

Members

Per A. Ramfjord, Chair
Vacant, Vice-Chair
Mark Hardin
Paul Solomon
Lisa Ludwig
Thomas M. Christ
Steven T. Wax
Christine Thomas
Alton Harvey Jr.



Ex-Officio Member

Chief Justice Martha Walters

Executive Director

Stephen Singer

**PUBLIC DEFENSE SERVICES COMMISSION
*AMENDED AGENDA***

Meeting will occur in person and virtually.
Due to space limitations, in person attendance requires reservation.
Please contact opds.info@opds.state.or.us to make a reservation.

3075 N Business 97 Bend, OR 97703
Thursday, June 23, 2022
9:00 AM – approx. 12:00 PM PT
Via Microsoft Teams Live Event*

This is a public meeting, subject to public meeting law and it will be digitally recorded. Remember to state your full name for the record, as it is required for making a record of the meeting. For action items requiring PDSC approval, a roll call vote will occur, unless the chair directs otherwise. The chair shall read any motion requiring PDSC approval into the record before a vote is taken. We are mindful of everyone’s busy schedule, particularly public defense providers, and we will adhere to the agenda of business unless the chair directs otherwise.

MEETING AGENDA

Approx. Time	Item	Lead(s)
3 min.	Welcome	Chair Solomon
2 min.	Action Item: • Approval of Meeting Minutes – PDSC meeting 5/19/2022 (Attachment 1)	PDSC
5 min.	Budget Update (Attachment 2)	R. Amador
15 min.	Legislative Update	A. Shreve
10 min.	Agency Status Update re: FY22-23 Contracts	S. Singer
55 min.	Public Comment limited to FY22-23 Contracts**	All
30 min.	PDSC Discussion with Agency Staff re: FY22-23 Contracts	PDSC, S. Singer & E. Deitrick
10 min.	<i>Break scheduled for approximately 11:00 AM PT</i>	All
10 min.	Action Item: • Approval of Public Defense Contracts for July 1, 2022 (Attachments 3a, 3b, 3c, 3d, 3e, 3f, 3g)	PDSC
10 min.	POPS & '23 Legislative Session Prep Update	B. DeForest

25 min.	Unrepresented Client Update	S. Singer, E. Deitrick, M-S. Storey & E. Lannet
5 min.	Future Business	S. Singer

**To join the Microsoft Teams Live Event meeting, click this link:*

https://teams.microsoft.com/join/19%3ameeting_ZDVIZWVjMzUtMGZmNi00NGNjLTlmYTItOWI2YTYwNzBkZWNm%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%22e2d550f7-f738-4d5a-9f2a-eb0c9857447%22%2c%22IsBroadcastMeeting%22%3a%22true%7d&btype=a&role=a

***If you are interested in providing public comment to the PDSC (either IN PERSON or virtual), please email interest to opds.info@opds.state.or.us. Please include your full name, organization/entity name, email, phone number and whether you would like to present in person or orally via video conference. Each guest will be given up to 3-minutes to share comments. There will continue to be written Q&A available via the Microsoft Teams Live Event throughout the duration of the public meeting for all guests.*

Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting to opds.info@opds.state.or.us.

Next meeting: Thursday, July 21, 2022, 10:00 AM – 2:00 PM PT.

Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at: <https://www.oregon.gov/opds/commission/Pages/meetings.aspx>.

Attachment 1

Meeting: Public Defense Services Commission (PDSC) Meeting

Date & Time: May 19, 2022: 10:00 AM – to approx. 3:00 PM PT

Address/Platform: Hybrid: Meeting occurred in person and virtually

Link to Recording: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjY3MMDM2NzgtNjZhOC00ZjBhLTk4MjltMGRiZGUxZjgyY2Q4%40thread.v2/0?context=%7b%22Tid%22%3a%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2c%22Oid%22%3a%22e2d550f7-f738-4d5a-9f2a-eb0c9857447%22%2c%22IsBroadcastMeeting%22%3atru%7d&btype=a&role=a

Commissioners In Person

Lisa Ludwig, Acting Chair
Mark Hardin
Thomas Christ
Christine Thomas
Alton Harvey Jr.
Paul Solomon
Steven Wax

Commissioners Virtual

Chief Justice Walters, Ex Officio

Commissioners Absent

Per Ramfjord

Presenting Staff

Stephen Singer, Executive Director
Brian DeForest, Deputy Director
Ralph Amador, Budget & Finance Manager
Eric Deitrick, General Counsel

Presenting Guests

Professor Aliza Kaplan, The Ramos Project
Laney Ellisor, The Ramos Project
Michaela Gore, The Ramos Project
Jessica Kampfe, Executive Director of Multnomah Public Defenders, Inc. (MDI)
Olcott Thompson, Executive Director of the Marion County Association of Defenders (MCAD)
Brook Reinhard, Executive Director of Public Defenders Services of Lane County

*Agenda item requires a vote by the commission

1. Welcome

Presented by Acting Chair Ludwig

Chair Ludwig welcomed everyone to the May 19, 2022 Public Defense Services Commission meeting.

2. *Approval of Transcript – PDSC meeting April 21, 2022

A motion was made and was seconded, and the PDSC unanimously approved the minutes without discussion.

3. Discussion on Stakeholder Provider Feedback to Contract Terms

Presented by Executive Director Singer

Director Singer discussed steps the agency has taken to discuss the proposed contract terms with stakeholders and public defense providers. He noted that several meetings occurred with stakeholder participation, and those meetings were conducted in person with a virtual attendance option. He noted that he and others in the agency traveled to southern Oregon and met with public defense providers. He also noted that the agency established a FAQ process to provide centralized questions to provider answers.

Director Singer informed the PDSC that, based upon that feedback, there were some changes to the contract general terms the agency would present to the PDSC today. He briefly discussed the RFQ process and noted that the agency received approximately 120 response to the RFQ, including some new contractors. Commissioner Christ asked if there were jurisdictional gaps in response to the RFQ. Director Singer noted that he did not believe there were jurisdictions with no submissions, but he would be reviewing the responses in more detail over the weekend.

4. *Approval of Possible Amendments to Contract Terms

Presented by Executive Director Singer

Director Singer discussed the agency's proposed changes to the general terms of the contracts, which were responsive to stakeholder feedback and included in the materials as an exhibit. Those changes included modifications to terms 3.5.1, 3.5.2, 7.6.1, 7.6.4, and 7.7.1.

Director Singer summarized the reasoning for these proposed changes. Commissioner Christ inquired about the process for adopting final contract language, and whether the language had to be approved today. Director Singer and General Counsel Deitrick

*Agenda item requires a vote by the commission

stated that the contracts would be approved at the June PDSC meeting, but that the agency wanted as much direction ahead of time to ensure the PDSC was supportive of the agency's direction. Mr. Deitrick noted that there was also an executive session to discuss contracts today. Director Singer also anticipated getting PDSC direction today. He noted that an interim meeting could be scheduled if additional direction was needed before the June PDSC meeting.

Executive Assistant Alena Haines noted that there were comments on the contract language in the virtual meeting's chat discussion. Chair Ludwig noted that public comment was planned for later in the meeting, but she suggested taking that comment sooner, as it appeared relevant to the PDSC's decision-making on this topic. Director Singer supported that idea. A discussion occurred about the scope of the public comment period, and it was determined to focus public comment on the contract terms.

Mr. Deitrick briefly summarized the proposed changes to contract terms. Commissioner Christ discussed the proposed change to 3.5.2 and expressed concerns about this change. The proposed term would prevent OPDS from reducing the financial value of a public defense contract if that contractor had a decrease in court appointments, if the decrease was due to the Oregon Rule of Professional Conduct 1.7. Commissioner Christ explained his opposition to this provision, as it would allow contractors to receive funds with no guarantee that they will continue to accept cases.

Director Singer explained the agency's rationale for the provision, noting that the RPC's already apply to all attorneys throughout Oregon, and that the agency could not penalize providers for complying with their ethical obligations. Director Singer stated that the agency was not required to accept the contractor's position as to whether the contractor is ethically prohibited from new appointments, and he noted that the agency had tools if providers were acting in bad faith.

Commissioner Thomas noted that, in her experience, most people do act in good faith, and perhaps the language could be modified to respect the RPC but ensure the agency had tools available to respond to contractor shutoffs. Commissioner Wax understood the need for the provision, given the annual caseload standards. He highlighted the need to move to a workload standard to address this specific issue, and he also discussed the challenges of measuring the workload of public defense providers who have a mixed caseload. He also believed the agency needed contract authority to review contractor decisions to decline court appointments.

Commissioner Christ, Commissioner Wax, and Director Singer continued discussing the challenges of the contract model, annual case assignment, full-time v. part-time

*Agenda item requires a vote by the commission

providers, and ensuring the agency had the tools and authority available to assign public defense cases while respecting attorneys' ethical obligations.

Commissioner Ludwig suggested that this was a good time to take public comment.

Commissioner Thomas moved to accept public comment before taking action on the contract changes. Commissioner Solomon second that motion. It passed unanimously, and the PDSC moved to public comment.

Jessica Kampfe, executive director of MDI, offered testimony in support of the language in 3.5.2. She described the current workload of her office, and in response to a question by Commissioner Christ, emphasized that attorneys in her office want to accept appointments and will do so they are able to.

Olcott Thompson, executive director of Marion County Association of Defenders, discussed the existing workload challenges for attorney members.

Brook Reinhard, executive director of Public Defense Services of Lane County, offered comment on the proposed contract changes, and he noted that the public defender offices throughout Oregon were largely unified in their positions. He offered support for the language in 3.5.2.

Mr. Deitrick then read into the record various comments that appeared on the virtual meeting's chat discussion. Commissioner Wax asked those providing public comment to discuss their bottom line on 3.5.2. Ms. Kampfe stated she supported the provision and explained why. Commissioners Solomon and Thomas thanked the providers for the feedback.

Director Singer summarized by stating that the PDSC appeared to support all of the proposed contract changes excepting 3.5.2, and he saw three options for 3.5.2.

Commissioner Solomon made a motion to approve the proposed contract changes, except for 3.5.2. Commissioner Thomas seconded the motion. Commissioner Wax discussed his opposition to the motion. He believed it was important to find a middle ground on 3.5.2. Director Singer said he believed middle ground language existed and read into the record what the language would be. Mr. Deitrick summarized the reasoning for the proposed language in 3.5.2, which was to ensure the agency had authority to review a contractor's declination of case assignments pursuant to that provision. The previous motion's were withdrawn. Commissioner Harvey made a motion to adopt all of the proposed contract changes excepting 3.5.2, and to direct the agency to craft

*Agenda item requires a vote by the commission

the middle ground language as discussed and share that language with the PDSC prior to the next meeting. Commissioner Christ seconded that motion. The motion passed unanimously.

Chair Ludwig suggested the PDSC take it's fifteen-minute break now, which it did.

5. Legislative Update

Presented by Executive Director Singer

Director Singer discussed the upcoming legislative emergency board hearings, which would occur June 1-3, 2022. The agency had several presentations to the emergency boards, both in terms of requesting funds and providing reports. The most important item on the emergency board agenda was consideration of the agency's \$100 million SPA.

6. The Ramos Project: An Update

Presented by Professor Aliza Kaplan, Ms. Laney Ellisor and Ms. Michaela Gore

Mr. Deitrick summarized the *Ramos v. Louisiana* decision, its impact on Oregon, and the efforts taken by OPDS to respond to the decision. One of those efforts was for the agency to contract with the Lewis and Clark Criminal Justice Reform Clinic to support the statewide workload.

Professor Kaplan discussed her work on the nonunanimous jury issue prior to the Ramos decision. Once the opinion was issued, she worked with OPDS to develop a comprehensive response. It was hoped that cases with broad impact could be litigated in an expeditious and coordinated manner, but due to decisions by other parties, that did not occur.

Ms. Kaplan, Ms. Ellisor, and Ms. Gore described the Project's components, which consisted of education and outreach, developing comprehensive pleadings, memorandum, and briefings, and coordination of case management statewide. They also discussed the data they collected, and they noted that people of color were disproportionately impacted in Oregon by the non-unanimous jury rule that had since been overturned.

The largest issue remaining is whether the *Ramos* rule should be applied retroactively. The United States Supreme Court held otherwise, but the matter is currently before the Oregon Supreme Court on independent state grounds.

*Agenda item requires a vote by the commission

7. Budget Update

Presented by Mr. Ralph Amador

Ralph Amador provided an update on the agency's budget, including a summary of charts that show where the various agency divisions stand at this point in the biennium. He discussed divisions that were under funded, and he referenced technical adjustments the agency would be requesting through the emergency board to address this issue. He also discussed how the release of the \$100 million SPA would impact the agency's budget. Mr. Amador also discussed the ongoing CSS liability and the new programs OPDS must in the area of guardianships, which was added to the agency's workload in the '21 legislative session.

Director Singer discussed the impact of the \$12.8 million the agency received during the '22 legislative session to address the issue of unrepresented individuals in 4 counties, but he noted that contractors have been challenged in hiring attorneys right now. Mr. Amador noted that the budget projections would need to be updated after the PDSC approved contracts in June.

8. Overview of Budget Process and POPs

Presented by Deputy Director Brian DeForest and Mr. Ralph Amador

9. Preview of Agency POPs

Presented by Mr. Ralph Amador

Agenda items 8 and 9 were presented and discussed together. Deputy Director Brian DeForest summarized the process in which the agency builds out its biennial budget, including a discussion of the base budget, essential packages, and policy option packages. He stated that you begin the process with your current service level, which reflects what it costs to keep doing what you have been funded to do. From there, agencies can build policy option packages to expand programs or services.

Commissioner Solomon emphasized the importance of the POP discussion and the looming timelines. He stated that he wanted more POP development around adding attorney capacity to the trial system, reducing attorney caseloads, and pay equity. Commissioner Christ commented on the number of OPDS employee positions included in the agency's existing POP concepts. Commissioner Christ and Mr. DeForest discussed the varying ways the agency could attempt to add resources to the state's trial system. Commissioner Wax commented on the state's current lack of attorneys, as reflected in the ABA Caseload Report.

Mr. DeForest updated the PDSC on POP development timelines. Commissioner Wax

*Agenda item requires a vote by the commission

expressed the need for PDSC involvement in the development of the POPs, as they need to be finalized by September. Commissioner Hardin expressed a desire to ensure PCRCP continues to receive agency advocacy.

Director Singer stated that he heard the PDSC's message that the agency's POP development should focus on resources for trial level providers – to increase compensation, add capacity, reduce caseloads, and expand PCRCP. Mr. Amador noted that the deadline for the POPs to be submitted is August 31, 2022. He discussed the efforts he and others have begun to build out a workload model for trial attorneys, which would include the necessary support services trial attorneys require.

Commissioners Christ and Solomon emphasized the urgency of the issue and pressed the agency to make significant budget requests.

10. Future Business

Presented by Executive Director Singer

Director Singer informed the PDSC that the agency will continue to work on contracts for trial attorneys and will present those contracts at the June PDSC meeting for approval.

11. Executive Session

The PDSC entered into Executive Session pursuant to ORS 192.660(2)(h), to discuss contracts and unrepresented individuals. The Executive Session was held in person and virtually via Microsoft Teams meeting and was closed to the public.

Chair Ludwig entertained a motion to adjourn the meeting.

Commissioner Hardin moved to adjourn the meeting. Commissioner Christ seconded the motion. The motion passed unanimously.

*Agenda item requires a vote by the commission

Attachment 2



OFFICE OF PUBLIC DEFENSE SERVICES
Budget Report by Fund and Program

AY 2023

As of fiscal month ended May 31, 2022

Biennium percent elapsed: 45.83

	Leg. Approved Budget	Total Expenditures	Total Projections		Total Forecast		Budget Variance	
			Current	Proposed	Current	Proposed	Current	Proposed
General Fund								
Administrative Services Division	14,189,812	5,669,456	6,328,050	6,759,484	11,997,507	12,428,940	(2,192,305)	(1,760,872)
Special Progs., Contracts, & Distr.	380,436						(380,436)	(380,436)
Appellate Division	24,818,312	9,893,713	12,218,784	13,122,105	22,112,497	23,015,817	(2,705,815)	(1,802,495)
Compliance, Audit, & Perf. Division	4,904,659	1,327,504	3,264,356	3,470,920	4,591,860	4,798,424	(312,799)	(106,235)
Court Mandated Expenses	39,567,492	11,663,506	29,150,897	30,517,030	48,892,802	50,258,935	9,325,310	10,691,443
Executive Division	3,743,464	1,527,463	1,718,320	1,859,631	3,245,783	3,387,094	(497,681)	(356,370)
Juvenile Division	40,965,293	21,711,476	26,612,343	28,897,712	48,323,819	50,609,188	7,358,526	9,643,895
Non-Routine Expenses	50,511,590	25,714,055	23,081,626	25,613,733	40,717,282	43,249,389	(9,794,308)	(7,262,201)
Trial Criminal Division	258,915,757	103,884,127	126,549,654	160,680,716	230,433,781	264,564,843	(28,481,976)	5,649,086
Total General Fund	437,996,815	181,391,300	228,924,031	270,921,330	410,315,331	452,312,630	(27,681,484)	14,315,815
Other Funds								
Court Mandated Expenses	4,449,667	1,006,308	0	0	1,006,308	1,006,308	(3,443,359)	(3,443,359)
Juvenile Division	14,000,000	0	0	0	0	0	(14,000,000)	(14,000,000)
Total Other Funds	18,449,667	1,006,308	0	0	1,006,308	1,006,308	(17,443,359)	(17,443,359)
General Fund	437,996,815	181,391,300	228,924,031	270,921,330	410,315,331	452,312,630	(27,681,484)	14,315,815
Other Funds	18,449,667	1,006,308	0	0	1,006,308	1,006,308	(17,443,359)	(17,443,359)
Total Funds	456,446,482	184,551,009	228,924,031	270,921,330	413,475,040	455,472,339	(42,971,442)	(974,143)

Leg. Approved Budget: Oregon Laws 2021, Chapter 444; Oregon Laws 2021, Chapter 669; Oregon Laws 2022, Chapter 110; and June 3, 2022, Joint Emergency Board meeting

Total Expenditures: Recognized expenditures from July 1, 2021, to May 31, 2022

Total Projections: Management's estimate of expenditures from June 1, 2022, to June 30, 2023

Total Forecast = Total Expenditures + Total Projections

Budget Variance (Savings) = Total Forecast - Leg. Approved Budget

Attachment 3a

ADDENDUM TO CRIMINAL AND JUVENILE CONTRACTS

This addendum memorializes agreed upon changes to the general terms of the criminal and juvenile contracts, with the new language in italics.

Amend general term 3.5.1(b) to state the following:

OPDS may request Contractor to accept appointments to cases in adjacent jurisdictions. If the Contractor accepts the appointment in the adjacent jurisdiction, OPDS shall work collaboratively with Contractor to select an attorney who is best suited to receive the appointment. OPDS shall also work with OJD to mitigate against attorney scheduling conflicts. These appointments will count toward the Contractor's overall contracted caseload and will receive additional case weight. In addition, Contractor shall be reimbursed by OPDS for all routine travel expenses, pursuant to the PDSC's Payment Policy.

Amend general term 4.3 to the following:

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 *if applicable*, 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.

Amend general term 7.3.1 to the following:

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 are related to, result from, or arise out of Contractor's or Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement. *Notwithstanding the above, Contractor has no duty to indemnify, defend, or hold harmless PDSC, OPDS, or the State for their actions, decisions, work, activities, or failures to act related to this Agreement.*

Amend general term 7.8.2.5 to the following:

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, *or as soon as practicable if unable to provide at least 30 days' notice*, before refusing court appointments.

Amend general term 10.3.2 to the following:

No one funded to perform a Maximum Attorney Caseload may engage in any other paid *legal* work unless OPDS otherwise agrees in writing. Contractor's non-contract *legal* work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work).

Contractor Signature: _____

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

Date

Attachment 3b

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

July 1, 2022, to June 30, 2023

Table of Contents

GENERAL TERMS.....	4
1 DEFINITIONS AND RULES.....	4
1.1 Interpretation of Terms.....	4
1.2 Construction and Jurisdiction.....	4
1.3 Severability.....	4
1.4 Definitions.....	4
1.5 Financial Verification Required for Court Appointment.....	5
2 MUTUAL RIGHTS.....	5
2.1 Waiver.....	5
2.2 Termination.....	5
3 RIGHTS OF PDSC.....	5
3.1 Subcontracts and Assignment of Contract.....	5
3.2 PDSC Rights for Failure to Obtain Workers' Compensation.....	6
3.3 Termination by PDSC.....	6
3.4 Funding Modification, Suspension, or Termination.....	6
3.5 Contractor Workload.....	7
3.6 Review, Verification, and Inspection of Records.....	8
4 RIGHTS OF CONTRACTOR.....	8
4.1 Termination by Contractor.....	8
4.2 Work Outside Contract.....	8
4.3 Client Records.....	8
4.4 Personnel Records.....	9
5 MUTUAL OBLIGATIONS.....	9
5.1 Professionalism.....	9
5.2 Successors in Interest.....	9
5.3 Compliance with Applicable Law.....	9
5.4 Notice of Contract Modification, Suspension, or Termination.....	9
5.5 Modification or Termination Due to Legislative Action or Court Interpretation.....	10
5.6 Periodic Review.....	10
5.7 Other Contractors and Vendors.....	10
6 OBLIGATIONS OF PDSC.....	10
6.1 State Funding Shortfall.....	10
6.2 Contract Payment.....	10
7 OBLIGATIONS OF CONTRACTOR.....	10
7.1 Performance Obligations of Appointed Counsel.....	10
7.2 Quality Assurance Obligations of Contract Administrator.....	14
7.3 Special Obligations to State of Oregon.....	15
7.4 Capacity and Equipment.....	17
7.5 Record Keeping.....	18
7.6 Reports to OPDS.....	19
7.7 Client Clothing.....	19

7.8	Special Notices.....	20
7.9	No Dual Payments for Contract Work	21
7.10	Contract Administrator Duties	21
8	MUTUAL RISKS.....	22
8.1	Impossibility of Performance	22
8.2	Tort Liability.....	22
9	WIND-DOWN PROCEDURES	22
10	CASELOAD STANDARDS AND CASE WEIGHTING.....	22
10.1	Definitions.....	22
10.2	Caseload Standards.....	23
10.3	General Considerations	24
10.4	Case Weighting.....	25
10.5	Partial Representation.....	25
10.6	Out of County Representation.....	25
10.7	Co-Counsel.....	26
10.8	Extraordinary Case Circumstances	26
10.9	Case Count.....	26
	SPECIFIC TERMS	27
1	PARTIES TO CONTRACT.....	27
2	TERM OF CONTRACT	27
3	NOTICE	27
4	TOTAL VALUE AND PAYMENT SCHEDULE.....	27
5	MAXIMUM ATTORNEY CASELOADS, SPECIALTY COURT, ADMINSTRATIVE, AND INVESTIGATOR BREAKDOWN.....	27
6	ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT.....	28
7	MERGER CLAUSE.....	28
	PAYMENT SCHEDULE	29

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 arising under this contract to a court of competent jurisdiction 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 Public Defense Services Commission and the Office of Public Defense Services

- (a) Public Defense Services Commission (PDSC) is the commission established under ORS 151.213. 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 Independent Contractor (“Contractor”)

“Contractor” is an independent person or entity that signs this Agreement and agrees to provide public defense services for eligible individuals. The term contractor 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.

Contractor’s Initials _____

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.

1.4.5 Maximum Attorney Caseload

Maximum Attorney Caseload is the limit on the number of cases to which an attorney can provide legal services in a one-year period, based on the Caseload Standards and Case Weighting Guidelines in Section 10.

1.4.6 Caseload Standards and Case Weighting Guidelines

These standards represent the number of cases to which an attorney can provide legal services in a one-year period. The standards provide different weighting to different case types, with increasing weight given to cases that involve more complexity and time.

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 Termination

The parties may mutually 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, the Parties may agree in writing to amend this contract. This provision does not affect any other Termination rights provided herein.

3 RIGHTS OF PDSC

3.1 Subcontracts and Assignment of Contract

Contractor shall not subcontract for or delegate any of the services or duties 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. Breach of this provision constitutes a material breach of this contract.

3.2 PDSC Rights for Failure to Obtain Workers' Compensation

If Contractor is obligated to secure and maintain workers' compensation coverage, and fails to do so 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

3.3.1 Reasons for Contract Termination

Subject to Section 5.4's notice and opportunity to cure provisions below, OPDS may terminate this contract for any of the following reasons. This provision does not affect any other Termination rights provided herein.

- (a) Contractor's breach of any material duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services, provided however, that good faith legally compliant actions of Contractor 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 or failure to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing best practices standards of performance, Oregon Rules of Professional Conduct, the Caseload Standards established in section 10; or
- (e) Demonstrated and substantial impairment of the 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, 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 and appropriation of funds. OPDS may modify, suspend, or terminate this contract if OPDS reasonably determines that funds will not be

Contractor's Initials _____

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

Except when Contractor has prior written authorization from OPDS, all attorneys under contract shall accept court appointments to all case types for which they are (1) competent pursuant to the Oregon Rules of Professional Conduct and (2) qualified pursuant to the PDSC's Qualification Standards, if a contractor elects a contract type based upon that attorney's qualifications. This rule does not apply to attorneys who provides ongoing and consistent monitoring and oversight to at least three other attorneys within the same office pursuant to a plan approved by OPDS. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

- (a) Contractor shall be in control of the means and manner of performing its work. Contractor will prioritize its legal work at its discretion, but in doing so shall reasonably take into account Contractor's duties under this Agreement, Caseload Standards, public defender professionalism standards, and the Oregon Rules of Professional Conduct, as well as Contractor's and Contractor's attorneys qualifications and availability.
- (b) Upon notice from OPDS, Contractor shall accept appointments to cases in adjacent jurisdictions, if the adjacent jurisdiction has a need for an attorney, and an attorney for Contractor has capacity, pursuant to the OPDS Case Counting Guidelines, to accept the appointment in the adjacent jurisdiction. OPDS shall work collaboratively with Contractor to select an attorney who is best suited to receive the appointment to a case in an adjacent jurisdiction. OPDS shall work with OJD to mitigate against attorney scheduling conflicts. These appointments will count toward the Contractor's overall contracted caseload and will receive additional case weight. In addition, Contractor shall be reimbursed by OPDS for routine mileage and parking expenses, pursuant to the PDSC's Payment Policy.
- (c) No Contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (d) No one funded to perform a Maximum Attorney Caseload may engage in any other paid work, unless OPDS otherwise agrees in writing.
- (e) Nothing in this section precludes a contractor from engaging in pro bono legal services.

3.5.2 Caseload Increase or Decrease

If Contractor's caseload increases or decreases by 15% or more for six consecutive months, Contractor shall notify OPDS and OPDS shall schedule a meeting to discuss the circumstances surrounding the increase or decrease. OPDS may not decrease a Contractor's Maximum Attorney Caseload, or the financial value attached, without considering whether Contractor's declination of court appointments was required by Rule 1.7 of the Oregon Rules of Professional Conduct. OPDS may adjust the number of Maximum Attorney Caseload in the contract to meet the changing needs of the jurisdiction if:

- (a) The actual or reasonably expected number of available cases increases or decreases substantially, such that the proposed Maximum Attorney Caseload 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 Maximum Attorney Caseload capacity is necessary.

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. Contractor shall provide Caseload records and documents at the request of OPDS under the following conditions:

- (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 requirements in section 4.3, Contractor shall provide information that OPDS deems necessary.

4 RIGHTS OF CONTRACTOR

4.1 Termination by Contractor

Subject to Section 5.4's notice and opportunity to cure provisions below, Contractor may terminate this contract should PDSC breach any material duty or obligation under this contract.

4.2 Work Outside Contract

Contractor controls its own means and manner of performing work under this Agreement and outside of this Agreement. Contractor, at its sole discretion, may engage in additional paid work outside of this contract, subject to Section 10 of this Agreement. 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 is responsible for ensuring and maintaining documentation sufficient to show that its employees and agents are performing services in compliance with this contract. Contractor grants no right to OPDS or designee of OPDS to review private or confidential information (such as personal health, insurance, or leave 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 non-confidential or non-private information, including but not limited to, compensation of individual staff members, performance reviews or concerns, and attorney caseload records. 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 private or confidential 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. Breach of this provision constitutes a material breach of this contract.

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) Be provided no less than 30 days before the proposed date of the modification, suspension, or termination;
- (d) Provide the recipient with at least 30 days to cure the alleged violation or breach.

5.5 Modification or Termination Due to Change in Law

OPDS and Contractor may renegotiate this contract if there is a significant change in workload, caseload, or increased cost of doing business due to changes in federal or state laws. In addition, OPDS may modify, suspend, or terminate this contract as needed to comply with applicable state or federal rules or law or a court of competent jurisdiction's 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

Notwithstanding anything to the contrary in this contract, if the Emergency Board or legislature does not appropriate sufficient funds, PDSC reserves the right to terminate this contract, subject to the below process. 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 legal requirements 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 unilaterally 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

Contractor shall fulfill all applicable state and national standards of performance, including those of

Contractor's Initials _____

the Oregon State Bar, American Bar Association, National Juvenile Defender Center, and National Legal Aid and Defender Association. Contractor shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel and shall meet state and federal statutory requirements for counsel in the applicable proceedings. Counsel shall satisfy the requirements of this contract, including but not limited to the Caseload Standards and the Oregon Rules of Professional Conduct. Breach of this Section 7.1 constitutes a material breach.

7.1.2 Minimum Contractor Duties During all Stages of a Proceeding

Contractor shall comply with 7.1.1 and shall use its independent professional judgment in performing the below contractual duties regarding its 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 includes, at minimum, the below listed items, but 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, OPDS 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

Contractor's Initials _____

- 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 Contractor 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
- (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

Consistent with national best practices supporting the continuous representation of a client, and subject to Oregon Rule of Professional Conduct 1.7, Contractor shall ensure that 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 Section 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

If seeking to withdraw from representation, Contractor shall comply with the Oregon Rules of Professional Conduct, including but not limited to Rule 1.16, which requires the court's approval and prompt notification to 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 Limitations on Withdrawal

When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting OPDS

and obtaining OPDS's written permission.

- (a) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in the same jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.
- (b) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and OPDS to ensure the due administration of justice and protect the rights of their existing clients.

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 to provide legal services to a Maximum Attorney Caseload may take on any other paid work. Contractor's non-contract work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.
- (d) Provides continuous representation from the commencement of proceedings until the final disposition of the case.

7.2.3 Continuing Legal Education Requirements

Contractor attests to the PDSC that all attorneys providing representation under this contract have or will:

- (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.

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 are related to, result from, or arise out of Contractor's or Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Contractor shall perform all services under this contract as an independent contractor. OPDS may determine the scope and quality of the services to be provided, may modify the delivery schedule, and may evaluate the quality of the Services. OPDS will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services; for paying any and all taxes on compensation received hereunder; for supplying the tools, office and materials to perform the services. Contractor is not eligible for any social security, unemployment insurance, workers compensation benefits or any other benefit not expressly provided herein. 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. No joint employer relationship is established by this Agreement.

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. The Oregon Tort Claim limits do not apply to any actions against Contractor. Contractor accepts responsibility for all decisions, actions or failures to act 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 name the State of Oregon, PDSC, OPDS, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities or failures to act related to 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 PDSC written approval.

7.3.6 Malpractice Insurance

Contractor's Initials _____

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.

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 maintain its ability to accept cases pursuant to the number of Maximum Attorney Caseloads as originally contracted for with the PDSC. If contractor is unable to do so for a period of 60 days, OPDS may temporarily remove funds, unless the inability to accept cases is pursuant to the Oregon Rules of Professional Conduct 1.7. The 60 days may be extended with written agreement by OPDS. Contractor shall immediately notify OPDS of any vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor must retain a minimum of 0.5 support staff for every Maximum Attorney Caseload funded by this contract. 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. 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 or upon OPDS' request, 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

Contractor 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 in more than one judicial district, then contractor shall maintain an office in at least 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 maintain, store, and preserve all appointment, service, and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to maintain, store, and 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 maintained, stored, and preserved a minimum of twenty (20) years from the date the case is closed.

Contractor's Initials _____

7.6 Reports to OPDS

7.6.1 Caseload Reports

By the 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 monthly caseload report for the preceding month. 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 related to Contractor's performance under this contract. Contractor shall provide information and data to OPDS in a reporting form that OPDS develops 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. OPDS will keep all data and information regarding non-contract work confidential.

7.6.4 Penalty for Late Reports

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports regarding Contractor's performance under this contract. 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 within 10 days of the due date: 5% of contract funds
- (b) 30 days of the original due date: 10% of contract funds
- (c) 60 days of the original due date: 15% of contract funds
- (d) 90 days of the original due date: 25% of contract funds

7.6.5 Enforceability

The reporting and records retention requirements set forth in this section are enforceable after the termination or expiration of this contract.

7.7 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 duties under 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 within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided herein.

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 the scope of this contract;
 - (b) Accept funds from anyone other than PDSC for work performed under the scope of this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
 - (c) Solicit or accept payment from a client for legal services on a matter within the scope of services of this contract or on a matter which Contractor has been appointed by the court.
- Breach of this section is a material breach of this agreement.

7.10 Contract Administrator Duties

Contractor shall name a Contract Administrator, who is responsible for contract administration duties in this contract. Typical Contract administration duties include, without limitation, the following: 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 under this contract if such delay or default was caused by theft, fire, flood, or other casualty or 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 solely responsible for the decisions, actions or failures to act of its own officers, employees, and agents committed in the performance of this contract or related to this contract.

9 WIND-DOWN PROCEDURES

In the event of a termination, suspension, or expiration of this Agreement, Contractor shall comply with the Oregon Rules of Professional Conduct and continue to provide legal services on all existing contract appointments on cases assigned before the effective date of the suspension, termination, or expiration, unless OPDS provides written notice of its desire for the Contractor to cease working on such contract appointments. If OPDS does not provide such cessation notice, OPDS and Contractor shall negotiate wind-down terms that allow Contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay Contractor at the existing PDSC authorized hourly rate to wind-down their contract caseload.

10 CASELOAD STANDARDS AND CASE WEIGHTING

10.1 Definitions

10.1.1 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.

10.1.2 Case Weight: The numerical multiplier assigned by this policy to apply to specific types of cases to generally recognize the greater or lesser attorney workload required for those cases compared to an average case under a numerical caseload standard.

10.1.3 Case Count: The term used when a case can be reported more than once.

10.1.4 Caseload: The term given to cases assigned to an individual attorney on an annual basis.

10.1.5 Non-Charge Representation: Matters where public defense attorneys represent clients who are eligible for public defense representation for matters that do not involve the filing of new criminal charges (*i.e.*, material witness or extradition).

10.1.6 Partial Representation: Cases where only a partial representation occurs because the court allows the attorney to withdraw due to an ethical conflict, is relieved by retained counsel, the case is transferred or reassigned by the court, contract administrator, or OPDS.

10.1.7 Public Defense Attorney: Counsel appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.

10.2 Caseload Standards

10.2.1 Contractor shall apply its own professional judgment and discretion to control the means and manner of providing services under this Agreement. Contractor agrees that all services provided under this contract shall meet all performance standards and duties under this Agreement. In doing so, Contractor acknowledges that caseloads standards are a reasonable public defense “best practice.” The maximum number of annual case assignment for the below categories are:

Criminal

- Murder: 6
- Jessica Law: 6
- Ballot Measure 11: 45
- Major (A/B) felonies: 138
- Minor (C) felonies: 165
- Misdemeanors: 300
- Probation violations: 825
- Civil commitments: 230

Juvenile

- Murder: 6
- Delinquencies: 132
- Probation violations: 825
- Dependency: 69

Contractor's Initials _____

Statewide

- PCR/Habeas: 45
- PCR appeals: 50
- Juvenile appeals: 32
- Civil commitment appeals: 60

10.3 General considerations

10.3.1 Contractor will comply with the Caseload Standards in order to establish and maintain professional and responsible legal services under this Agreement, whether such caseload comes from OPDS or outside of OPDS. Contractors who have accepted the Maximum Attorney Caseloads of OPDS work agree not to take on any additional legal work, whether such work comes from OPDS or outside of OPDS. Contractor may unilaterally amend this Agreement to decrease their caseload below the Maximum Attorney Caseloads, subject to any client duties, the Oregon State Bar Rules of Professional Conduct duties, and the notice requirements in Section 5.4. Contractor shall not begin any legal work which exceeds the Maximum Attorney Caseloads prior to the effective date of the amendment. The Parties hereby agree that such amendment will decrease any compensation due to Contractor under this Agreement in a percentage commensurate with the percentage reduction in OPDS assigned work (e.g. a 25 percent reduction in OPDS assigned work would result in a 25 percent reduction in compensation due to Contractor).

10.3.2 No one funded to perform a Maximum Attorney Caseload may engage in any other paid work, unless OPDS otherwise agrees in writing. Contractor's non-contract work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work).

10.3.3 Caseload limits assume a reasonable even distribution of cases throughout the year.

10.3.4 When public defense attorneys are not contracted for a Maximum Attorney Caseload, their maximum caseload shall be based on the percentage of a Maximum Attorney Caseload for which contractor receives funding.

10.3.5 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.

10.4 Case Weighting

The Maximum Attorney Caseload for a public defense attorney shall not exceed 300 weighted cases per year, with each case type below worth the following value in terms of weighted cases.

Contractor's Initials _____

Criminal

- Murder: 50
- Jessica Law: 50
- Ballot Measure 11: 6.7
- Major (A/B) felonies: 2.2
- Minor (C) felonies: 1.8
- Misdemeanors: 1
- Probation violations: .36
- Civil commitments: 1.3

Juvenile

- Murder: 50
- Delinquencies: 2.3
- Probation violations: .36
- Dependency: 4.3

Statewide

- PCR/Habeas: 6.7
- PCR appeals: 6
- Juvenile appeals: 9.4
- Civil commitment appeals: 5

10.5 Partial Representation

When an attorney’s appointment ends for any of the reasons stated in section 10.1.6, the full case weight of the case will be transferred to the new attorney. The attorney’s case weight will be determined based on the length of time they were on the case with partial weight being applied to the original case type weight.

Length of Representation	Weight
0-14 days	0.25
15-30 days	0.5
31-89	0.75
90+ days	1.0

10.6 Out of County Representation

The case weight determined by section 10.4 will be doubled whenever a contractor takes a criminal or non-PCR juvenile delinquency or dependency case in a county outside their contracted jurisdiction, with the following exceptions. When an attorney’s appointment ends for any of the reasons stated in section 10.1.6 of these guidelines, the case weight will be determined based on the length of time they were on the case with partial weight being applied to the original case type’s weight.

Length of Representation	Weight
0-14 days	0.5
15-30 days	0.75
31-89 days	1.0
90+ days	2.0

10.6.1 Murder cases, Jessica’s Law cases, and cases assigned pursuant to a statewide contract are not eligible for double weight, except as provided in section 10.8 of these guidelines.

10.6.2 Multiple cases: The case with the highest case type eligible for doubling under 10.4 will receive double weight. The remaining cases will not receive additional weight except as provided in section 10.7 of these guidelines.

10.6.3 Sibling Groups: If an attorney accepts appointments for a sibling group in a county outside their jurisdiction, they will receive one (1.0) additional dependency weighting for the sibling group.

10.7 Co-Counsel

Attorneys will receive a full case weight for their work as co-counsel on Murder 1 and juvenile Murder cases. OPDS may grant up to full case weight for an attorney’s work as co-counsel in Murder 2 and Jessica’s Law cases where the attorney can provide evidence to OPDS why co-counsel is necessary and reasonable.

10.8 Extraordinary Case Circumstances

Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to OPDS’s discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by OPDS for this purpose.

10.9 Case Count

10.9.1 Delay

If a case to which an attorney is appointed has been interrupted for the following reasons for 365 days or more the case can be reported again:

- a) Aid and Assist Delay;
- b) Bench warrant; or
- c) Dismissal.

10.9.2 Re-Trial or Resentencing

If a case to which an attorney is appointed comes back for re-trial or resentencing for the following reasons the case can be reported again:

- a) After Direct Appeal or Post-Conviction Relief; or
- b) After Mistrial or Hung Jury.

Contractor’s Initials _____

Attachment 3c

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

July 1, 2022, to June 30, 2023

Table of Contents

GENERAL TERMS	4
1 DEFINITIONS AND RULES	4
1.1 Interpretation of Terms.....	4
1.2 Construction and Jurisdiction	4
1.3 Severability.....	4
1.4 Definitions.....	4
1.5 Financial Verification Required for Court Appointment	5
2 MUTUAL RIGHTS.....	5
2.1 Waiver.....	5
2.2 Termination.....	5
3 RIGHTS OF PDSC.....	5
3.1 Subcontracts and Assignment of Contract.....	5
3.2 PDSC Rights for Failure to Obtain Workers’ Compensation	6
3.3 Termination by PDSC	6
3.4 Funding Modification, Suspension, or Termination.....	6
3.5 Contractor Workload	6
3.6 Review, Verification, and Inspection of Records.....	7
4 RIGHTS OF CONTRACTOR	8
4.1 Termination by Contractor	8
4.2 Work Outside Contract	8
4.3 Client Records.....	8
4.4 Personnel Records.....	9
5 MUTUAL OBLIGATIONS	9
5.1 Professionalism.....	9
5.2 Successors in Interest	9
5.3 Compliance with Applicable Law.....	9
5.4 Notice of Contract Modification, Suspension, or Termination.....	9
5.5 Modification or Termination Due to Legislative Action or Court Interpretation	9
5.6 Periodic Review	9
5.7 Other Contractors and Vendors.....	10
6 OBLIGATIONS OF PDSC	10
6.1 State Funding Shortfall.....	10
6.2 Contract Payment.....	10
7 OBLIGATIONS OF CONTRACTOR.....	10
7.1 Performance Obligations of Appointed Counsel	10
7.2 Quality Assurance Obligations of Contract Administrator.....	14
7.3 Special Obligations to State of Oregon	14
7.4 Capacity and Equipment	17
7.5 Record Keeping.....	18
7.6 Reports to OPDS.....	19
7.7 Client Clothing	19

7.8	Special Notices	19
7.9	No Dual Payments for Contract Work	211
7.10	Contract Administrator Duties	21
8	MUTUAL RISKS.....	22
8.1	Impossibility of Performance	22
8.2	Tort Liability.....	222
9	WIND-DOWN PROCEDURES.....	222
10	CASELOAD STANDARDS AND CASE WEIGHTING.....	22
10.1	Definitions.....	23
10.2	Caseload Standards.....	24
10.3	General Considerations	24
10.4	Case Weighting.....	24
10.5	Juvenile Specific Case Weighting	25
10.6	Partial Representation.....	25
10.7	Out of County Representation.....	26
10.8	Co-Counsel.....	26
10.9	Extraordinary Case Circumstances.....	26
10.10	Case Count.....	26
	SPECIFIC TERMS.....	28
1	PARTIES TO CONTRACT.....	28
2	TERM OF CONTRACT	28
3	NOTICE.....	278
4	TOTAL VALUE AND PAYMENT SCHEDULE.....	278
5	MAXIMUM ATTORNEY CASELOAD, SPECIALTY COURT, ADMINSTRATIVE, AND INVESTIGATOR BREAKDOWN.....	278
6	ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT.....	289
7	MERGER CLAUSE.....	289
	PAYMENT SCHEDULE	3029

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 arising under this contract to a court of competent jurisdiction 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 Public Defense Services Commission and Office of Public Defense Services

- (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 Independent Contractor (“Contractor”)

“Contractor” is an independent person or entity that signs this Agreement and agrees to provide public defense services for eligible individuals. The term contractor 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 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).

1.4.5 Maximum Attorney Caseload

Maximum Attorney Caseload is the limit on the number of cases to which an attorney can provide legal services in a one-year period, based on the Caseload Standards and Case Weighting Guidelines in Section 10.

1.4.6 Caseload Standards and Case Weighting Guidelines

These standards represent the number of cases to which an attorney can provide legal services in a one-year period. The standards provide different weighting to different case types, with increasing weight given to cases that involve more complexity and time.

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 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 or duties 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. Breach of this provision constitutes a material breach of this contract.

3.2 PDSC Rights for Failure to Obtain Workers' Compensation

If Contractor is obligated to secure and maintain workers' compensation coverage, and fails to do so 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

3.3.1 Reasons for Contract Termination

Subject to Section 5.4's notice and opportunity to cure provisions below, OPDS may terminate this contract for any of the following reasons. This provision does not affect any other Termination rights provided herein.

- (a) Contractor's breach of any material duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services, provided however, that good faith legally compliant actions of Contractor 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 or failure to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing best practices standards of performance, Oregon Rules of Professional Conduct, the Caseload Standards established in section 10; or
- (e) Demonstrated and substantial impairment of the 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, 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 and appropriation of funds. OPDS may 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

Except when Contractor has prior written authorization from OPDS, all attorneys under contract shall accept court appointments to all case types for which they are (1) competent pursuant to the Oregon Rules of Professional Conduct and (2) qualified pursuant to the PDSC's Qualification Standards, if a

Contractor's Initials _____

contractor elects a contract type based upon that attorney's qualifications. This rule does not apply to attorneys who provides ongoing and consistent monitoring and oversight to at least three other attorneys within the same office pursuant to a plan approved by OPDS. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

- (a) Contractor shall be in control of the means and manner of performing its work. Contractor will prioritize its legal work at its discretion, but in doing so shall reasonably take into account Contractor's duties under this Agreement, Caseload Standards, public defender professionalism standards, and the Oregon Rules of Professional Conduct, as well as Contractor's and Contractor's attorneys qualifications and availability.
- (b) Upon notice from OPDS, Contractor shall accept appointments to cases in adjacent jurisdictions, if the adjacent jurisdiction has a need for an attorney, and an attorney for Contractor has capacity, pursuant to the OPDS Case Counting Guidelines, to accept the appointment in the adjacent jurisdiction. OPDS shall work collaboratively with Contractor to select an attorney who is best suited to receive the appointment to a case in an adjacent jurisdiction. OPDS shall work with OJD to mitigate against attorney scheduling conflicts. These appointments will count toward the Contractor's overall contracted caseload and will receive additional case weight. In addition, Contractor shall be reimbursed by OPDS for routine mileage and parking expenses, pursuant to the PDSC's Payment Policy.
- (c) No Contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (d) No one funded to perform a Maximum Attorney Caseload may engage in any other paid work, unless OPDS otherwise agrees in writing.
- (e) Nothing in this section precludes a contractor from engaging in pro bono legal services.

3.5.2 Capacity Increase or Decrease

If Contractor's caseload increases or decreases by 15% or more for six consecutive months, Contractor shall notify OPDS and OPDS shall schedule a meeting to discuss the circumstances surrounding the increase or decrease. OPDS may not decrease a Contractor's Maximum Attorney Caseload, or the financial value attached, without considering whether Contractor's declination of court appointments was required by Rule 1.7 of the Oregon Rules of Professional Conduct. OPDS may adjust the number of Maximum Attorney Caseload in the contract to meet the changing needs of the jurisdiction if:

- (a) The actual or reasonably expected number of available cases increases or decreases substantially, such that the proposed Maximum Attorney Caseload 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 Maximum Attorney Caseload capacity is necessary.

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. Contractor shall provide Caseload records and documents at the request of OPDS under the following conditions:

- (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 requirements in section 4.3, Contractor shall provide information that OPDS deems necessary.

4 RIGHTS OF CONTRACTOR

4.1 Termination by Contractor

Subject to Section 5.4's notice and opportunity to cure provisions below, Contractor may terminate this contract should PDSC breach any material duty or obligation under this contract.

4.2 Work Outside Contract

Contractor controls its own means and manner of performing work under this Agreement and outside of this Agreement. Contractor, at its sole discretion, may engage in additional paid work outside of this contract, subject to Section 10 of this Agreement. 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 is responsible for ensuring and maintaining documentation sufficient to show that its employees and agents are performing services in compliance with this contract. Contractor grants no right to OPDS or designee of OPDS to review private or confidential information (such as personal health, insurance, or leave 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 non-confidential or non-private information, including but not limited to, compensation of individual staff members, performance reviews or concerns, and attorney caseload records. 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 private or confidential 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. Breach of this provision constitutes a material breach of this contract.

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) Be provided no less than 30 days before the proposed date of the modification, suspension, or termination;
- (d) Provide the recipient with at least 30 days to cure the alleged violation or breach.

5.5 Modification or Termination Due to Changes in Law

OPDS and Contractor may renegotiate this contract if there is a significant change in workload, caseload, or increased cost of doing business due to changes in federal or state laws. In addition, OPDS may modify, suspend, or terminate this contract as needed to comply with applicable state or federal rules or law or a court of competent jurisdiction's 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

Notwithstanding anything to the contrary in this contract, if the Emergency Board or legislature does not appropriate sufficient funds, PDSC reserves the right to terminate this contract, subject to the below process. 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 legal requirements 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 unilaterally 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

Contractor shall fulfill all 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. Contractor shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel and shall meet state and federal statutory requirements for counsel in the applicable proceedings. Counsel shall satisfy the requirements of this contract, including but not limited to the Caseload Standards and the Oregon Rules of Professional Conduct. Breach of this Section 7.1 constitutes a material breach.

7.1.2 Representation at all Stages of a Proceeding

Contractor shall comply with 7.1.1 and shall use its independent professional judgment in performing the below contractual duties regarding its 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 includes, at minimum, the below listed items, but 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

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
- (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 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

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

Consistent with national best practices supporting the continuous representation of a client, and subject to Oregon Rule of Professional Conduct 1.7, Contractor shall ensure that 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 Section 7.1.2.5; or
- (c) A case is remanded to circuit court following an appeal unless specific circumstances

Contractor's Initials _____

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

If seeking to withdraw from representation, Contractor shall comply with the Oregon Rules of Professional Conduct, including but not limited to Rule 1.16, which requires the court's approval and prompt notification to 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 Limitations on Withdrawal

When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission.

- (a) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in the same jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.
- (b) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and OPDS to ensure the due administration of justice and protect the rights of their existing clients.

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 to provide legal services to a Maximum Attorney Caseload may take on any other paid work. Contractor's non-contract work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload 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 attests to the PDSC that all attorneys providing representation under this contract have or will:

- (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's Initials _____

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 are related to, result from, or arise out of Contractor's or Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Contractor shall perform all services under this contract as an independent contractor. OPDS may determine the scope and quality of the services to be provided, may modify the delivery schedule, and may evaluate the quality of the Services. OPDS will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services; for paying any and all taxes on compensation received hereunder; for supplying the tools, office and materials to perform the services. Contractor is not eligible for any social security, unemployment insurance, workers compensation benefits or any other benefit not expressly provided herein. 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. No joint employer relationship is established by this Agreement.

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. The Oregon Tort Claim limits do not apply to any actions against Contractor. Contractor accepts responsibility for all decisions, actions or failures to act of its members, officers, employees, parties, agents, and subcontractors.

Contractor's Initials _____

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 name the State of Oregon, PDSC, OPDS, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities or failures to act related to 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 PDSC written approval.

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.

Contractor's Initials _____

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 maintain its ability to accept cases pursuant to the number of Maximum Attorney Caseloads as originally contracted for with the PDSC. If contractor is unable to do so for a period of 60 days, OPDS may temporarily remove funds, unless the inability to accept cases is pursuant to the Oregon Rules of Professional Conduct 1.7. The 60 days may be extended with written agreement by OPDS. Contractor shall immediately notify OPDS of any vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor must retain a minimum of 0.5 support staff for every Maximum Attorney Caseload funded by this contract. 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. 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 or upon OPDS' request, 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

Contractor's Initials _____

(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

Contractor 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 in more than one judicial district, then contractor shall maintain an office in at least 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 maintain, store, and preserve all appointment, service, and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to maintain, store, and 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 maintained, stored, and preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to OPDS

7.6.1 Caseload Reports

By the 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 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 must be current on case reporting at the time of their review meetings with their analyst.

Contractor's Initials _____

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 related to Contractor's performance under this contract. Contractor shall provide information and data to OPDS in a reporting form that OPDS develops 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. OPDS will keep all data and information regarding non-contract work confidential.

7.6.4 Penalty for Late Reports

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports regarding Contractor's performance under this contract. 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 within 10 days of the due date: 5% of contract funds
- (b) 30 days of the original due date: 10% of contract funds
- (c) 60 days of the original due date: 15% of contract funds
- (d) 90 days of the original due date: 25% of contract funds

7.6.5 Enforceability

The reporting and records retention requirements set forth in this section are enforceable after the termination or expiration of this contract.

7.7 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 duties under this contract;
- (b) Contractor's ability to accept appointments;
- (c) Contractor's ability to meet financial obligations; and

Contractor's Initials _____

- (d) Matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

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

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, 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 the scope of this contract;
- (b) Accept funds from anyone other than PDSC for work performed under the scope of this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) Solicit or accept payment from a client for legal services on a matter within the scope of services of this contract or on a matter which Contractor has been appointed by the court.

Breach of this section is a material breach of this agreement.

7.10 Contract Administrator Duties

Contractor shall name a Contract Administrator, who is responsible for contract administration duties in this contract. Typical Contract administration duties include, without limitation, the following: 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 under this contract if such delay or default was caused by theft, fire, flood, or other casualty or 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 solely responsible for the decisions, actions or failures to act of its own officers, employees, and agents committed in the performance of this contract or related to this contract.

9 WIND-DOWN PROCEDURES

In the event of a termination, suspension, or expiration of this Agreement, Contractor shall comply with the Oregon Rules of Professional Conduct and continue to provide legal services on all existing contract appointments on cases assigned before the effective date of the suspension, termination, or expiration, unless OPDS provides written notice of its desire for the Contractor to cease working on such contract appointments. If OPDS does not provide such cessation notice, OPDS and Contractor shall negotiate wind-down terms that allow Contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay Contractor at the existing PDSC authorized hourly rate to wind-down their contract caseload.

10 CASELOAD STANDARDS AND CASE WEIGHTING

10.1 Definitions

10.1.1 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.

10.1.2 Case Weight: The numerical multiplier assigned by this policy to apply to specific types of cases to generally recognize the greater or lesser attorney workload required for those cases compared to an average case under a numerical caseload standard.

10.1.3 Case Count: The term used when a case can be reported more than once.

10.1.4 Caseload: The term given to cases assigned to an individual attorney on an annual basis.

10.1.5 Non-Charge Representation: Matters where public defense attorneys represent clients who are

Contractor's Initials _____

eligible for public defense representation for matters that do not involve the filing of new criminal charges (i.e., material witness or extradition).

10.1.6 Partial Representation: Cases where only a partial representation occurs because the court allows the attorney to withdraw due to an ethical conflict, is relieved by retained counsel, the case is transferred or reassigned by the court, contract administrator, or OPDS.

10.1.7 Public Defense Attorney: Counsel appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.

10.2 Caseload Standards

Contractor shall apply its own professional judgment and discretion to control the means and manner of providing services under this Agreement. Contractor agrees that all services provided under this contract shall meet all performance standards and duties under this Agreement. In doing so, Contractor acknowledges that caseloads standards are a reasonable public defense “best practice.” The maximum number of annual case assignment for the below categories are:

Criminal

- Murder: 6
- Jessica Law: 6
- Ballot Measure 11: 45
- Major (A/B) felonies: 138
- Minor (C) felonies: 165
- Misdemeanors: 300
- Probation violations: 825
- Civil commitments: 230

Juvenile

- Murder: 6
- Delinquencies: 132
- Probation violations: 825
- Dependency: 69

Statewide

- PCR/Habeas: 45
- PCR appeals: 50
- Juvenile appeals: 32
- Civil commitment appeals: 60

10.3 General considerations

10.3.1 Contractor will comply with the Caseload Standards in order to establish and maintain professional and responsible legal services under this Agreement, whether such caseload comes from

Contractor's Initials _____

OPDS or outside of OPDS. Contractors who have accepted the Maximum Attorney Caseloads of OPDS work agree not to take on any additional legal work, whether such work comes from OPDS or outside of OPDS. Contractor may unilaterally amend this Agreement to decrease their caseload below the Maximum Attorney Caseloads, subject to any client duties, the Oregon State Bar Rules of Professional Conduct duties, and the notice requirements in Section 5.4. Contractor shall not begin any legal work which exceeds the Maximum Attorney Caseloads prior to the effective date of the amendment. The Parties hereby agree that such amendment will decrease any compensation due to Contractor under this Agreement in a percentage commensurate with the percentage reduction in OPDS assigned work (e.g. a 25 percent reduction in OPDS assigned work would result in a 25 percent reduction in compensation due to Contractor).

10.3.2 No one funded to perform a Maximum Attorney Caseload may engage in any other paid work, unless OPDS otherwise agrees in writing. Contractor's non-contract work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work).

10.3.3 Caseload limits assume a reasonable even distribution of cases throughout the year.

10.3.4 When public defense attorneys are not contracted for a Maximum Attorney Caseload, their maximum caseload shall be based on the percentage of a Maximum Attorney Caseload for which contractor receives funding.

10.3.5 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.

10.4 Case Weighting

The Maximum Attorney Caseload for a public defense attorney shall not exceed 300 weighted cases per year, with each case type below worth the following value in terms of weighted cases.

Criminal

- Murder: 50
- Jessica Law: 50
- Ballot Measure 11: 6.7
- Major (A/B) felonies: 2.2
- Minor (C) felonies: 1.8
- Misdemeanors: 1
- Probation violations: .36
- Civil commitments: 1.3

Juvenile

- Murder: 50
- Delinquencies: 2.3
- Probation violations: .36
- Dependency: 4.3

Contractor's Initials _____

Statewide

- PCR/Habeas: 6.7
- PCR appeals: 6
- Juvenile appeals: 9.4
- Civil commitment appeals: 5

10.5 Juvenile Specific Case Weighting

- Sibling Groups: When an attorney represents one or more children in a sibling group, they will receive a full case weight for the oldest child and half (0.5) of a case weight for each sibling; up to a maximum total weight of three (3.0). If an attorney represents a parent they will receive one case weight. This rule applies to both Dependency and Termination cases.
- Post Disposition Additional Sibling: If a new petition is filed regarding a sibling of a child client or clients whose cases are post disposition, then the new appointment will receive one (1.0) additional case weight.
- Guardianships: Cases in which a general guardianship under ORS 419B.366 has been established should be reported annually as a quarter (0.25) of a dependency case weight, as long as the attorney continues to be appointed to represent the client.
- Formal Accountability Agreements: Representation regarding a formal accountability agreement will receive half (0.5) of a delinquency case weight.
- Waiver Hearings: If the state files a motion requesting a waiver hearing in a case eligible for waiver, then the case will receive one (1.0) additional case weight. When an attorney continues to represent a client in criminal court after the juvenile court waives jurisdiction, the attorney will receive additional case weighting for the criminal case, consistent with these guidelines.

10.6 Partial Representation

When an attorney’s appointment ends for any of the reasons stated in section 10.1.6, the full case weight of the case will be transferred to the new attorney. The attorney’s case weight will be determined based on the length of time they were on the case with partial weight being applied to the original case type weight.

Length of Representation	Weight
0-14 days	0.25
15-30 days	0.5
31-89	0.75
90+ days	1.0

10.7 Out of County Representation

The case weight determined by section 10.4 will be doubled whenever a contractor takes a criminal or non-PCRJP juvenile delinquency or dependency case in a county outside their contracted jurisdiction, with the following exceptions. When an attorney’s appointment ends for any of the reasons stated in section 10.1.6 of these guidelines, the case weight will be determined based on the length of time they were on the case with partial weight being applied to the original case type’s weight.

Length of Representation	Weight
0-14 days	0.5
15-30 days	0.75
31-89 days	1.0
90+ days	2.0

10.7.1 Murder cases, Jessica’s Law cases, and cases assigned pursuant to a statewide contract are not eligible for double weight, except as provided in section 10.9 of these guidelines.

10.7.2 Multiple cases: The case with the highest case type eligible for doubling under 10.4 will receive double weight. The remaining cases will not receive additional weight except as provided in section 10.7 of these guidelines.

10.7.3 Sibling Groups: If an attorney accepts appointments for a sibling group in a county outside their jurisdiction, they will receive one (1.0) additional dependency weighting for the sibling group.

10.8 Co-Counsel

Attorneys will receive a full case weight for their work as co-counsel on Murder 1 and juvenile Murder cases. OPDS may grant up to full case weight for an attorney’s work as co-counsel in Murder 2 and Jessica’s Law cases where the attorney can provide evidence to OPDS why co-counsel is necessary and reasonable.

10.9 Extraordinary Case Circumstances

Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to OPDS’s discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by OPDS for this purpose.

10.10 Case Count

10.10.1 Delay

If a case to which an attorney is appointed has been interrupted for the following reasons for 365 days or more the case can be reported again:

- a) Aid and Assist Delay;
- b) Bench warrant; or
- c) Dismissal.

10.10.2 Re-Trial or Resentencing

If a case to which an attorney is appointed comes back for re-trial or resentencing for the following reasons the case can be reported again:

- a) After Direct Appeal or Post-Conviction Relief; or
- b) After Mistrial or Hung Jury.

Attachment 3d

ADDENDUM TO PCRCP CONTRACTS

This addendum memorializes agreed upon changes to the general terms of the PCRCP contracts, with the new language in italics.

Amend general term 3.5.1(b) to state the following:

Upon notice from OPDS, Contractor shall accept appointments to cases in adjacent jurisdictions, if the adjacent jurisdiction has a need for an attorney, and an attorney for Contractor has capacity, pursuant to the OPDS Case Counting Guidelines, to accept the appointment in the adjacent jurisdiction. OPDS shall work collaboratively with Contractor to select an attorney who is best suited to receive the appointment to a case in an adjacent jurisdiction. OPDS shall work with OJD to mitigate against attorney scheduling conflicts. These appointments will count toward the Contractor's overall contracted caseload and will receive additional case weight. In addition, Contractor shall be reimbursed by OPDS for *all routine travel expenses* pursuant to the PDSC's Payment Policy.

Amend general term 4.3 to the following:

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 *if applicable*, 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.

Amend general term 7.3.1 to the following:

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 are related to, result from, or arise out of Contractor's or Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement. *Notwithstanding the above, Contractor has no duty to indemnify, defend, or hold harmless PDSC, OPDS, or the State for their actions, decisions, work, activities, or failures to act related to this Agreement.*

Amend general term 10.4(b) to the following:

No one funded to perform a Maximum Attorney Caseload may engage in any other paid *legal* work, unless OPDS otherwise agrees in writing. Contractor's non-contract *legal* work shall be

proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work).

Contractor Signature: _____

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

Date

Attachment 3e

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

July 1, 2022, to June 30, 2023

Table of Contents

GENERAL TERMS.....	4
1 DEFINITIONS AND RULES.....	4
1.1 Interpretation of Terms.....	4
1.2 Construction and Jurisdiction.....	4
1.3 Severability.....	4
1.4 Definitions.....	4
1.5 Financial Verification Required for Court Appointment.....	5
2 MUTUAL RIGHTS.....	5
2.1 Waiver.....	5
2.2 Termination.....	6
3 RIGHTS OF PDSC.....	6
3.1 Subcontracts and Assignment of Contract.....	6
3.2 PDSC Rights for Failure to Obtain Workers' Compensation.....	6
3.3 Termination by PDSC.....	6
3.4 Funding Modification, Suspension, or Termination.....	7
3.5 Contractor Workload.....	7
3.6 Review, Verification, and Inspection of Records.....	8
4 RIGHTS OF CONTRACTOR.....	9
4.1 Termination by Contractor.....	9
4.2 Work Outside Contract.....	9
4.3 Client Records.....	9
4.4 Personnel Records.....	9
5 MUTUAL OBLIGATIONS.....	9
5.1 Professionalism.....	9
5.2 Commitment to PCRCP Principles and Goals.....	9
5.3 Successors in Interest.....	10
5.4 Compliance with Applicable Law.....	10
5.5 Notice of Contract Modification, Suspension, or Termination.....	10
5.6 Modification or Termination Due to Legislative Action or Court Interpretation.....	10
5.7 Periodic Review.....	10
5.8 Other Contractors and Vendors.....	10
6 OBLIGATIONS OF PDSC.....	11
6.1 Case Managers.....	11
6.2 Regular PCRCP Meetings.....	11
6.3 Systemic Improvement.....	11
6.4 State Funding Shortfall.....	11
6.5 Contract Payment.....	11
7 OBLIGATIONS OF CONTRACTOR.....	11
7.1 Performance Obligations of Appointed Counsel.....	11
7.2 Quality Assurance Obligations of Contract Administrator.....	15
7.3 Special Obligations to State of Oregon.....	16

7.4	Capacity and Equipment	19
7.5	Record Keeping	20
7.6	Reports to OPDS.....	20
7.7	Client Clothing	21
7.8	Special Notices.....	21
7.9	No Dual Payments for Contract Work	23
7.10	Contract Administrator Duties	23
8	MUTUAL RISKS.....	23
8.1	Impossibility of Performance	23
8.2	Tort Liability.....	24
9	WIND-DOWN PROCEDURES	24
10	CASE COUNTING STANDARDS	24
10.1	General Case Counting Standards	24
10.2	Case Count Adjustments	24
10.3	Case Closure.....	25
10.4	General Considerations.....	25
	SPECIFIC TERMS	26
1	PARTIES TO CONTRACT	26
2	TERM OF CONTRACT	27
3	NOTICE	27
4	TOTAL VALUE AND PAYMENT SCHEDULE	27
5	CASES, ATTORNEYS, AND STAFF.....	27
6	ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT	28
7	MERGER CLAUSE.....	28
	PAYMENT SCHEDULE	29

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 arising under this contract to a court of competent jurisdiction 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 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.

1.4.2 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.

1.4.3 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.

Contractor's Initials _____

1.4.4 Independent Contractor (“Contractor”)

“Contractor” is an independent person or entity that signs this Agreement and agrees to provide public defense services for eligible individuals. The term contractor includes Contractor’s agents, employees, members, officers, representatives, and successors. A contractor does not include subcontractors.

1.4.5 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).

1.4.6 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.

1.4.7 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.

1.4.8 Public Defense Services Commission and the Office of Public Defense Services

- (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.

2.2 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 or duties 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. Breach of this provision constitutes a material breach of this contract.

3.2 PDSC Rights for Failure to Obtain Workers' Compensation

If Contractor is obligated to secure and maintain workers' compensation coverage, and fails to do so 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

3.3.1 Reasons for Contract Termination

Subject to Section 5.5's notice and opportunity to cure provisions below, OPDS may terminate this contract for any of the following reasons. This provision does not affect any other Termination rights provided herein.

- (a) Contractor's breach of any material duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services, provided however, that good faith legally compliant actions of Contractor 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 or failure to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by prevailing best practices standards of performance, Oregon Rules of Professional Conduct, the Caseload Standards established in section 10; or
- (e) Demonstrated and substantial impairment of the Contractor's ability to provide constitutionally adequate legal services under this contract or fulfill the obligations of this contract.

Contractor's Initials _____

3.3.2 No Appointments After Notice

When Contractor receives OPDS' notice of termination, 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 and appropriation of funds. OPDS may 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

Except when Contractor has prior written authorization from OPDS, all attorneys under contract shall accept court appointments to all case types for which they are (1) competent pursuant to the Oregon Rules of Professional Conduct and (2) qualified pursuant to the PDSC's Qualification Standards, if a contractor elects a contract type based upon that attorney's qualifications. This rule does not apply to attorneys who provides ongoing and consistent monitoring and oversight to at least three other attorneys within the same office pursuant to a plan approved by OPDS. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

- (a) Contractor shall be in control of the means and manner of performing its work. Contractor will prioritize its legal work at its discretion, but in doing so shall reasonably take into account Contractor's duties under this Agreement, Caseload Standards, public defender professionalism standards, and the Oregon Rules of Professional Conduct, as well as Contractor's and Contractor's attorneys qualifications and availability.
- (b) Upon notice from OPDS, Contractor shall accept appointments to cases in adjacent jurisdictions, if the adjacent jurisdiction has a need for an attorney, and an attorney for Contractor has capacity, pursuant to the OPDS Case Counting Guidelines, to accept the appointment in the adjacent jurisdiction. OPDS shall work collaboratively with Contractor to select an attorney who is best suited to receive the appointment to a case in an adjacent jurisdiction. OPDS shall work with OJD to mitigate against attorney scheduling conflicts. These appointments will count toward the Contractor's overall contracted caseload and will receive additional case weight. In addition, Contractor shall be reimbursed by OPDS for routine mileage and parking expenses, pursuant to the PDSC's Payment Policy.
- (c) No Contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.
- (d) No one funded to perform a Maximum Attorney Caseload may engage in any other paid work, unless OPDS otherwise agrees in writing.
- (e) Nothing in this section precludes a contractor from engaging in pro bono legal services.

3.5.2 Open Caseload Standard

To comply with performance standards, generally an attorney should limit full-time representation to

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.

3.5.3 Capacity Increase or Decrease

If Contractor's caseload increases or decreases by 15% or more for six consecutive months, Contractor shall notify OPDS and OPDS shall schedule a meeting to discuss the circumstances surrounding the increase or decrease. OPDS may not decrease a Contractor's Maximum Attorney Caseload, or the financial value attached, without considering whether Contractor's declination of court appointments was required by Rule 1.7 of the Oregon Rules of Professional Conduct. OPDS may adjust the number of Maximum Attorney Caseload in the contract to meet the changing needs of the jurisdiction if:

- (a) The actual or reasonably expected number of available cases increases or decreases substantially, such that the proposed Maximum Attorney Caseload 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 Maximum Attorney Caseload capacity is necessary.

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. Contractor shall provide Caseload records and documents at OPDS's request under the following conditions:

- (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 requirements in section 4.3, Contractor shall provide information that OPDS deems necessary.

Contractor's Initials _____

4 RIGHTS OF CONTRACTOR

4.1 Termination by Contractor

Subject to Section 5.5's notice and opportunity to cure provisions below, Contractor may terminate this contract should PDSC breach any material duty or obligation under this contract.

4.2 Work Outside Contract

Contractor controls its own means and manner of performing work under this Agreement and outside of this Agreement. Contractor, at its sole discretion, may engage in additional paid work outside of this contract, subject to Section 10 of this Agreement. 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 is responsible for ensuring and maintaining documentation sufficient to show that its employees and agents are performing services in compliance with this contract. Contractor grants no right to OPDS or designee of OPDS to review private or confidential information (such as personal health, insurance, or leave 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 non-confidential or non-private information, including but not limited to, compensation of individual staff members, performance reviews or concerns, and attorney caseload records. 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 private or confidential 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 PCRPs Principles and Goals

- (a) Parties agree to work together, in good faith, to successfully implement and maintain the PCRPs.
- (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

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. Breach of this provision constitutes a material breach of this contract.

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) Be provided no less than 30 days before the proposed date of the modification, suspension, or termination;
- (d) Provide the recipient with at least 30 days to cure the alleged violation or breach.

5.6 Modification or Termination Due to Changes in Law

OPDS and Contractor may renegotiate this contract if there is a significant change in workload, caseload, or increased cost of doing business due to changes in federal or state laws. In addition, OPDS may modify, suspend, or terminate this contract as needed to comply with applicable state or federal rules or law or a court of competent jurisdiction’s 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

OPDS, on behalf of 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

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

6.4 State Funding Shortfall

Notwithstanding anything to the contrary in this contract, if the Emergency Board or legislature does not appropriate sufficient funds, PDSC reserves the right to terminate this contract, subject to the below process. 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 legal requirements 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 unilaterally 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

Contractor 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>;

Contractor's Initials _____

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

Contractor 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
- (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

Contractor's Initials _____

- 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;
 - (h) Conducting a thorough, continuing, and independent review and investigation of the case; and
 - (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;

7.1.2.5 Reappointment to Prior Clients

Consistent with national best practices supporting the continuous representation of a client, and subject to Oregon Rule of Professional Conduct 1.7, Contractor shall ensure that 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 Section 10.3; 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

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.

7.1.5 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.

7.1.6 Withdrawal

7.1.6.1 Withdrawal from Case Only with Court Approval

If seeking to withdraw from representation, Contractor shall comply with the Oregon Rules of Professional Conduct, including but not limited to Rule 1.16, which requires the court's approval and prompt notification to 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.

7.1.6.2 Limitations on Withdrawal

When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting OPDS and obtaining OPDS's written permission.

- (a) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in the same jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.
- (b) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and OPDS to ensure the due administration of justice and protect the rights of their existing clients.

7.1.7 Regular PCRCP 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.

7.1.8 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 attorney, or the contracted proportion thereof. Contractor shall provide such plan details and timelines 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 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*

Contractor's Initials _____

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 to provide legal services to a Maximum Attorney Caseload may take on any other paid work. Contractor's non-contract work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload 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 attests to the PDSC that all attorneys providing representation under this contract have or will:

- (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 are related to, result from, or arise out of Contractor's or Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Contractor shall perform all services under this contract as an independent contractor.

Contractor's Initials _____

OPDS may determine the scope and quality of the services to be provided, may modify the delivery schedule, and may evaluate the quality of the Services. OPDS will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services; for paying any and all taxes on compensation received hereunder; for supplying the tools, office and materials to perform the services. Contractor is not eligible for any social security, unemployment insurance, workers compensation benefits or any other benefit not expressly provided herein. 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. No joint employer relationship is established by this Agreement.

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. The Oregon Tort Claim limits do not apply to any actions against Contractor. Contractor accepts responsibility for all decisions, actions or failures to act 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's Initials _____

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 name the State of Oregon, PDSC, OPDS, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities or failures to act related to 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 PDSC written approval.

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 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 (OEI) 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

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 maintain its ability to accept cases pursuant to the number of Maximum Attorney Caseloads as originally contracted for with the PDSC. If contractor is unable to do so for a period of 60 days, OPDS may temporarily remove funds, unless the inability to accept cases is pursuant to the Oregon Rules of Professional Conduct 1.7. The 60 days may be extended with written agreement by OPDS. Contractor shall immediately notify OPDS of any vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.
- (c) Contractor must retain a minimum of 0.5 support staff for every Maximum Attorney Caseload funded by this contract. 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. 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 or upon OPDS's request, 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

Contractor 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 in more than one judicial district, then contractor shall maintain an office in at least 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 maintain, store, and preserve all appointment, service, and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to maintain, store, and 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 maintained, stored, and 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

Contractor's Initials _____

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 related to Contractor's performance under this contract. Contractor shall provide information and data to OPDS in a reporting form that OPDS develops 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. OPDS will keep all data and information regarding non-contract work confidential.

7.6.5 Penalty for Late Reports

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports regarding Contractor's performance under this contract. 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 within 10 days of the due date: 5% of contract funds
- (b) 30 days of the original due date: 10% of contract funds
- (c) 60 days of the original due date: 15% of contract funds
- (d) 90 days of the original due date: 25% of contract funds

7.6.6 Enforceability

The reporting and records retention requirements set forth in this section are enforceable after the termination or expiration of this contract.

7.7 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 duties under this contract;

Contractor's Initials _____

- (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 within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided herein.

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 the scope of this contract;
 - (b) Accept funds from anyone other than PDSC for work performed under the scope of this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
 - (c) Solicit or accept payment from a client for legal services on a matter within the scope of services of this contract or on a matter which Contractor has been appointed by the court.
- Breach of this section is a material breach of this agreement.

7.10 Contract Administrator Duties

- (a) Contractor shall name a Contract Administrator, who is responsible for contract administration duties in this contract. Typical Contract administration duties include, without limitation, the following: 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 under this contract if such delay or default was caused by theft, fire, flood, or other casualty, or 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 solely responsible for the decisions, actions, or failures to act of its own officers, employees, and agents committed in the performance of this contract or related to this contract.

9 WIND-DOWN PROCEDURES

In the event of a termination, suspension, or expiration of this Agreement, Contractor shall comply with the Oregon Rules of Professional Conduct and continue to provide legal services on all existing contract appointments on cases assigned before the effective date of the suspension, termination, or expiration, unless OPDS provides written notice of its desire for the Contractor to cease working on such contract appointments. If OPDS does not provide such cessation notice, OPDS and Contractor shall negotiate wind-down terms that allow Contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay Contractor 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

Contractor's Initials _____

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.
- (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.

10.4 General Considerations

(a) Contractor will comply with the Caseload Standards in order to establish and maintain professional and responsible legal services under this Agreement, whether such caseload comes from OPDS or outside of OPDS. Contractors who have accepted the Maximum Attorney Caseloads of OPDS work agree not to take on any additional legal work, whether such work comes from OPDS or outside of OPDS. Contractor may unilaterally amend this Agreement to decrease their caseload below the Maximum Attorney Caseloads, subject to any client duties, the Oregon State Bar Rules of Professional Conduct duties, and the notice requirements in Section 5.4. Contractor shall not begin any legal work which exceeds the Maximum Attorney Caseloads prior to the effective date of the amendment. The Parties hereby agree that such amendment will decrease any compensation due to Contractor under this Agreement in a percentage commensurate with the percentage reduction in OPDS assigned work (e.g. a 25 percent reduction in OPDS assigned work would result in a 25 percent reduction in compensation due to Contractor).

(b) No one funded to perform a Maximum Attorney Caseload may engage in any other paid work, unless OPDS otherwise agrees in writing. Contractor's non-contract work shall be proportional to their

percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work).

(c) When public defense attorneys are not contracted for a Maximum Attorney Caseload, their maximum caseload shall be based on the percentage of a Maximum Attorney Caseload for which contractor receives funding.

Attachment 3f

County	Entity Name	Emergency Funding	Contracted Attorney FTE	Contract Amount
Lane	Public Defender Services of Lane County, Inc.	EM Criminal	3.00	\$1,037,878.80
Marion	Mark G. Obert, Attorney PC	EM Criminal	0.70	\$166,441.00
Marion	Public Defender of Marion County , Inc.	EM Criminal	3.00	\$638,348.00
Multnomah	Metropolitan Public Defender, Inc	EM Criminal	7.00	\$1,596,998.00
Multnomah	Multnomah Defenders Inc.	EM Criminal	2.45	\$535,954.00
Multnomah	Portland Defense Consortium	EM Criminal	0.75	\$170,297.00
Multnomah	Schaleger Philpott, PC	EM Criminal	1.00	\$227,063.00
Washington	Metropolitan Public Defender, Inc	EM Criminal	1.00	\$237,773.00
Marion	Marion Juvenile Advocacy Consortium	EM Juvenile	0.00	\$177,922.00
Totals			18.90	\$4,788,674.80

Attachment 3g

County	Entity Name	Criminal	Contracted Attorney FTE	Contract Amount
Baker	Elkhorn Public Defender	Criminal	1.05	\$242,164.00
Baker	Eagle Cap Defenders, Inc	Criminal	1.40	\$317,888.00
Benton	Benton County Legal Defense Corp.	Criminal	5.70	\$1,334,954.00
Clackamas	Clackamas Indigent Defense Corporation	Criminal	23.30	\$5,389,088.00
Clackamas	Juvenile Advocates of Clackamas	Criminal	2.90	\$668,120.00
Clatsop	Stacy C. Rodriguez, Attorney at Law	Criminal	0.25	\$56,766.00
Clatsop	Clatsop County Defenders Assoc.	Criminal	5.79	\$1,296,485.00
Clatsop	North Coast Public Defender	Criminal	1.00	\$227,063.00
Columbia	Justice Alliance of Columbia County, LLC	Criminal	1.40	\$332,882.00
Columbia	Columbia County Indigent Defense Corporation	Criminal	3.70	\$847,628.00
Coos	Southwestern Oregon Public Defender Services, Inc.	Criminal	4.50	\$1,158,601.00
Crook/Jefferson	22nd Circuit Defenders, LLC	Criminal	8.60	\$1,960,770.00
Curry	Curry County Public Defense, LLC	Criminal	2.22	\$512,111.00
Curry, Coos, Douglas, Josephine, Jackson, Klamath	Michael J. Bertholf, LLC	Murder	0.90	\$292,745.00
Deschutes	Atlas Law Group, LLC	Criminal	3.88	\$928,253.00
Deschutes	Deschutes Defenders	Criminal	11.80	\$3,114,981.00
Deschutes	Bend Attorney Group	Criminal	3.80	\$893,361.00
Douglas	Roseburg Defense Consortium	Criminal	2.25	\$505,536.00
Douglas	Umpqua Valley Public Defender	Criminal	5.70	\$1,643,573.00
Douglas	Arneson, Stewart & Styarfy, PC	Criminal	1.00	\$227,063.00
Grant & Harney conflicts	Strawberry Mountain Law, PC	Criminal	0.90	\$209,176.00
Harney & Grant conflicts	Law Office of John B. Lamborn PC	Criminal	1.40	\$307,713.00
Hood River, Wasco, Gilliam, Sherman, Wheeler	Morris & Sullivan, PC	Criminal	7.20	\$1,751,205.00
Hood River, Wasco, Gilliam, Sherman, Wheeler	7th District Consortium LLC	Criminal	2.40	\$551,376.00
Jackson	Los Abogados, LLC	Criminal	5.94	\$1,455,372.00
Jackson	Rogue Valley Defenders, Inc	Criminal	4.35	\$993,612.00
Jackson	Southern Oregon Public Defender	Criminal	13.17	\$3,233,554.00
Josephine	Josephine County Defense Laywers, Inc.	Criminal	5.00	\$1,135,313.00
Josephine	Southern Oregon Public Defender	Criminal	5.00	\$1,265,423.00
Klamath	Monique Renner	Criminal	0.85	\$183,900.00
Klamath	Noel Kersey	Criminal	1.00	\$227,063.00
Klamath	Dougherty Law, LLC	Criminal	0.90	\$213,995.00
Klamath	Marcus Costello	Criminal	1.00	\$237,773.00
Klamath	Phil Studenberg, PC	Criminal	1.00	\$237,773.00
Klamath	Stephen R Hedlund, PC	Criminal	0.17	\$40,421.00
Klamath	Diana Jean Bettles, PC	Criminal	0.75	\$286,329.00
Klamath	Jennifer J. Schade LLC	Criminal	0.77	\$183,085.00
Klamath	Cole Chase	Criminal	1.00	\$237,773.00
Klamath	Scott O. Carter, PC	Criminal	0.90	\$213,995.00
Lake	Jeffrey Hedlund, PC	Criminal	0.60	\$136,238.00
Lake	David A. Schutt, LLC	Criminal	0.90	\$213,995.00
Lane	Lane County Defense Consortium	Criminal	7.00	\$1,609,787.00
Lane	Public Defender Services of Lane County, Inc.	Criminal	22.00	\$6,380,384.00
Lincoln	Oregon Coast Defenders, Inc.	Criminal	7.55	\$1,704,147.00
Linn	Linn Defenders, Inc	Criminal	9.25	\$2,045,707.00
Malheur	Elkhorn Public Defender	Criminal	2.95	\$823,299.00
Malheur	David R. Carlson	Criminal	0.40	\$90,825.00
Malheur	Five Rivers Law PC	Criminal	2.20	\$486,686.00
Malheur	Denison Law, PC	Criminal	0.53	\$126,019.00
Malheur	Norris Laywers	Criminal	0.25	\$56,766.00
Marion	Marion County Association of Defenders, LTD	Criminal	21.45	\$4,782,669.00
Marion	Public Defender of Marion County , Inc.	Criminal	13.80	\$3,392,771.00
Multnomah	Disability Rights Oregon	Criminal	3.00	\$787,808.00
Multnomah	Metropolitan Public Defender, Inc	Criminal	34.30	\$8,281,156.00
Multnomah	Multnomah Defenders Inc.	Criminal	20.10	\$4,822,571.00
Multnomah	Portland Defense Consortium	Criminal	11.25	\$2,645,488.00
Polk	Vidrio Park & Jarvis, LLC	Criminal	4.50	\$1,011,017.00
Polk	Polk County Conflict Consortium, LCC	Criminal	2.90	\$630,100.00
Tillamook	Tillamook County Defense Consortium	Criminal	2.70	\$613,069.00
Umatilla	Intermountain Public Defenders	Criminal	5.30	\$1,184,657.00
Umatilla	Jill Weygant Esq	Criminal	0.85	\$202,107.00
Umatilla	Pendleton Law LLC	Criminal	0.85	\$202,107.00
Umatilla/Morrow	Blue Mountain Defenders	Criminal	3.10	\$719,959.00
Union/Wallowa	Eastern Oregon Defenders	Criminal	3.05	\$701,109.00
Washington	Burton McCaffery Oregon Lawyers PC, DBA Hillsboro Law Group PC	Criminal	2.70	\$582,545.00
Washington	Ridehalgh & Associates, LLC	Criminal	4.80	\$1,009,575.00
Washington	Karpstein & Verhulst, PC dba cornerston Law Group	Criminal	1.40	\$308,249.00
Washington	Metropolitan Public Defender, Inc	Criminal	23.50	\$5,646,716.00
Washington	Oregon Defense Attorneys Consortium Inc.	Criminal	8.43	\$1,898,393.00
Yamhill	Mark G. Obert, Attorney PC	Criminal	0.25	\$59,443.00
Yamhill	Yamhill Justice League	Criminal	10.20	\$2,247,494.00
Statewide - Appeals	Liza Langford	Statewide - Appeals	0.50	\$113,531.00
Statewide - Appeals	Youth, Rights & Justice	Statewide - Appeals	2.80	\$665,763.00
Statewide - Appeals	Multnomah Defenders Inc.	Statewide - Appeals	2.00	\$475,545.00
Statewide - Appeals	O'Connor Weber LLC	Statewide - Appeals	4.50	\$1,069,976.00
Statewide - DP	Law Office of Alsept & Ellis, LLC	Statewide - DP	0.90	\$213,995.00
Statewide - Habeas	Kammer Law Firm, LLC	Statewide - Habeas	0.80	\$190,218.00
Statewide - Habeas	Patrick L. Block	Statewide - Habeas	0.80	\$190,218.00
Statewide - Murder	Metropolitan Public Defender, Inc	Statewide - Murder	4.00	\$1,344,840.00
Statewide - Murder	Christopher M. Clayhold	Statewide - Murder	1.00	\$237,773.00
Statewide - Murder	Lynne B. Morgan	Statewide - Murder	1.00	\$237,773.00
Statewide - Murder	Richard L. Wolf, PC	Statewide - Murder	0.90	\$213,995.00
Statewide - PCR	Teena Killian	Statewide - PCR	0.80	\$190,218.00
Statewide - PCR	Oregon Post-Conviction Consortium	Statewide - PCR	5.55	\$1,319,637.00
Statewide - PCR/HC	Ginger Mooney	Statewide - PCR/HC	1.50	\$447,221.00
Statewide - PSRB	Harris S. Matarazzo	Statewide - PSRB	1.90	\$411,070.00
		Totals	405.85	\$97,639,512.00

County	Entity Name	Juvenile	Contracted Attorney FTE	Contract Amount
Baker	Elkhorn Public Defender	Juvenile	0.35	\$80,543.00
Baker	Eagle Cap Defenders, Inc	Juvenile	0.60	\$136,238.00
Clackamas	Juvenile Advocates of Clackamas	Juvenile	7.40	\$1,735,703.00
Crook/Jefferson	22nd Circuit Defenders, LLC	Juvenile	3.00	\$683,865.00
Curry	Curry County Public Defense, LLC	Juvenile	0.73	\$168,433.00
Deschutes	Bend Attorney Group	Juvenile	4.25	\$975,190.00
Deschutes	Deschutes Defenders	Juvenile	1.70	\$441,257.00
Grant, Harney conflicts	Strawberry Mountain Law, PC	Juvenile	0.90	\$209,176.00
Harney/Grant conflicts	Law Office of John B. Lamborn PC	Juvenile	0.50	\$113,531.00
Hood River, Wasco, Gilliam, Sherman	7th District Consortium LCC	Juvenile	2.45	\$560,052.00
Hood River, Wasco, Gilliam, Sherman	Morris & Sullivan, PC	Juvenile	1.30	\$299,465.00
Jackson	Jackson Juvenile Consortium	Juvenile	7.68	\$1,763,975.00
Jackson	Southern Oregon Public Defender	Juvenile	3.00	\$681,188.00
Josephine	Josephine County Defense Lawyers, Inc.	Juvenile	3.50	\$794,183.00
Klamath	Bly Law, LLC	Juvenile	1.00	\$227,063.00
Klamath	Lam Law Office PC	Juvenile	0.95	\$215,709.00
Klamath	Monique Renner	Juvenile	0.15	\$32,453.00
Klamath	Robert J. Foltyn	Juvenile	1.00	\$237,773.00
Klamath	Stephen R Hedlund, PC	Juvenile	0.78	\$185,463.00
Klamath	Diana Jean Bettles, PC	Juvenile	0.15	\$35,666.00
Klamath	Jennifer J. Schade LLC	Juvenile	0.15	\$32,453.00
Lake	David A. Schutt, LLC	Juvenile	0.10	\$23,777.00
Lake	Jeffrey Hedlund, PC	Juvenile	0.70	\$158,944.00
Lane	Lane County Juvenile Lawyers Association	Juvenile	13.10	\$2,985,764.00
Lane	Public Defender Services of Lane County, Inc.	Juvenile	3.00	\$681,188.00
Malheur	Elkhorn Public Defender	Juvenile	0.50	\$127,032.00
Malheur	David R. Carlson	Juvenile	0.55	\$124,884.00
Malheur	Denison Law, PC	Juvenile	0.47	\$111,753.00
Malheur	Douglas J. Rock, PC	Juvenile	0.90	\$204,356.00
Malheur	Five Rivers Law PC	Juvenile	1.70	\$474,968.00
Marion	Marion Juvenile Advocacy Consortium	Juvenile	13.15	\$2,985,872.00
Tillamook	Tillamook County Defense Consortium	Juvenile	0.30	\$68,119.00
Umatilla	Intermountain Public Defenders	Juvenile	1.20	\$293,958.00
Umatilla	Jill Weygandt Esq	Juvenile	0.05	\$11,353.00
Umatilla	Pendleton Law LLC	Juvenile	0.10	\$22,706.00
Umatilla/Morrow	Blue Mountain Defenders	Juvenile	3.10	\$703,894.00
Union/Wallowa	Eastern Oregon Defenders	Juvenile	0.75	\$170,297.00
Washington	Burton McCaffery Oregon Lawyers PC, DBA Hillsboro Law Group PC	Juvenile	1.40	\$317,888.00
Washington	Karpstein & Verhulst, PC dba cornerston Law Group	Juvenile	1.20	\$272,475.00
Washington	Metropolitan Public Defender, Inc	Juvenile	4.25	\$965,016.00
Washington	Paula Lawrence	Juvenile	0.30	\$71,332.00
Washington	Ridehalgh & Associates, LLC	Juvenile	1.50	\$340,594.00
Washington	Oregon Defense Attorneys Consortium Inc.	Juvenile	2.00	\$454,125.00
Totals			91.86	\$21,179,674.00

County	Entity Name	PCRP	Contracted Attorney FTE	Contract Amount
Benton	Jennifer I. Nash & Nicloas Ortiz, PC	PCRP	0.50	\$140,235.00
Benton, Linn, Polk, Yamhill, Douglas, Lincoln	Riddell & Largent, P.C.	PCRP	1.70	\$439,404.00
Clatsop and Columbia	Justice Alliance of Columbia County, LLC	PCRP	6.30	\$1,539,707.00
Columbia	Columbia County Indigent Defense Corporation	PCRP	1.50	\$366,597.00
Coos	Coos County Juvenile Consortium	PCRP	3.60	\$879,833.00
Coos	Southwestern Oregon Public Defender Services, Inc.	PCRP	1.00	\$267,674.00
Douglas	Roseburg Defense Consortium	PCRP	4.50	\$1,099,791.00
Douglas	Umpqua Valley Public Defender	PCRP	3.30	\$833,324.00
Douglas	Arneson, Stewart & Styarfy, PC	PCRP	3.00	\$803,022.00
Lincoln & Benton	Lincoln Juvenile Defenders, LLC	PCRP	4.00	\$1,004,181.00
Linn	Juveile Defenders of Linn County	PCRP	6.80	\$1,780,052.00
Multnomah	Metropolitan Public Defender Inc.	PCRP	6.25	\$1,866,894.00
Multnomah	Multnomah Defenders Inc.	PCRP	4.60	\$1,393,834.00
Multnomah	Portland Juvenile Defenders, Inc.	PCRP	7.10	\$1,858,584.00
Multnomah	Riley & Washchuk PC	PCRP	3.90	\$1,020,912.00
Multnomah	Rose City Juvenile Consortium, LLC	PCRP	4.50	\$1,177,976.00
Multnomah	Youth, Rights & Justice	PCRP	10.00	\$2,942,031.00
Multnomah	Elizabeth Levi	PCRP	0.65	\$170,152.00
Polk	Polk County Conflict Consortium	PCRP	3.00	\$813,318.00
Polk/Benton	Vidrio, Park & Jarvis	PCRP	1.60	\$413,861.00
Yamhill	Yamhill Juvenile Group	PCRP	3.50	\$978,707.00
Totals			81.30	\$21,790,089.00

PCRP County	Case Manager	Proposed 2022 FTE	Monthly Hours	2022 Actual Contract Value
Administrator	Brandon, Dana	1.00	160	\$118,656.00
Administrator	Getman, Shannon	1.00	160	\$105,907.20
Benton	Vacant	0.30	48	\$25,418.88
Benton/Polk	Russell, Jodi	1.00	160	\$84,729.60
Clatsop	Wright, Jentry	0.80	128	\$67,783.68
Columbia/Clatsop	Barbeau, Kim	0.30	48	\$25,418.88
Columbia	Rivas-Davila, Jillian	0.80	128	\$67,783.68
Columbia	Pasiak, Jordyn	1.00	160	\$84,729.60
Coos	Keeler, Deb	0.75	120	\$63,547.20
Coos	Pruett, Daniel	0.75	120	\$63,547.20
Douglas	Coccia-Gleghorn, Kivonna	1.00	160	\$84,729.60
Douglas	Fox-Morse, Nicki	0.30	48	\$25,418.88
Douglas	Loosli, Ryan	0.50	80	\$42,364.80
Douglas	Loosli, Sadie	1.00	160	\$84,729.60
Douglas	Stevenson, Tabitha	1.00	160	\$84,729.60
Lincoln	James, Carol	1.00	160	\$84,729.60
Lincoln	Vacant	0.30	48	\$25,418.88
Linn	Rodgers, Whitney	0.50	80	\$42,364.80
Linn	Warne, Jodi	1.00	160	\$84,729.60
Linn	Wilcox, Jessi	0.60	96	\$50,837.76
Multnomah	Evans, Jennifer	1.00	160	\$84,729.60
Multnomah	Avery-Hull, Mikayla	0.80	128	\$67,783.68
Multnomah	Barrett, David	1.00	160	\$84,729.60
Multnomah	Ceniceros, Leslie	1.00	160	\$84,729.60
Multnomah	Davis, Lucille	1.00	160	\$84,729.60
Multnomah	Gomez, Josue	1.00	160	\$84,729.60
Multnomah	Grayson, Lorna	1.00	160	\$84,729.60
Multnomah	Hull, Rebecca	0.70	112	\$59,310.72
Multnomah	Knight, Tara	1.00	160	\$84,729.60
Multnomah	Lopez-Verduzco, Anotonia	1.00	160	\$84,729.60
Multnomah	Riojas, Conan	1.00	160	\$84,729.60
Multnomah	Wilkinson, Veronica	1.00	160	\$84,729.60
Multnomah	Ward, Sunshine	0.50	80	\$42,364.80
Polk/Yamhill	Janoski, James	1.00	160	\$84,729.60
Yamhill	Thomas, Nicole	1.00	160	\$84,729.60
		28.90	4,624	\$2,503,789.44

2022 Total \$2,503,789.44