorney's public defense client representation based on the caseload standards adopted by the PDSC.

#### **1.4.6 Caseload Standards**

These standards represent the maximum number of cases for which a 1.0 FTE public defense provider can provide legal services to in a one-year contract period. The Caseload Standards are listed in section 10.

### **1.5 Financial Verification Required for Court Appointment**

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

## **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, OPDS may agree in writing to alternative measures.

## **3 RIGHTS OF PDSC**

### **3.1 Subcontracts and Assignment of Contract**

Contractor shall not subcontract for or delegate any of the services required under this contract or assign Contractor's interest in this contract without obtaining OPDS' prior written consent. Prior written consent must be obtained in each case a subcontract is sought. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

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### 3.2 PDSC Rights for Failure to Obtain Workers' Compensation

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

- (a) Withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) Suspend this agreement until Contractor complies; or
- (c) Terminate this contract.

### 3.3 Termination by PDSC for Cause

#### 3.3.1 Reasons for Contract Termination

OPDS may terminate this contract for cause, for any or one of 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; 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 inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing standards of performance and rules of professional conduct; or
- (e) Some other cause which has substantially impaired Contractor's ability to provide constitutionally adequate legal services under this contract or fulfill the obligations of this contract.

#### 3.3.2 No Appointments After Notice

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

### 3.4 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within the 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. OPDS may propose to modify, suspend, or terminate this contract if OPDS reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and OPDS has complied with the procedures set out below in Section 6.1 (State Funding Shortfall).

### 3.5 Contractor Workload

#### 3.5.1 Court Appointments

All attorneys under contract shall accept court appointments to all juvenile case types for which they are qualified pursuant to the PDSC's Qualification Standards. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

- (a) Contractor shall accept appointments to cases in counties other than those specified in this

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Contract. Contractor shall accept conflict and overflow appointments from jurisdictions within 100 miles, as measured from the courthouse in contractor's jurisdiction to the courthouse in the adjacent jurisdiction. Contractor shall not unreasonably refuse conflict and overflow appointments from jurisdictions more than 100 miles from Contractor's jurisdiction. These appointments will count toward the Contractor's overall contracted caseload and will be evaluated for weighting on a case-by-case basis. OPDS will provide additional weight to cases more than 100 miles from Contractor's jurisdiction.

- (b) No public defense contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (c) No one funded as a 1.0 FTE may engage in any other paid work, unless OPDS otherwise agrees in writing.
- (d) Nothing in this section precludes a contractor from engaging in pro bono legal services.

### **3.5.2 Capacity Increase or Decrease**

When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. OPDS may adjust the number of FTE in the contract to meet the changing needs of the jurisdiction if:

- (a) The probable number of available cases increases or decreases substantially, such that the proposed FTE amount no longer corresponds with caseload needs;
- (b) The introduction or discontinuation of a specialty court; or
- (c) OPDS determines that an increase or decrease in FTE capacity is in the state's interest.

## **3.6 Review, Verification, and Inspection of Records**

### **3.6.1 Request**

OPDS 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 OPDS deems necessary during the contract term.

### **3.6.2 Production of Records and Access to Facilities**

OPDS may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. On OPDS's request, Contractor shall provide access to its facilities and make records available to OPDS or agent at all reasonable times, and promptly respond to requests for information in connection with fiscal or performance audits. OPDS will not remove Contractor's original office records or other property from Contractor's premises without Contractor's approval. Contractor shall keep such data and records in an accessible location and condition.

### **3.6.3 Other Information**

Upon OPDS's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality and personnel confidentiality (Sections 4.3), Contractor shall provide any other information that OPDS deems necessary.

## 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 Work Outside Contract

Contractor may engage in additional paid work outside of this contract, but only to the extent that the additional paid work does not interfere with Contractor's ability to fulfill this contract.

Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.

### 4.3 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 or confidential 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.

### 4.4 Personnel Records

Contractor grants no right to OPDS or designee of OPDS 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 OPDS or OPDS's designee reasonable access to other information, including 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 Professionalism

Contractor and OPDS shall work collaboratively and professionally on all aspects of contract administration.

### 5.2 Successors in Interest

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

### 5.3 Compliance with Applicable Law

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

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tax liability and independent contractor status.

#### **5.4 Notice of Contract Modification, Suspension, or Termination**

A notice to modify, suspend, or terminate this contract shall be in writing and:

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

#### **5.5 Modification or Termination Due to Legislative Action or Court Interpretation**

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

#### **5.6 Periodic Review**

At the request of either party, OPDS and Contractor will periodically review case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides legal services, periodic review shall include a review by OPDS of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates contemplated under the contracts, OPDS shall notify the court and Contractors that appointment rates must be adjusted and corrected.

#### **5.7 Other Contractors and Vendors**

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

### **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.



## 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. Counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

#### 7.1.2 Representation at all Stages of a Proceeding

Contractor shall comply with 7.1.1 and provide comprehensive representation in all stages of a juvenile case, 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, probate proceedings, and other civil proceedings not otherwise provided for under this contract.

##### 7.1.2.1 Pre-appointment representation

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 shall commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written request from OPDS. In determining whether to authorize pre-appointment representation, the agency will consider whether:

- (a) The individual is a clear target of an investigation;
- (b) The agency has a good faith basis to conclude the individual seeks counsel;
- (c) It is reasonable for the agency to believe the person qualifies for public defense counsel; and
- (d) The case is of a magnitude for which pre-petition appointment is reasonable.

##### 7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation at all shelter hearings, detention hearings, and other initial appearances, unless OPDS agrees in writing otherwise. Failure to provide such representation is a material breach of this contract.
- (b) When practicable, Contractor shall meet with client prior to a shelter hearing, detention hearing, or other initial appearance to review available discovery.
- (c) Contractor shall work with OPDS and the court to determine schedules for providing representation at shelter hearings, detention hearings, or other initial appearances.
- (d) Contractor shall provide 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

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Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

- (a) Providing representation at all scheduled hearings and court proceedings.
- (b) Filing petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,
- (c) 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 provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- (a) Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of 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) Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- (c) Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- (d) Seeking 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;
- (e) Filing a motion for new trial;
- (f) File a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- (g) File request for a review hearing under ORS 419C.626, as requested by a youth client;
- (h) Consult with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation; and
- (i) Upon request, provide copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation.

#### **7.1.2.5 Case Closure**

(a) For dependency, permanent guardianship, and termination-of-parental-rights cases, Contractor may close the case when the attorney has met all of their contractual obligations and the court has entered one of the following into the court register:

- (i) An order or judgment dismissing the petition;
- (ii) An order or judgment dismissing the case and/or terminating the wardship over the child;

- (iii) An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
  - (iv) An order or judgment disestablishing the parentage of the attorney's client;
  - (v) An order or judgment terminating the parental rights of the attorney's client;
  - (vi) An order or judgment granting an adoption of the attorney's client; or
  - (vii) An order terminating or vacating the attorney's appointment.
- (b) For delinquency cases, Contractor may close the case when the attorney has met all of their contractual obligations and the court has entered one of the following into the court register:
- (i) An order or judgment dismissing the petition;
  - (ii) An order or judgment dismissing the case and terminating the wardship over the youth;
  - (iii) An order terminating or vacating the attorney's appointment;
  - (iv) A bench warrant, which has remained in effect for 180 days.

**7.1.2.6 Reappointment to Prior Clients**

The original contract attorney shall accept reappointment to a previous client when:

- (a) A case was dismissed without prejudice and has been refiled;
- (b) A case is reactivated following service of a bench warrant after contractor closed the file pursuant to 7.1.2.5; or
- (c) A case is remanded to circuit court following an appeal unless specific circumstances warrant assignment of a different attorney.

**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 court recognized 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**

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#### **7.1.5.1 Withdrawal from Case Only with Court Approval**

Contractor shall comply with rule 1.16 of the Oregon Rules of Professional Conduct and 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 Contractor shall notify OPDS in writing. Consistent with the Oregon Rules of Professional Conduct, the Contractor shall ensure continuous representation of a client until withdrawal is granted and then assist in the prompt establishment of a new attorney/client relationship.

#### **7.1.5.2 Prohibition on Withdrawal**

When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

### **7.2 Quality Assurance Obligations of Contract Administrator**

#### **7.2.1 Quality Assurance Procedures**

Contractor shall ensure that persons providing client representation under this contract, including any subcontractors OPDS approves, meet the standards of representation set forth in Section 7.1.1 of this contract. Contractor shall comply with quality assurance programs adopted by OPDS. Contractor shall establish and implement, as appropriate for Contractor's entity structure, quality assurance procedures consistent with the practices recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010).

#### **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 PDSC's Qualification Standards for Court-Appointed Counsel) and has been approved for appointment to the applicable case type by OPDS. Contractor shall provide to OPDS 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 other paid work 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. No contract attorney funded as a 1.0 FTE may take on any other paid work. Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.
- (c) Provides continuous representation from the commencement of proceedings until the final disposition of the case.

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### **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 constitutional and/or criminal law during each year of this contract, if the attorney is handling juvenile delinquency and/or waiver 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.

## **7.3 Special Obligations to State of Oregon**

### **7.3.1 Indemnity of PDSC By Contractor**

Contractor shall protect, indemnify, defend, and hold harmless PDSC, OPDS, 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 subcontractors, 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 subcontractors, 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.

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### **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 VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, 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 Chapter 659A, 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 OPDS 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, OPDS, 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

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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 OPDS 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 received, 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 Capacity and Equipment**

### **7.4.1 Number of Persons Providing Services**

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

- (a) Contractor shall not require any attorney performing the services required by this contract to sign a noncompete agreement;
- (b) Contractor shall retain an FTE attorney within 30 days of any vacancy, or OPDS may remove those funds from the contract. The 30 days may be extended with written agreement by OPDS. Contractor shall fill the vacancy as soon as practicable with an attorney who possesses equal or greater qualifications as defined in the PDSC Qualification Standards unless OPDS otherwise agrees in writing. Contractor shall immediately notify OPDS of a vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor shall notify OPDS when a contract attorney is on leave for more than 30 days or is otherwise unavailable to accept appointments. Contractor shall provide the date that the leave begins and the contractor's plan to cover the attorney's caseload while the attorney is on leave.
- (d) Contractor must retain a minimum of 0.5 support staff per 1.0 attorney FTE to assist the attorneys on the contract in a manner detailed in the contract's specific terms. Support staff are persons who provide support for attorneys and clients through administrative, clerical, communicative, technical, or similar work. Support staff does not include contracted services such as answering services or photocopying services. Contractor shall immediately notify OPDS of any support staff vacancies and shall fill the vacancy within 30 days. Failure to retain a minimum number of support staff is a material breach of this contract.

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#### **7.4.2 Certification to OPDS**

Contractor shall provide an updated attorney certification form for all attorneys providing legal services pursuant to the contract within 30 days of the contract's execution, excepting attorneys who have submitted an updated attorney certification form within the past 12 months of the contract's effective date. Contractor shall also provide certifications for any attorneys added during the contract. Contractor shall certify that the attorney added 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(8)(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.

#### **7.4.4 Contractor Offices**

Contract attorneys shall maintain an office in the judicial district in which they have contracted to provide legal services. If a contractor has contracted to provide services statewide, then contractor shall maintain an office in a location of their choice within Oregon. If a contractor has contracted to provide services in more than one judicial district, then contractor shall maintain an office in one of the judicial districts in which they have contracted to provide legal services. A failure to maintain an office is a material breach of this contract.

### **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 OPDS, or OPDS'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, juvenile waiver, and ORS 137.707 cases. Case files in aggravated murder, juvenile waiver, and ORS 137.707 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

## **7.6 Reports to OPDS**

### **7.6.1 Caseload Reports**

Within ten (10) days of the end of each month, Contractor shall provide to OPDS, in a format specified by OPDS, a monthly caseload report for the preceding month. To assist OPDS in providing accurate information to the Oregon Department of Human Services in support of claims for allowable expenses under Title IV-E of the Social Security Act, 42 USC § 474(a)(3), Contractor shall ensure that, in all such reports, any pre-appointment representation is properly identified. Contractor may submit amended caseload reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly caseload report to be amended. Contractor must be current on case reporting at the time of their review meetings with their analyst.

### **7.6.2 Case Activity, Disposition, and Withdrawal Data**

Contractor shall maintain data, using codes specified by OPDS, 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 OPDS. Contractor shall make the data available for OPDS review upon request.

### **7.6.3 Other Reports**

Contractor shall comply with OPDS requests for information and data. Contractor shall provide information and data to OPDS in a reporting form that the agency develops, including information and data on non-contract work, to the extent permitted by the Oregon Rules of Professional Conduct. Contractor shall comply with any due dates established by OPDS. Information and data may include information related to Contractor's non-contract work to the extent permitted by the Oregon Rules of Professional Conduct.

### **7.6.4 Penalty for Late Reports**

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports. If Contractor fails to submit a reasonably accurate report on the due date, OPDS may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until OPDS receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current.

- (a) Not received by due date: 10% of contract funds
- (b) 30 days late: 25% of contract funds
- (c) 60 days late: 50% of contract funds
- (d) 90 days late: 100% of contract funds

### **7.6.5 Enforceability**

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

Contractor's Initials \_\_\_\_\_

## **7.7 Costs, Expenses, and Client Clothing**

### **7.7.1 Costs and Expenses**

Except for the expense items listed in Section 6.3, 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.

### **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 OPDS 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 OPDS 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;
- (b) Contractor's ability to accept appointments;
- (c) Contractor's ability to meet financial obligations; and
- (d) Matters affecting Contractor's ability to provide services to clients.

### **7.8.1 Time Requirement for Notices**

All notices shall be provided to OPDS 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 Persons Providing Services Under the Contract**

Contractor shall provide, to OPDS and the affected court, notice of the names of attorneys providing services under this contract and any changes in the number of persons providing services under this contract. Upon request by OPDS, Contractor shall provide a current list of attorneys and non-attorneys providing services under this contract and provide timely responses to OPDS surveys or other inquiries concerning the diversity of attorneys and others performing services for Contractor.

Contractor's Initials \_\_\_\_\_

### 7.8.2.3 Events Which Could Impair the Contract

Contractor shall notify OPDS in writing within forty-eight (48) hours of when Contractor learns that one of the following has occurred:

- (a) **Criminal Charges**  
An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been charged with a crime.
- (b) **Criminal Conviction**  
An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been convicted of a crime.
- (c) **Formal Bar Complaint**  
A formal accusation of misconduct has been filed by the Oregon State Bar against an attorney performing services for Contractor.
- (d) **Bar Discipline**  
Disciplinary action is taken by the Oregon State Bar against an attorney performing services for Contractor.
- (e) **Uninsured Practice of Law**  
An attorney performing services for Contractor has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.
- (f) **Unforeseen Events**  
An attorney performing services for Contractor experienced an event that impacts their ability to perform services under this contract, including, but not limited to events such as fire, flood, burglary, embezzlement.

### 7.8.2.4 Nonassignment of Available Cases

Contractor shall notify OPDS immediately upon determining that the court is not assigning Contractor to cases available for appointment. OPDS shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

### 7.8.2.5 Contractor Shut-Off

If Contractor is unable, or believes it will be unable, to accept court appointments to public defense cases, Contractor shall notify OPDS immediately and provide at least 30 days' notice before refusing court appointments.

## 7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) Expend funds under this contract for work performed outside this contract without OPDS 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

Contractor's Initials \_\_\_\_\_

Solicit or accept payment from a client for legal services on a matter on which Contractor has been appointed by the court.

### **7.13 Contract Administrator Duties**

Contract Administrator is responsible for contract administration. Contract administration shall include, without limitation, selection of prospective contract attorney members, assigning cases and oversight of case assignments, timely and accurate tracking and reporting of caseloads to OPDS, management and disbursement of contract funds, working with OPDS to organize regular meetings to review data and ensure sufficient support to achieve program expectations, consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing, corresponding with OPDS regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations, maintaining records of all case reporting, financial and other records regarding contract members and making such records available to OPDS upon request, negotiating new contracts and contract changes with OPDS as necessary, actively participating in system improvement initiatives including multi-disciplinary training and partner meetings, and providing training and mentorship to contract attorneys and staff. Contract administrators and OPDS will meet a minimum of three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

## **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 WIND-DOWN PROCEDURES**

Unless OPDS agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall continue to provide legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination. OPDS and contractor shall negotiate wind-down terms that allow for contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay attorneys at the existing PDSC authorized hourly rate to wind-down their contract caseload.

## **10 CASELOAD STANDARDS AND CASE WEIGHTING**

### **10.1 Caseload Standards**

Contractor's Initials \_\_\_\_\_

10.1.1 The caseload of a full-time public defense attorney should not exceed the caseload standards specified below:

- a. Juvenile Dependency Petition
- b. Juvenile Termination of Parental Rights
- c. Juvenile Delinquency

10.1.2 General considerations in applying caseload standards:

- a. Caseload limits reflect the maximum caseloads for full-time public defense attorneys.
- b. Caseload limits assume a reasonable even distribution of cases throughout the year.
- c. If a public defense attorney is carrying a mixed caseload, including cases from more than one category of cases, these standards should be applied proportionally to determine a full-time caseload.
- d. When public defense attorneys work less than full-time, their maximum caseload shall be based on the percentage of time that the lawyer devotes to public defense.

10.1.3 Specialty Courts: When an attorney is assigned to represent or advise clients in Specialty Courts, the attorney's maximum caseload should be reduced proportionally by the amount of time they spend preparing for and appearing at such dockets.

## 10.2 Case Weighting

The following case weights shall be assigned to case types listed, in order to determine if the attorney is compliant with the caseload standards described in section 10.1:

### ADULT CRIMINAL CASES, CONTEMPT, AND CIVIL COMMITMENTS

CASE TYPE	CASE WEIGHT
Juvenile Dependency Petition	
Termination of Parental Rights	
Juvenile Delinquency	

## 10.3 Juvenile Murder Cases

All juvenile murder cases shall have co-counsel.

## 10.4 Extraordinary Cases and Other Circumstances

10.3.1 The assigned attorney or contract administrator may request that OPDS adjust the assigned case weight upwards for substantial work or extraordinary cases where the count assigned does not reflect the complexity or time and effort involved in the representation. OPDS retains discretion on whether to adjust the case weight.

Contractor's Initials \_\_\_\_\_

**SPECIFIC TERMS**

**1 PARTIES TO CONTRACT**

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission (“PDSC”) and \_\_\_\_\_ (“Contractor”).

**2 TERM OF CONTRACT**

The contract term shall be from July 1, 2022 through June 30, 2023.

**3 NOTICE**

Each party shall provide to the other all notices regarding this contract:

- (a) In writing, and
- (b) Delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:  
mail@opds.state.or.us

Contractor: \_\_\_\_\_  
(Contract Administrator email address)

**4 TOTAL VALUE AND PAYMENT SCHEDULE**

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$\_\_\_\_\_ during the term of this contract. PDSC shall pay the total value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

**5 CASES, FTE, AND STAFF**

Contractor shall provide legal representation in the Circuit Court of \_\_\_\_ County. Contractor shall procure \_\_\_\_\_ FTE to provide legal services pursuant to this contract, in accordance with the Caseload Standards in Section 10 of the General Terms of this contract. This includes \_\_\_\_\_ FTE for the following specialty court programs:

- (a) \_\_\_\_\_

The total contract value per attorney FTE is \_\_\_\_\_

Contractor shall procure \_\_\_\_\_ FTE investigators. Contractor shall maintain an additional support staff ratio to attorney of at least 0.5:1. The minimum number of FTE support staff for this contract is \_\_\_\_\_.

Contractor’s Initials \_\_\_\_\_

**6 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT**

Contractor may not distribute funds based upon a fixed-fee per case model. All attorneys providing legal services pursuant to this contract must comply with all OPDS requests for data and information, including but not limited to monthly caseload reports. In addition to section 7.1.1 of the general terms of the contract, attorneys providing legal services pursuant to this contract must comply with section 1.7 of the Oregon Rules of Professional Conduct.

**7 MERGER CLAUSE**

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT AND ALL ATTORNEYS PERFORMING LEGAL SERVICES PURSUANT TO THIS CONTRACT HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

---

Steve Singer, Executive Director Date  
Office of Public Defense Services Public Defense Services Commission

---

**Contractor** **Date**

---

**Title or Representative Capacity**

Contractor's Initials \_\_\_\_\_

CONTRACT BETWEEN PDSC AND XXXX PAYMENT SCHEDULE

Contractor's Initials \_\_\_\_\_



**PUBLIC DEFENSE LEGAL SERVICES CONTRACT  
TERMS FOR PARENT CHILD REPRESENTATION  
PROGRAM (PCRP)**

**July 1, 2022 to June 30, 2023**

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## GENERAL TERMS

### 1 DEFINITIONS AND 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 term or provision held to be invalid.

#### 1.4 Definitions

##### 1.4.1 Attorney Full Time Equivalent (FTE)

“Attorney FTE” is the unit of measurement equivalent to an individual attorney’s public defense client representation based on the caseload standards adopted by the PDSC.

##### 1.4.2 Case

Any action in this state in which a Contractor has been appointed to represent or advise a client under the terms of the Public Defense Services Contract in a matter to which there is a right to appointed counsel at state expense.

##### 1.4.3 Client

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

##### 1.4.4 Collateral Representation

“Collateral representation” means legal services provided by an attorney appointed in a juvenile case in matters outside the juvenile case to improve the position of the parent, legal guardian, child, or youth client in the juvenile case. “Collateral representation” includes, but is not limited to, legal services provided in relation to:

- (a) a charge or conviction for a violation or crime under state or federal law;
- (b) a petition for custody and parenting time; and
- (c) a petition for a restraining order or stalking protective order.

#### **1.4.5 Contractor**

“Contractor” is an entity that provides public defense services for eligible individuals, and includes Contractor’s agents, employees, members, officers, representatives, and successors. A contractor does not include subcontractors.

#### **1.4.6 Juvenile Case**

“Juvenile case” means any case initiated under ORS chapter 419B or ORS chapter 419C or as required in a contested adoption proceeding consistent with *Zockert v. Fanning*, 310 Or 514, 524 (1990).

#### **1.4.7 Open Caseload**

“Open caseload” means the total number of cases in which an attorney providing legal services under this contract is actively representing a client at any given time.

#### **1.4.8 Pre-appointment Representation**

“Pre-appointment representation” (also referred to as “prepetition representation”) means representation of a parent, legal guardian, or child during a child welfare investigation by the Oregon Department of Human Services and representation of a youth during a law enforcement investigation, before a court has appointed counsel for that person and typically before a proceeding under ORS chapter 419B or ORS chapter 419C has been initiated.

#### **1.4.9 State of Oregon**

- (a) Public Defense Services Commission (PDSC) is the commission established under ORS 151.213.
- (b) Office of Public Defense Services (OPDS) is the office established by the PDSC under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system.

### **1.5 Financial Verification Required for Court Appointment**

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

## **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.

Contractor’s Initials \_\_\_\_\_

## 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, OPDS may agree in writing to alternative measures.

## 3 RIGHTS OF PDSC

### 3.1 Subcontracts and Assignment of Contract

Contractor shall not subcontract for or delegate any of the services required under this contract or assign Contractor's interest in this contract without obtaining OPDS' prior written consent. Prior written consent must be obtained in each case a subcontract is sought. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

### 3.2 PDSC Rights for Failure to Obtain Workers' Compensation

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

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

### 3.3 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, OPDS 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 and place in which contractor must submit any required report or other document.

### 3.4 Termination by PDSC for Cause

#### 3.4.1 Reasons for Contract Termination

OPDS may terminate this contract for cause, for any the following reasons:

Contractor's Initials \_\_\_\_\_

- (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; however, 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 inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing standards of performance and rules of professional conduct; or
- (e) Some other cause which has substantially impaired Contractor's ability to provide constitutionally adequate legal services under this contract or fulfill the obligations of this contract.

**3.4.2 No Appointments After Notice**

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

**3.5 Funding Modification, Suspension, or Termination**

At the time this contract is executed, sufficient funds either are available within the PDSC's current appropriation or are expected to become available to cover the costs of this contract. However, payments under this contract are subject to the availability of funds. OPDS may propose to modify, suspend, or terminate this contract if OPDS reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and OPDS has complied with the procedures set out below in Section 6.1 (State Funding Shortfall).

**3.6 Contractor Workload**

**3.6.1 Court Appointments**

All attorneys under contract shall accept court appointments to all juvenile case types for which they are qualified pursuant to the PDSC's Qualification Standards. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

- (a) Contractor may be appointed to cases in counties other than those specified in this Contract. If Contractor's caseload has sufficient workload capacity, Contractor shall accept conflict and overflow appointments from jurisdictions no more than two counties distant from Contractor's place of business. Those cases will count toward the Contractor's open caseload.
- (b) No public defense contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (c) No one funded as a 1.0 FTE may take on any other paid legal work, unless OPDS otherwise agrees in writing
- (d) Nothing in this section precludes a contractor from engaging in pro bono legal services.

**3.6.2 Open Caseload Standard**

To comply with performance standards, generally an attorney should limit full-time representation to no more than 80 open cases at any given time. OPDS recognizes that an attorney's open caseload may

fluctuate as cases are received, assigned, and closed. A contract administrator may request a good cause variance from the caseload limit, and OPDS may approve or deny such request.

### **3.6.3 Capacity Increase or Decrease**

When caseload increases or decreases by 15% for six consecutive months, Contractor and OPDS shall discuss the circumstances surrounding the increase or decrease. OPDS may adjust the number of FTE in the contract to meet the changing needs of the jurisdiction if:

- (a) The probable number of available cases increases or decreases substantially, such that the proposed FTE amount no longer matches caseload needs;
- (b) The introduction or discontinuation of a specialty court; or
- (c) OPDS determines that an increase or decrease in FTE capacity is in the state's interest.

## **3.7 Review, Verification, and Inspection of Records**

### **3.7.1 Request**

OPDS 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 OPDS deems necessary during the contract term.

### **3.7.2 Production of Records and Access to Facilities**

OPDS may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. On OPDS's request, Contractor shall provide access to its facilities and make records available to OPDS or agent at all reasonable times, and promptly respond to requests for information in connection with fiscal or performance audits. OPDS will not remove Contractor's original office records or other property from Contractor's premises without Contractor's approval. Contractor shall keep such data and records in an accessible location and condition.

### **3.7.3 Other Information**

Upon OPDS's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality and personnel confidentiality (Section 4.3), Contractor shall provide any other information that OPDS deems necessary.

## **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 Work Outside Contract**

Contractor may engage in additional paid work outside of this contract, but only to the extent that the additional paid work does not interfere with Contractor's ability to fulfill this contract.

Contractor's non-contract work shall be no greater than their percentage of FTE (e.g., a 0.5 FTE



contract attorney shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract legal work.

#### **4.3 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 or confidential 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.

#### **4.4 Personnel Records**

Contractor grants no right to OPDS or designee of OPDS 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 OPDS or OPDS's designee reasonable access to other information, including 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 Professionalism**

Contractor and OPDS shall work collaboratively and professionally on all aspects of contract administration.

#### **5.2 Commitment to PCRCP Principles and Goals**

- (a) Parties agree to work together, in good faith, to successfully implement and maintain the PCRCP.
- (b) Parties agree to work toward accomplishing shared goals, namely:
  - i. Providing competent, effective, and quality legal representation throughout the life of the case.
  - ii. Reducing the number of cases in which the time to establish jurisdiction is greater than 60 days in the county.
  - iii. Reducing the number of youth and children in out-of-home placements in the county.
  - iv. Reducing the time to achieve permanency in the county.
  - v. Providing attorney representation of parents, youth and children at all shelter and detention hearings in the county.
  - vi. Increasing the number of youth and children who are reunified with their parent(s) in the county.

#### **5.3 Successors in Interest**

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

#### **5.4 Compliance with Applicable Law**

Contractor's Initials \_\_\_\_\_

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.

**5.5 Notice of Contract Modification, Suspension, or Termination**

A notice to modify, suspend, or terminate this contract shall be in writing and:

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

**5.6 Modification or Termination Due to Legislative Action or Court Interpretation**

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

**5.7 Periodic Review**

At the request of either party, OPDS and Contractor will periodically review case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides legal services, periodic review shall include a review by OPDS 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, OPDS shall notify the court and Contractors that appointment rates must be adjusted and corrected.

**5.8 Other Contractors and Vendors**

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

**6. OBLIGATIONS OF PDSC**

**6.1 Case Managers**

PDSC shall provide independent case managers to assist attorneys in juvenile cases by evaluating services, identifying additional appropriate services in the community, connecting clients with appropriate services when necessary, and interceding when conflict occurs between clients and providers.

**6.2 Regular PCRCP Meetings**

OPDS, on behalf of PDSC, shall organize regular meetings with contractors and attorneys to review data, ensure appropriate staffing levels, communicate any information regarding program issues and provide opportunity for provider feedback and questions.

**6.3 Systemic Improvement**

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OPDS, on behalf of PDSC, shall facilitate stakeholder discussion to support the PCRPs systemic improvement efforts.

#### **6.4 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.

#### **6.5 Contract Payment**

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

### **7 OBLIGATIONS OF CONTRACTOR**

#### **7.1 Performance Obligations of Appointed Counsel**

##### **7.1.1 Standard of Representation**

Appointed counsel shall adhere to the Oregon State Bar performance standards, namely:

- (a) Specific Standards for Representation in Juvenile Dependency Cases (June 23, 2017), <https://www.osbar.org/docs/resources/juveniletaskforce/JTFR3>;
- (b) Specific Standards of Representation in Criminal and Juvenile Delinquency Cases (Apr 25, 2014), <https://www.osbar.org/docs/resources/juveniletaskforce/JTFR2.pdf>

Appointed counsel shall also fulfill applicable national performance standards, including those of the 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. Further, 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 comprehensive representation at all stages of a juvenile case, including but not limited to the types of proceedings and representation below.

###### **7.1.2.1 Pre-appointment representation**

Contractor may commence pre-appointment representation only with pre-approval from OPDS. In determining whether to authorize pre-appointment representation, OPDS will consider whether:

- (a) The agency has a good faith basis to conclude the individual seeks counsel; and

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- (b) It is reasonable for the agency to believe the person qualifies for public defense counsel.

**7.1.2.2 Appearance at first proceedings**

- (a) Contractor shall provide representation and advocate for client at all scheduled appearances, detention hearings, shelter hearings, and other initial appearances in juvenile cases. Failure to appear at these proceedings is a material breach of this contract.
- (b) As practicable, Contractor shall meet with client prior to a detention hearing, shelter hearing, or other initial appearance to review available discovery.
- (c) Notwithstanding subsection (a), where OPDS has approved in writing other arrangements for representation at first proceedings, Contractor is not required to provide representation.
- (d) Contractor shall provide 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, including but not limited to:

- (a) Contractor shall provide representation at all scheduled hearings and court proceedings. Failure to provide representation at all hearings and court proceedings is a material breach of this contract;
- (b) Filing a petition for writ of mandamus or habeas corpus arising from the case on which counsel is appointed;
- (c) Attending all meetings where Department of Human Services (DHS), Oregon Youth Authority (OYA) and/or other state actors or parties are present and discussing matters relevant to the case;
- (d) Meeting with client to review available discovery, prior to any court hearing;
- (e) Advocating for client at all court hearings;
- (f) Meeting and communicating regularly with clients including:
  - i. Before court hearings and Citizen’s Review Board (CRB) reviews.
  - ii. In response to contact by the client.
  - iii. When a significant change of circumstances must be discussed with the client.
  - iv. Whenever notified that the youth’s or child’s placement has changed.
  - v. When a lawyer is apprised of emergencies or significant events impacting the youth or child.
- (g) Utilizing independent investigators and case managers/social workers/mitigation specialists, as appropriate, to provide comprehensive representation; and
- (h) Conducting a thorough, continuing, and independent review and investigation of the case.
- (i) 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 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) Litigate issues of restitution arising from the case until a final order on restitution is entered by the court;
- (c) Complete questionnaires, forms, or other process necessary to obtain appellate counsel for clients requesting an appeal;
- (d) Seek court orders or other remedies on behalf of a client if a term of disposition favorable to the client is not followed or implemented by a probation department, 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;
- (e) File a motion for new trial;
- (f) File a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- (g) File request for a review hearing under ORS 419C.626, as requested by a youth client;
- (h) Consult with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation;
- (i) Upon request, provide copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation;

#### **7.1.2.6 Reappointment to Prior Clients**

The original contract attorney shall accept reappointment to a previous client when:

- (a) A case was dismissed without prejudice and has been refiled;
- (b) A case is reactivated following service of a bench warrant after contractor closed the file pursuant to 7.1.2.5; or
- (c) A case is remanded to circuit court following an appeal unless specific circumstances warrant assignment of a different attorney.

#### **7.1.3 High Quality Representation**

Contractor shall provide high quality representation of parents, legal guardians, children and youth in juvenile cases including, but not limited to:

- (a) Developing a method to maintain regular contact with each client throughout the case;
- (b) Having staff available to respond to immediate client questions when the attorney is in court or otherwise unavailable;
- (c) Conducting an initial interview of the client, when possible, within 72 hours of appointment;
- (d) Having staff available to adequately support attorney functions; and
- (e) Endeavoring to spend, on average, one-third of their time meeting with clients, one-third on case preparation; and one-third on court appearances and case-related meetings.

#### **7.1.4 Client Contact**

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**7.1.4.1 Client Contact Generally**

Contractor shall engage in regular and consistent client communication as specified in the Oregon State Bar performance standards.

**7.1.4.2 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 court recognized holiday.

**7.1.4.3 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**

**7.1.5.1 Withdrawal from Case Only with Court Approval**

Contractor shall comply with rule 1.16 of the Oregon Rules of Professional Conduct and 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 Contractor shall notify OPDS in writing. Consistent with the Oregon Rules of Professional Conduct, the Contractor shall ensure continuous representation of a client until withdrawal is granted and then assist in the prompt establishment of a new attorney/client relationship.

**7.1.5.2 Prohibition on Withdrawal**

When a public defense attorney leaves a Contractor, they may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission. If a public defense attorney leaves a Contractor but continues doing public defense work funded by OPDS in the same or adjacent jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

**7.1.6 Regular PCRPs Meetings**

Contractor shall attend regular meetings with OPDS to review data, ensure appropriate staffing levels,

provide feedback, and ask questions related generally to PCRCP and providing high-quality representation of parents, legal guardians, children, and youth in juvenile cases.

#### **7.1.7 PCRCP Caseload Plan**

Contractor shall develop and implement a plan to ensure that the open caseload for each attorney providing services under the Contract generally does not exceed 80 cases per 1.0 FTE, or the contracted proportion thereof. Contractor shall provide such plan details and timeliness to OPDS in writing.

### **7.2 Quality Assurance Obligations of Contract Administrator**

#### **7.2.1 Quality Assurance Procedures**

Contractor shall ensure that persons providing client representation under this contract, including any subcontractors OPDS approves, meet the standards of representation set forth in Section 7.1.1 of this contract. Contractor shall comply with quality assurance procedures adopted by OPDS. Contractor shall establish and implement, as appropriate for Contractor's entity structure, quality assurance procedures consistent with the practices recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010).

#### **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 PDSC's Qualification Standards for Court-Appointed Counsel and has been approved for appointment to the applicable case type by OPDS. Contractor shall provide to OPDS 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 other paid work 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. No contract attorney funded as a 1.0 FTE may take on any other paid work. Contract attorneys funded less than a 1.0 FTE may engage in non-contract legal work, to the extent that non-contract work is proportional in time to their percentage of FTE (e.g., a .5 FTE contract attorney shall spend half their time on contract work). Contractor shall fairly account for the time spent on non-contract work.
- (c) Provides continuous representation, from the commencement of proceedings until the final judgment dismissing case and terminating wardship.

### **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 constitutional and criminal law during each year of this contract, if the attorney is handling juvenile delinquency and/or waiver 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.

## **7.3 Special Obligations to State of Oregon**

### **7.3.1 Indemnity of PDSC By Contractor**

Contractor shall protect, indemnify, defend, and hold harmless PDSC, OPDS, 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 subcontractors, 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 subcontractors, 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.

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### **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 VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, 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 Chapter 659A, 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 OPDS 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, OPDS, 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

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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 OPDS 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 Capacity and Equipment**

### **7.4.1 Number of Persons Providing Services**

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

- (a) Contractor shall not require any attorney performing the services required by this contract to sign a noncompete agreement;
- (b) Contractor shall retain an FTE attorney within 30 days of any vacancy, or OPDS may remove those funds from the contract. The 30 days may be extended with written agreement by OPDS. Contractor shall fill the vacancy as soon as practicable with an attorney who possesses equal or greater qualifications as defined in the PDSC Qualification Standards unless OPDS otherwise agrees in writing. Contractor shall immediately notify OPDS of a vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor shall notify OPDS when a contract attorney is on leave for more than 30 days, or is otherwise unavailable to accept appointments. Contractor shall provide the date that the leave begins and the contractor's plan to cover the attorney's caseload while the attorney is on leave.
- (d) Contractor must retain a minimum of 0.5 support staff per 1.0 attorney FTE to assist the attorneys on the contract in a manner detailed in the contract's specific terms. Support staff are persons who provide support for attorneys and clients through administrative, clerical, communicative, technical, or similar work. Support staff does not include contracted services such as answering services or photocopying services. Contractor shall immediately notify OPDS of any support staff vacancies and shall fill the vacancy within 30 days. If the vacancy is not filled within 30 days, OPDS may remove the contract funds allocated for support staff.

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#### **7.4.2 Certification to OPDS**

Contractor shall provide an updated attorney certification form for all attorneys providing legal services pursuant to the contract within 30 days of the contract's execution, excepting attorneys who have submitted an updated attorney certification form within the past 12 months of the contract's effective date. Contractor shall also provide certifications for any attorneys added during the contract. Contractor shall certify that the attorney added 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(8)(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.

#### **7.4.4 Contractor Offices**

Contract attorneys shall maintain an office in the judicial district in which they have contracted to provide legal services. If a contractor has contracted to provide services statewide, then contractor shall maintain an office in a location of their choice within Oregon. If a contractor has contracted to provide services in more than one judicial district, then contractor shall maintain an office in one of the judicial districts in which they have contracted to provide legal services. A failure to maintain an office is a material breach of this contract.

### **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 OPDS, or OPDS'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

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aggravated murder, cases where a waiver motion was filed, and ORS 137.707 cases. Case files in aggravated murder, cases where a waiver motion is filed, and ORS 137.707 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

## **7.6 Reports to OPDS**

### **7.6.1 Case Management System**

Contractor shall use a case management system or other data collection method that will provide data reports demonstrating time spent with clients and on case preparation, court appearances, and case-related meetings, as well as case-related outcomes and use of case managers and investigators.

### **7.6.2 Open Caseload Reports**

By the twentieth (20th) day of each month, or the following business day if the twentieth day falls on a weekend or holiday, Contractor shall provide to OPDS, in a format specified by OPDS, a report of the open cases for each attorney providing legal services under the Contract for the preceding month. To assist OPDS in providing accurate information to ODHS in support of claims for allowable expenses under Title IV-E of the Social Security Act, 42 USC § 474(a)(3), Contractor shall ensure that, in all such reports, any pre-appointment representation, collateral representation for which additional case counts are granted pursuant to section 10.2.2(c), and cases in which a guardianship has been established are properly identified. Contractor may submit amended open caseload reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly caseload report to be amended. Contractor must be current on case reporting at the time of their review meetings with their analyst.

### **7.6.3 Case Activity, Disposition, and Withdrawal Data**

Contractor shall maintain data, using codes specified by OPDS, 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 OPDS. Contractor shall make the data available for OPDS review upon request.

### **7.6.4 Other Reports**

Contractor shall comply with OPDS requests for information and data. Contractor shall provide information and data to OPDS in a reporting form that the agency develops, including information and data on non-contract work, to the extent permitted by the Oregon Rules of Professional Conduct. Contractor shall comply with any due dates established by OPDS. Contract administrators and analysts will meet three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

### **7.6.5 Penalty for Late Reports**

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports. If Contractor fails to submit a reasonably accurate report on the due date, OPDS may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until OPDS receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current:

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- (a) Not received by due date: 10% of contract funds
- (b) 30 days late: 25% of contract funds
- (c) 60 days late: 50% of contract funds
- (d) 90 days late: 100% of contract funds

**7.6.6 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 6.3, 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.

**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 OPDS 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 OPDS 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;
- (b) Contractor’s ability to accept appointments;
- (c) Contractor’s ability to meet financial obligations; and
- (d) Matters affecting Contractor’s ability to provide services to clients.

**7.8.1 Time Requirement for Notices**

All notices shall be provided to OPDS 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 Persons Providing Services Under the Contract

Contractor shall provide, to OPDS and the affected court, notice of the names of attorneys providing services under this contract and any changes in the number of persons providing services under this contract. Upon request by OPDS, Contractor shall provide a current list of attorneys and non-attorneys providing services under this contract and provide timely responses to OPDS surveys or other inquiries concerning the diversity of attorneys and others performing services for Contractor.

### 7.8.2.3 Events Which Could Impair the Contract

Contractor shall notify OPDS in writing within forty-eight (48) hours of when Contractor learns that one of the following has occurred:

(a) **Criminal Charges**

An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been charged with a crime.

(b) **Criminal Conviction**

An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been convicted of a crime.

(c) **Formal Bar Complaint**

A formal accusation of misconduct has been filed by the Oregon State Bar against an attorney performing services for Contractor.

(d) **Bar Discipline**

Disciplinary action is taken by the Oregon State Bar against an attorney performing services for Contractor.

(e) **Uninsured Practice of Law**

An attorney performing services for Contractor has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

(f) **Unforeseen Events**

An attorney performing services for Contractor experienced an event that impacts their ability to perform services under this contract, such as fire, flood, burglary, embezzlement.

### 7.8.2.4 Nonassignment of Available Cases

Contractor shall notify OPDS immediately upon determining that the court is not assigning Contractor to cases available for appointment; OPDS 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 OPDS authorization;

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- (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 Solicit or accept payment from a client for legal services on a matter on which Contractor has been appointed by the court.

**7.10 Contract Administrator Duties**

- (a) Contract Administrator is responsible for contract administration. Contract administration shall include, without limitation, selection of prospective contract attorney members, assigning cases and oversight of case assignments, timely and accurate tracking and reporting of caseloads to OPDS, management and disbursement of contract funds, working with OPDS to organize regular meetings to review data and ensure sufficient support to achieve PCRCP expectations, consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing, corresponding with OPDS regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations, maintaining records of all case reporting, financial and other records regarding contract members and making such records available to OPDS upon request, negotiating new contracts and contract changes with OPDS as necessary, actively participating in system improvement initiatives including multi-disciplinary training and partner meetings, and providing training and mentorship to contract attorneys and staff.
- (b) The Contract Administrator shall ensure that they carry a reduced caseload to allow for adequate administration time. The amount to which caseload is reduced shall be agreed upon by the Contract Administrator and OPDS.

**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 WIND-DOWN PROCEDURES**

Unless OPDS agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall continue to provide legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination. OPDS and contractor shall negotiate wind-down terms that allow for contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay attorneys at the existing PDSC authorized hourly rate to wind-down their contract caseload.

## 10 CASE COUNTING STANDARDS

### 10.1 General Case Counting Standards

- (a) Representing one parent, legal guardian, or child in a dependency case counts as one case.
- (b) Representing one parent, legal guardian, or child in a termination-of-parental-rights case counts as one case.
- (c) Representing multiple children in a dependency case counts as one case for the first child and as 0.5 cases for each additional child.
- (d) Representing one youth in a delinquency case counts as one case.
- (e) Pre-appointment representation of one child, youth, parent, or legal guardian, preapproved by OPDS, counts one case.
- (f) Pre-appointment representation of multiple children, preapproved by OPDS, counts as one case for the first child and as 0.5 cases for each additional child.
- (g) When representation on a case begins and ends within the same calendar month, the case can count toward the attorney's open caseload until the end of that calendar month unless the court allows the attorney to withdraw due to a conflict.

### 10.2 Case Count Adjustments

- (a) Delinquency cases in which the alleged conduct, if committed by an adult, would constitute murder or a crime subject to ORS 137.707 shall be granted an additional case count.
- (b) Any case in which the attorney accepts an appointment in a county other than those specified in this Contract shall be granted an additional case count.
- (c) Cases that involve extraordinary circumstances and require work well beyond the range of work typically required in juvenile cases may be granted additional case counts, subject to OPDS's discretion. No earlier than thirty (30) days after being appointed in any particular case, an attorney seeking approval for extraordinary circumstances case counts for that case shall use the form provided by OPDS.
- (d) For any client or sibling group, the attorney may count a maximum of three cases in their open caseload, except that additional case counts granted pursuant to subsections (a) through (c) above shall be in addition to this maximum.

### 10.3 Case Closure

- (a) For dependency, permanent guardianship, and termination-of-parental-rights cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
  - i. An order or judgment dismissing the petition;
  - ii. An order or judgment dismissing the case and/or terminating the wardship over the child;
  - iii. An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
  - iv. An order or judgment disestablishing the parentage of the attorney's client;
  - v. An order or judgment terminating the parental rights of the attorney's client;
  - vi. An order or judgment granting an adoption of the attorney's client; and
  - vii. An order terminating or vacating the attorney's appointment.
  - viii. An order terminating or vacating the attorney's appointment

Contractor's Initials \_\_\_\_\_



- (b) For delinquency cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
- i. An order or judgment dismissing the petition;
  - ii. An order or judgment dismissing the case and terminating the wardship over the youth;  
and
  - iii. An order terminating or vacating the attorney's appointment.
  - iv. A bench warrant for a youth's failure to appear has been active for 180 days.

## SPECIFIC TERMS

### 1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and [REDACTED] ("Contractor").

### 2 TERM OF CONTRACT

The contract term shall be from July 1, 2022 through June 30, 2023.

### 3 NOTICE

Each party shall provide to the other all notices regarding this contract:

- (a) In writing, and
- (b) Delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:  
mail@opds.state.or.us

Contractor: [REDACTED]  
(Contract Administrator email address)

### 4 TOTAL VALUE AND PAYMENT SCHEDULE

For representation provided pursuant to this contract, PDSC shall pay Contractor a total of \$ [REDACTED] during the term of this contract. PDSC shall pay the total value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

### 5 CASES, FTE, AND STAFF

Contractor shall provide legal representation in the Circuit Court of [REDACTED] County for the estimated number of cases listed in the Estimated Case Matrix. The estimated number of cases is a target quota and not a mandate. Contractor shall procure [REDACTED] FTE to provide legal services pursuant to this contract.

The total contract value per attorney FTE is [REDACTED], which is listed here for purposes of transparency. The following rates comprise the total contract value:

Attorney rate - \$ \_\_\_\_\_  
Staff rate - \$ \_\_\_\_\_  
Overhead rate - \$ \_\_\_\_\_  
Administration/Supervision - \$ \_\_\_\_\_

Contractor's Initials \_\_\_\_\_

Contractor shall procure \_\_\_\_\_ FTE investigators. Contractor shall maintain an additional support staff ratio to attorney of at least 0.5:1. The minimum number of FTE support staff for this contract is \_\_\_\_\_.

**6 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT**

Contractor may not distribute funds based upon a fixed fee per case model. All attorneys providing legal services pursuant to this contract must comply with all OPDS requests for reports, including but not limited to monthly caseload reports. In addition to section 7.1.1 of the general terms of the contract, attorneys providing legal services pursuant to this contract must comply with section 1.7 of the Oregon Rules of Professional Conduct.

**7 MERGER CLAUSE**

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT AND ALL ATTORNEYS PERFORMING LEGAL SERVICES PURSUANT TO THIS CONTRACT HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

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Stephen Singer, Executive Director  
Office of Public Defense Services Public Defense Services Commission

Date

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**Contractor**

**Date**

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**Title or Representative Capacity**

Contractor's Initials \_\_\_\_\_

CONTRACT BETWEEN PDSC AND XXXX PAYMENT SCHEDULE

Contractor's Initials \_\_\_\_\_

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Contractor's Initials \_\_\_\_\_