

**PUBLIC DEFENSE SERVICES COMMISSION  
CONTRACT FOR PUBLIC DEFENSE SERVICES**

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DRAFT

# CONTRACT FOR PUBLIC DEFENSE SERVICES

The Public Defense Services Commission, referred to as “the PDSC,” and [entity name], referred to hereafter as “Contractor,” agree to the provision of public defense services as outlined below for the period [date] to [date] in [county/counties]. The Contract incorporates Exhibits A (Compensation), B (Caseload and Workload Standards), and C (Additional Performance Requirements). The Contract Administrator is [ ].

The following are the underlying bases for the Contract:

- Oregon has a constitutional and statutory responsibility to provide public defense services, and pursuant to ORS 151.216, the Public Defense Services Commission has responsibility for ensuring those services are available in circuit and appellate courts.
- The PDSC desires to have legal services performed for eligible persons entitled to public defense representation by Contractor, as authorized by law.
- Contractor agrees to accept appointments to represent eligible clients. Contractor agrees to provide, and the PDSC agrees to pay for, competent, zealous legal representation to its clients as required by this contract, the Oregon Rules of Professional Conduct, Oregon State Bar Performance Standards, American Bar Association Best Practice Standards, and Oregon and federal judicial opinions regarding the right to counsel. Contractor agrees to comply with PDSC policies and procedures.
- The PDSC and Contractor agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of representational services to eligible clients of Contractor, the training and educational expenses associated with providing those services, and overhead costs.

The parties agree as follows:

## I. DURATION OF CONTRACT

This Contract shall commence on \_\_\_\_\_ and terminate on \_\_\_\_\_, unless extended or terminated earlier in a manner allowed by this Contract.

## II. RULES

A. 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.

B. 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.

C. 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 other law, the remaining terms and provisions shall remain valid, and 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.

D. 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.

### III. DEFINITIONS

A. Eligible client: An eligible client is a person who has been determined by a court or the PDSC to be entitled to a court-appointed attorney, pursuant to Oregon statute, the Oregon Constitution, or the United States Constitution.

B. Case: A Case shall mean any action in which there is one eligible client on one charging instrument, or on one petition and its successor.

C. Full Time Equivalent Attorney (FTE): A FTE Attorney is an attorney under contract with the PDSC to provide representational services. FTE Attorneys shall be eligible for appointment to the maximum number of cases as described in Exhibit B, based upon their time commitment to the PDSC. A FTE attorney must provide at least .5 of a maximum attorney caseload.

D. Maximum Attorney Caseload: The measurement in Exhibit B that defines the caseload and workload limits for FTE attorneys.

E. Caseload: The number of cases assigned to a FTE Attorney on an annual basis.

F. Workload: The number of open cases assigned to a FTE Attorney at a given point in time.

G. Representational Services: The services for which the PDSC is to pay Contractor are representational services, which includes lawyer services and appropriate support staff services, investigation and appropriate sentencing and disposition advocacy, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the PDSC is to pay Contractor do not include fees and expenses authorized as routine expenses or case support services as defined by the PDSC.

H. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term

shall include the disbursement of funds for which prior approval is required but is not obtained.

#### **IV. INDEPENDENT CONTRACTOR**

Contractor is, for all purposes arising out of this Contract, an independent contractor, and neither Contractor nor its employees, members, agents, or successors shall be deemed employees of the PDSC. Contractor shall complete the requirements of this Contract according to Contractor's own means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to control or supervision by the PDSC, except as specified herein.

#### **V. ASSIGNMENT AND SUBCONTRACTING**

Contractor shall not subcontract, delegate, or assign any of the services or duties required under this contract without obtaining the PDSC's prior written consent.

#### **VI. CONTRACTOR'S EMPLOYEES, MEMBERS, OFFICE, AND EQUIPMENT**

Contractor agrees that it has secured or will secure at Contractor's own expense, all persons, employees, office space, and equipment required to perform the services contemplated/required under this Contract. Contractor agrees that all attorneys performing services pursuant to this Contract shall maintain an office in the judicial district in which they have contracted to provide representational services at which Contractor can have confidential communication with public defense clients. If Contractor contracts 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 representational services.

#### **VII. PERFORMANCE REQUIREMENTS**

Any attorney working under this contract shall use their independent professional judgment in their representation at all proceedings related to the legal matters that are the subject of the representation.

Contractor agrees to provide representational services and comply with the requirements of this Contract. Contractor agrees to comply with the Oregon Rules of Professional Conduct, the Oregon State Bar Performance Standards, American Bar Association Best Practice Standards, and to provide competent legal representation as mandated by Oregon and federal judicial opinions regarding the right to counsel.

Contractor agrees to adhere to the caseload and workload standards in Exhibit B and the additional performance standards in Exhibit C.

#### **VIII. ATTORNEY TRAINING**

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes

and developments in the law and assure continued rendering of competent assistance of counsel. Contractor shall provide sufficient training, whether in-house or through a qualified provider of continuing legal education (CLE), to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules.

Contractor shall ensure all of its attorneys comply with the CLE requirements of the Oregon State Bar and obtain 12 hours of CLE credit specific to their contract (criminal or juvenile) during the contract period.

## **IX. COMPENSATION AND METHOD OF PAYMENT**

The PDSC shall pay Contractor pursuant to the rates specified in Exhibit A, which may be amended during the term of the Contract by mutual assent of the parties. Payments shall be made in monthly installments by direct deposit into the account designated by Contractor. Compensation rates for Attorney FTE will be determined by the types of cases attorneys are qualified and agree to accept. All funds provided pursuant to this Contract are provided for the sole purpose of provision of representational services to eligible clients of Contractor, the training and educational expenses associated with providing those services, and overhead costs.

Contractor shall not expend funds under this contract for work performed outside the scope of this contract; 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 solicit or accept payment from a client for representational services on a matter within the scope of services of this contract or on a matter which Contractor has been appointed by the court.

In the event of Contractor failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the PDSC reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the PDSC's right to termination as provided in Section XV of this Contract.

At the time this contract is executed, sufficient funds either are available within the Contract Authority'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. The PDSC may modify, suspend, or terminate this contract if it reasonably determines that funds will not be sufficient to pay anticipated costs of the contract. The PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense contract agencies. The 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. The PDSC may unilaterally suspend or terminate the contract if the parties cannot agree to modification.

## **X. CONTRACT MODIFICATION AND ADJUSTMENTS**

If Contractor's caseload increases or decreases by 15% or more for six consecutive months, the PDSC shall notify Contractor and schedule a meeting to discuss the circumstances surrounding the increase or decrease. The PDSC may not decrease a Contractor's attorney FTE, or the financial value attached, without considering whether Contractor's declination of court appointments was required by Exhibit B. The PDSC may adjust the number of attorney FTE in the contract to meet the changing needs of the jurisdiction if:

- The actual or reasonably expected number of available cases increases or decreases substantially, such that the existing attorney FTE amount no longer corresponds with caseload needs;
- The introduction or discontinuation of a specialty court; or
- The PDSC determines that an increase or decrease in attorney FTE capacity is necessary.

## **XI. ESTABLISHMENT AND MAINTENANCE OF RECORDS**

A. Contractor agrees to maintain accounts and records, including client case files, personnel records, property records, and financial records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract.

B. Contractor's financial records shall be 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.

C. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the PDSC. In addition, Contractor agrees to retain all public defense client case files as required by the Oregon State Bar, with a minimum of 10 years from the time of closure for all cases except murder and Ballot Measure 11 offenses, which shall be preserved for a minimum of 20 years.

## **XII. CONTRACTOR REPORTING AND INSPECTION**

Contractor agrees to audits and inspections, and it agrees to submit to the PDSC reports, as prescribed below. Failure to comply with requested audits and inspections, or to submit required reports and records, may be considered a breach of this contract and may result in the PDSC withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

### **A. Position Profile**

Contractor shall submit to the PDSC on September 1, and the first day of each subsequent quarter, a profile of Full-Time Equivalent (FTE) positions for both legal and support staff who

perform work on this Contract, distributed by type of case. The report will designate the name and compensation for each person who performs work on this Contract, in a format to be provided by the PDSC. The PDSC will not release this information except as required by law. If the employee splits his/her work between work under this Contract and other business, the report will indicate the amount of time that employee devotes to private matters compared to work under this Contract.

B. Caseload and Workload Reports

By the 20th day of the month, Contractor shall submit a monthly report to the PDSC detailing assigned and open cases, as required by the PDSC's Caseload and Workload Reporting Policy.

C. Other Reports

Contractor agrees to provide PDSC with other reports during the Contract if the PDSC commission determines additional reporting obligations are necessary and the PDSC provides a template to Contractor to submit the reports.

D. Audit and Inspection and Records

Contractor agrees to grant the PDSC full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the PDSC may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, Contractor shall provide to the PDSC requested records and/or a right of access to its facilities to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by Contractor in a way that allows access by the PDSC without breaching such confidentiality or privilege. Contractor agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the PDSC agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The PDSC will respect the attorney-client privilege.

E. Failure to Provide Reports

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

- Not received within 10 days of the due date: 5% of contract funds
- 30 days of the original due date: 10% of contract funds
- 60 days of the original due date: 15% of contract funds
- 90 days of the original due date: 25% of contract funds



### **XIII. EVALUATION OF CONTRACTOR**

The PDSC may review information to monitor Contractor activity, including attorney caseloads and workloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, the compensation provided to attorneys and support staff to assure adherence, and whether Contractor is meeting the performance requirements of this Contract.

At the request of either party, and at least twice per year, the PDSC and Contractor will meet to discuss 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 representational services, these meetings will include a review by the PDSC of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates contemplated under the contracts, the PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected.

### **XIV. CORRECTIVE ACTION**

If the PDSC reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The PDSC will notify Contractor in writing of the nature of the breach.
2. Contractor shall respond in writing within five (5) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.
3. The PDSC will notify Contractor in writing of the PDSC's determination as to the sufficiency of Contractor's corrective action plan. The determination of the sufficiency of Contractor's corrective action plan will be at the discretion of the PDSC and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event Contractor does not concur with the determination, Contractor may request a review of the decision by the PDSC Executive Director. The PDSC agrees that it shall work with Contractor to implement an appropriate corrective action plan.

In the event that Contractor does not respond to the PDSC's notification within the appropriate time, or Contractor's corrective action plan for a substantial breach is determined by the PDSC to be insufficient, the PDSC may commence termination of this Contract in whole or in part pursuant to Section XV (Contract Termination and Suspension).

In addition, the PDSC reserves the right to withhold a portion of subsequent payments owed Contractor which is directly related to the breach of the Contract until the PDSC is satisfied the corrective action has been taken or completed.

## **XV. CONTRACT TERMINATION AND SUSPENSION**

A. The PDSC may terminate this Contract in whole or in part upon 10 days' written notice to Contractor in the event that –

1. Contractor substantially breaches any duty, obligation, or service required pursuant to this Contract;
2. Contractor engages in misappropriation of funds; or
3. The duties, obligations, or services herein become illegal, or not feasible.

Before the PDSC terminates this Contract pursuant to Section XV A.1, the PDSC shall provide Contractor written notice of termination, which shall include the reasons for termination and the effective date of termination. Contractor shall have the opportunity to submit a written response to the PDSC within 10 working days from the date of the PDSC's notice. If Contractor elects to submit a written response, the PDSC will review the response and make a determination within 10 days after receipt of Contractor's response. In the event Contractor does not concur with the determination, Contractor may request a review of the decision by the PDSC Executive Director. In the event the PDSC Executive reaffirms termination, the Contract shall terminate in 10 days from the date of the final decision of the PDSC Executive Director. The Contract will remain in full force pending communication of the PDSC Executive Director to Contractor. A decision by the PDSC Executive affirming termination shall become effective 10 days after it is communicated to Contractor.

B. Contractor reserves the right to terminate this Contract with cause with 30 days written notice should the PDSC substantially breach any duty, obligation or service pursuant to this Contract. In the event that Contractor terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the PDSC, Contractor shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the PDSC that (i) no default actually occurred, or (ii) the failure to perform was without Contractor's control, fault or negligence.

C. In the event of the termination or suspension of this Contract, Contractor shall continue to represent clients that were previously assigned and the PDSC will be liable for any payments owed for the completion of that work. Contractor will remit to the PDSC any monies paid for cases not yet assigned or work not performed under the Contract. The PDSC may request that Contractor attempt to withdraw from any case assigned and not completed. Should a court require, after Contractor has attempted to withdraw, the appearance of counsel from Contractor on behalf of any client previously represented by Contractor where such representation is no longer the obligation of Contractor pursuant to the terms of this Contract, the PDSC will honor payment to Contractor upon judicial verification that continued representation is required.

D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, Contractor shall return to the PDSC those funds,

unexpended or misappropriated, which, at the time of termination, have been paid to Contractor by the PDSC.

E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.

F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract.

## **XVI. NOTICES**

Contractor will immediately notify the PDSC in writing if one of the following events occurs:

- A. Bar Discipline. When it becomes aware that a complaint lodged with the Oregon State Bar has resulted in discipline, reprimand, suspension, or disbarment of any attorney who is a member of Contractor's staff or working for Contractor.
- B. Criminal Charges or Conviction. When it becomes aware that an attorney or investigator performing services under this contract has been charged with or convicted of a crime.
- C. Events Impacting Contractor's Ability to Perform Contract. When it becomes aware of an event that impacts its ability to perform services under this contract including, but not limited to, events such as fire, flood, burglary, or other damage to offices, buildings, or equipment used by Contractor to provide services.
- D. Embezzlement or Misappropriation of Funds. When it becomes aware of embezzlement or misappropriation of funds as defined in Section III.
- E. Ability to Accept Appointments to Eligible Clients. When it becomes aware that Contractor is unable to accept appointments to represent eligible clients.

## **XVII. CONTRACTOR INSURANCE**

Without limiting Contractor's indemnification, it is agreed that Contractor shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below. Contractor shall provide a certificate of insurance or, upon written request of the PDSC, a duplicate of the policy as evidence of insurance protection.

### **A. General Liability Insurance**

At its expense, in whole or in part from contract funds, Contractor, and each independent member of Contractor, 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.

**B. Professional Liability Insurance**

Contractor shall maintain, or ensure that its attorneys maintain, professional liability insurance for any and all acts which occur during the course of their work for Contractor, and the professional liability insurance must meet the minimum requires as established by the Oregon State Bar.

**C. Workers' Compensation**

Contractor shall maintain Workers' Compensation coverage as required by the State of Oregon.

**XVIII. HOLD HARMLESS AND INDEMNIFICATION**

Contractor shall protect, indemnify, defend, and hold harmless the PDSC 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 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 the PDSC for its actions, decisions, work, activities, or failures to act related to this Agreement.

**XIX. RESPONSIBILITY OF CONTRACT ADMINISTRATOR**

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 in accordance with contract attorney qualification level and oversight of case assignments;
- Timely and accurate tracking and reporting of caseloads to PDSC;
- Management and disbursement of contract funds;
- Working with PDSC 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 PDSC 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 PDSC upon request;
- Negotiating new contracts and contract changes with PDSC 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 PDSC 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.

## **XX. COMPLIANCE WITH APPLICABLE LAW**

Contractor shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its status as an entity and the work to be done under this contract. Such laws include, but are not limited to, the following laws, regulations and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

## **XXI. NONDISCRIMINATION**

During the performance of this Contract, neither Contractor nor any party subcontracting with Contractor under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

## **XXII. CONFLICT OF INTEREST**

### **A. Interest of Members of PDSC and Contractor**

No officer, employee, or agent of the PDSC, or the State of Oregon, who exercises any functions or responsibility in connection with the planning and implementation of the services funded herein shall have any personal financial interest, direct or indirect, in this Contract, or Contractor.

B. Interests of Contract Administrators and Officers

Contractor shall not acquire or rent real and/or personal property owned or rented by (a) an officer of Contractor, (b) a Contract administrator, (c) an individual related to an officer of Contractor or Contract administrator, or (d) a corporation owned by Contractor, a Contract administrator, an officer of Contractor, or relative of an officer of Contract or Contract administrator, without prior disclosure and approval by the PDSC

**XXIII. MERGER CLAUSE**

This writing, together with Exhibits A, B, and C, constitutes the entire agreement between the parties. There are no other oral or written understandings, agreements, or representation regarding this agreement. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless made in writing and signed by both parties. If made, such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. Contractor, by the signature below of its authorized representative hereby acknowledges that it and all attorneys providing representational services pursuant to this contract, have read this agreement, understand it, and agree to be bound by its terms.

Agreed:

\_\_\_\_\_  
PDSC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

## EXHIBIT A – COMPENSATION

The compensation for this contract is detailed below. These amounts may be amended:

- By mutual assent of the parties;
- Following receipt of Contractor’s Profile Report, based upon a change in the attorney qualification status of its attorneys; or
- Following a contract modification authorized by Section X.

Compensation authorized by this contract may be withheld:

- When Contractor has a vacancy that has not been filled for 60 days;
- When Contractor fails to submit reports as required by Section XII;
- In response to the breach, corrective action, and termination provisions established in Sections XIV and XV.

Contractor shall be compensated at two rates based upon the number of Attorney FTE in their contract – Attorney 1 and Attorney 2. This contract includes funding for the following Attorney FTE:

Attorney 1:	FTE at	per year.
Attorney 2:	FTE at	per year.

In addition, the contract contains the following funds:

## EXHIBIT B – CASELOAD AND WORKLOAD STANDARDS FOR CRIMINAL CONTRACT

Contractor agrees that its attorneys will provide legal services in accord with the following caseload and workload standards:

A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the caseload and workload limits described below. Contractor agrees that all attorneys will accept appointments to case types that they are qualified, competent, and reimbursed. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor’s responsibilities include administration, training, supervision, or specialty courts. Due to jurisdictional differences in practice, the annual caseload limits are subject to a 15% variance.

B. Annual Caseload Limits: Below is the maximum number of cases a 1.0 FTE attorney may be assigned per calendar year, if the attorney was assigned only cases from one case type.

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

C. Case Weighting and Annual Caseload Limits: The annual caseload limit for a 1.0 FTE attorney is 300 weighted cases per year, which corresponds to 25 weighted cases per month. The maximum number of cases an FTE Attorney may be assigned is equal to the product of their percentage of FTE Attorney and the percentage of the year they are under contract (300 Weighted Cases x Percent FTE x Percent of Year under Contract). Each case type receives the following weights:

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



- D. Workload: Contractor agrees that it will monitor attorney workloads to ensure those attorneys can meet their ethical obligations to each of their clients. Contractor agrees to adhere to the ABA's *Eight Guidelines of Public Defense Related to Excessive Workloads*. Contractor agrees to report attorney workload information to the PDSC in its monthly caseload reports.
- E. Partial Representation Weighting: When an attorney's representation ends prior to the entry of a final order or judgment, the attorney shall be assigned a percentage of the case weight described in B, based upon the following formula:
- 0-14 Days, 25%
  - 15-30 Days, 50%
  - 31-89 Days, 75%
  - 90 Days or more, 100%
- F. Out of County Weighting: When an attorney accepts an appointment to a case outside the county or counties for which this contract is contemplated, the case shall receive twice the case weighting described in B. An attorney shall endeavor to accept appointments to current clients in other counties to support the best practice of one client, one lawyer.
- The additional weighting does not apply to Murder or Jessica's Law cases;
  - If an attorney is assigned to an out of county client with more than one case, the most serious case type will be the case for which double credit is assigned.
- G. Additional Case Weighting: In addition to the assigned case weight in B, an attorney may treat the case as a new appointment and receive a new case weight:
- The attorney has represented the client for a year or more and the case has been delayed pursuant to a bench warrant, a dismissal without prejudice, or issues surrounding aid and assist;
  - The case is retried following a hung jury; or
  - The case returns for a new trial or sentencing following a direct appeal or post-conviction relief.
- H. Extraordinary Case Weighting: 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 the PDSC'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 PDSC for this purpose.
- I. Case Closure: Contractor shall close a client's case when:
1. The final judgment or order has been entered into the court register, and the

Contractor has met all other contractual obligations:

- If the appointment was for a probation violation, the attorney shall close the case upon disposition of the probation violation.
  - A judgment of dismissal constitutes a final judgment.
  - 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;
2. A judge has signed an order removing the attorney from the case; or
  3. A bench warrant for a client's failure to appear has been active for 180 days.

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## EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR CRIMINAL CONTRACT

Contractor agrees to provide legal services in accord with the additional performance standards:

- A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 24 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. During the initial contact, an attorney will make reasonable efforts to conduct interviews of clients or to schedule such an interview.
- C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.
- D. Attorney Departure/Continuous Representation. 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 PDSC and obtaining PDSC’s written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.
- E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to 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. Representation in these matters may be undertaken at an attorney's discretion pro bono.

- F. Pre-appointment representation. Where an individual would be eligible for appointed counsel at state expense if charged with a crime, but exigent circumstances preclude an appointment order, Contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written approval from the PDSC. In determining whether to authorize pre-appointment representation, the PDSC will consider whether:
- The individual is a clear target of the investigation;
  - The Contractor has a good faith basis to conclude the individual seeks counsel;
  - It is reasonable for the Contractor to believe the person qualifies for public defense counsel; and
  - The case is of a magnitude for which pre-indictment/petition appointment is reasonable.
- G. Initial Appearances. Contractor shall provide representation at all arraignment and first appearance hearings, unless the PDSC agrees in writing otherwise. Contractor shall work with the PDSC 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. Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. Contractor will include the attorney's contact information in the notice to the client.
- H. Representation Obligations 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:
- Providing representation at all scheduled hearings and court proceedings;
  - Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
  - Filing or arranging for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
  - Devote sufficient time to interviewing and counseling clients;
  - Seek pretrial release of all detained clients when the client so desires;
  - Assure all necessary investigation is conducted;
  - Pursue all avenues of discovery from the prosecution, both formal and informal;
  - Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case; and
  - Sufficiently prepare for all hearings, trials, and sentencings.

I. Post-Judgment Obligations. 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:

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