

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
T E R M S**

July 1, 2020 TO DECEMBER 31, 2021

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GENERAL TERMS

1 DEFINITIONS AND RULES

1.1 Interpretation of Terms

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

1.2 Construction and Jurisdiction

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

1.3 Severability

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

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

1.4 Definitions

1.4.1 State of Oregon

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

1.4.2 Contractor

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

1.4.3 Public Defender

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

1.4.4 Law Firm

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

1.4.5 Consortium

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

1.4.6 Client

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

1.4.7 Case

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

1.4.8 Full Time

It is presumed that a full-time public defense attorney spends approximately 1,650 hours annually on client representation. It is expected that other work time is spent on administrative activities, CLE attendance, participation in professional associations and committees, vacations, holidays, and sick leave.

1.4.9 FTE /Workload Model

An “FTE/workload Model” is the term given when OPDS funds entities based on the number of staff and infrastructure needed to cover the anticipated public defense cases in the jurisdiction.

1.4.11 Caseload

A “Caseload” is the term given cases assigned to an individual on an annual basis.

1.4.12 Workload

A “Workload” is the term given to the number of open cases assigned to an individual at a given time.

1.5 Caseload Guidelines

See OPDS Case Counting Guidelines.

1.6 Appointments That Do Not Qualify to be Counted

Verification Removal

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

(a) **Finding of Ineligibility**

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

(b) **Withdrawal of Application for Counsel**

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

2 MUTUAL RIGHTS

2.1 Waiver

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

2.2 Attorney Fees

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

2.3 Termination

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

3 RIGHTS OF PDSC

3.1 Subcontracts and Assignment of Contract

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

3.3 PDSC Rights for Failure to Obtain Workers' Compensation

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

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

3.4 De Minimis Changes in Contractor Reports/Documents

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

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

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

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

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

3.5.2 No Appointments After Notice

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

3.6 Funding Modification, Suspension, or Termination

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

3.7 Increasing Workload: Capacity Increase

When caseload increases significantly, Contractor and OPDS analyst are required to discuss the circumstances surrounding the increase. The parties may increase the number of FTE in the contract to meet the increased needs of the jurisdiction at additional cost to the state, if:

- (a) the probable number of available cases increases substantially;
- (b) Contractor demonstrates that it has a sufficient number of attorneys and other persons providing services under the contract, or has identified or is able to identify additional attorney(s) to manage the additional workload; and
- (c) OPDS determines that increase in capacity is in the state's interest.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

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

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

3.8.2 Access to Facilities and Provision of Records

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

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

3.8.3 Other Information

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

3.8.4 Timely Reports by PDSC

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

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

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

4.2 Court Appointments Outside Contract

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

4.3 Client Records

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

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

4.4 Personnel Records

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

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

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

5.2 Compliance with Applicable Law

5.2.1 In General

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

5.2.2 Laws Incorporated by Reference

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

5.3 Notice of Contract Modification, Suspension, or Termination

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

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

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload, caseload, or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or

state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Caseload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available. If OPDS analysts determine that there is a significant decrease in the probable number of cases, then Contractor will be given a two-week notice to meet with OPDS and address any variance.

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.

5.6.1 Review of Assignments to Multiple Contractors and Mixture of Cases

In counties where more than one Contractor provides legal services, periodic review shall include a review by 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, to the extent total cases are available. Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, OPDS shall notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

5.7.2 Fungibility

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

5.8 Other Contractors and Vendors

PDSC may undertake or award other contracts for additional or related work. Contractor shall cooperate with PDSC and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for public defense services. Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

6 OBLIGATIONS OF PDSC

6.1 State Funding Shortfall

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

6.2 Contract Payment

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

6.3 Payments in Addition to Contract Price

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

- (a) **Discovery**
Discovery expenses include material provided by DHS or a county juvenile department for representation in a juvenile case. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, district attorney, or court files pertaining to the underlying case;
- (b) **Preauthorized Non-Routine Expenses**
Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). Preauthorization of non-routine expenses shall be sought in compliance with the *PDSC Public Defense Payment Policies and Procedures*;
- (c) **Lay Witness Fees**
Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;
- (d) **Copying Clients' Files**
The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief, or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;
- (e) **Copying Direct Appeal Transcripts for PCR Trial-Level Representation**
The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;
- (f) **Records**
Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and
- (g) **Process Service**
The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

7 OBLIGATIONS OF CONTRACTOR

7.1 Performance Obligations of Appointed Counsel

7.1.1 Standard of Representation

Appointed counsel shall fulfill applicable state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center, and National Legal Aid and Defender Association. Counsel shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel, and meet state and federal statutory requirements for counsel in the applicable proceedings. And counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

7.1.2 Representation at all Stages of a Proceeding

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

7.1.2.1 Pre-appointment representation

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

7.1.2.2 Appearance at first proceedings

- (a) Contractor shall provide representation at all scheduled arraignments, shelter hearings, and other initial appearances in criminal and juvenile cases.
- (b) Notwithstanding subsection (a), where PDSC has approved in writing other arrangements for representation at first proceedings, Contractor is not required to provide representation.
- (c) Contractor shall 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 through judgment or other final order of the court on the case, including but not limited to:

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

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

7.1.2.4 Post-judgment proceedings

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

- (a) Seek modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- (b) Complete questionnaires, forms or other process necessary to obtain appellate counsel for clients requesting an appeal;
- (c) Seek court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- (d) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705;
- (e) Consult with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
- (f) Upon request, provide copies of the entire file to appellate or post-conviction relief counsel.

7.1.3 Client Contact

7.1.3.1 In-custody Initial Contacts

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

- (a) Within 48 hours of appointment; or
- (b) By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a holiday.

7.1.3.2 Out-of-Custody Contacts

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

7.1.4 Contractor Responsibilities Regarding Financially Ineligible Clients

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

7.1.5 Withdrawal From Case Only on Court Approval

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

7.2 Quality Assurance Obligations of Contract Administrator

7.2.1 Quality Assurance Procedures

Contractor shall ensure that persons providing client representation under this contract meet the standards of representation set forth in Section 7.1.1 of this contract. In doing so, Contractor should 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 private practice cases not covered by this contract, that will not interfere with competent and diligent representation that fulfills the Standard of Representation set forth in Section 7.1.1 of this contract, unless the attorney works as a 1.0 full-time FTE (in one or more contracts). Attorneys who agree to work full-time on public defense cases may not take on other legal work, such as private cases or acting as a municipal court judge or prosecutor.
- (c) Will provide continuous representation by the same attorney, when possible, from the commencement of proceedings continuously until the final disposition of the case.

7.2.3 Continuing Legal Education Requirements

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

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

7.2.4 Report to OPDS

Contractor shall provide to OPDS, on a form created by OPDS, a description of its quality assurance procedures, including documentation demonstrating current compliance with those procedures, quarterly. Contract administrators and analysts will meet quarterly to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

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

7.3.2 Independent Status of Contractor

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

7.3.2.1 Ineligibility for Public Employee Benefits

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

7.3.2.2 Wages and Taxes

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

7.3.2.3 Workers' Compensation

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

7.3.3 State Tort Claims Act Not Applicable

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

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS Chapter 659A, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

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

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability

insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

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

7.3.5.3 Additional Insured

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

7.3.5.4 Cancellation or Change

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

7.3.6 Malpractice Insurance

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

7.3.7 Internal Controls

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

7.3.8 Oregon Judicial Case Information Network (OJCIN)

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

7.3.9 Protection of Consumer Personal Information

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

7.4 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.

7.4.2 Certification to OPDS

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

7.4.3 Interpreters

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(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.

7.5 Record Keeping

7.5.1 Case Records

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

7.5.2 Financial Records

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

7.5.3 Retention Period

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

7.6 Reports to OPDS

7.6.1 Case Inventory

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

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by 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 Caseload and Workload Reports

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

7.6.4 Penalty for Late Reports

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

7.6.5 Enforceability

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

7.7 Costs, Expenses, and Client Clothing

7.7.1 Costs and Expenses

Except for the expense items listed in Section 6.3, Contractor shall pay for:

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

7.7.2 Client Clothing

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

7.8 Special Notices

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

- (a) Contractor's ability to carry out this contract, including changes in names and number of attorneys providing services under this contract, number of non-attorneys providing services under the contract, and office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

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

7.8.2 Specific Notices and Responses Required

7.8.2.1 Insurance Cancellation or Change

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

7.8.2.2 Persons Providing Services Under the Contract

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

7.8.2.3 Change in Contractor's Organization

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

7.8.2.4 Events Which Could Impair the Contract

Contractor shall notify 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.

7.8.2.5 Nonassignment of Available Cases or Early Quota

Contractor shall notify OPDS immediately upon determining that:

- (a) the court is not assigning Contractor to cases available for appointment; OPDS shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract without PDSC authorization;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) solicit or accept payment from a client for legal services on a matter on which Contractor has been appointed by the court.

7.10 Independent Audit Required

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

7.11 Limits on Nonprofit Public Defender Attorneys

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

7.12 Limits on Pro Bono Work

Nonprofit public defenders may provide pro bono representation only for:

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

Key: Public Defender

Consortium or Law Firm

8 MUTUAL RISKS

8.1 Impossibility of Performance

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

8.2 Tort Liability

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

9 RISKS OF CONTRACTOR

9.1 Wind-Down Procedures

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

9.1.1 Negotiations

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

9.1.1 Negotiations

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

9.1.2 Reduction in Contractor's Caseload

Key: Public Defender

Consortium or Law Firm

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

10 APPOINTMENT TYPE DEFINITIONS

() denotes the applicable appointment code.

10.1 Criminal Cases

10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)

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

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

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

10.1.2 Capital Murder Case (CMUR)

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

10.1.3 Noncapital Murder Case (MURD)

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

- (a) murder in the second degree as defined by ORS 163.115; and murder in the first degree as defined by SB 1013 (2019),
- (b) murder where the person is a juvenile who is waived to circuit court on the charge.

10.1.4 Felony Case

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

10.1.4.1 Jessica's Law Case (JLAW)

Jessica's Law case, is a felony first degree sex offense case in which the victim was under the age of 12 at the time of the offense. The offense is subject to a mandatory minimum 300 month prison sentence pursuant to ORS 137.700. Jessica's law cases include violations of ORS 163.375(1)(b), ORS 163.405(1)(b), ORS 163.411(1)(b). It also includes Kidnapping in the First Degree when the offense is in furtherance of the commission, of the attempted commission, of ORS 163.375(1)(b), ORS 163.405(1)(b), ORS 163.411(1)(b).

10.1.4.2 Measure 11 Felony (AM11, BM11, JM11)

Other than murder and Jessica's Law cases, a felony that is the subject of ORS 137.700 or ORS 137.707 is a measure 11 felony. AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15-, 16- or 17-year-old may be waived into adult circuit court.

10.1.4.3 Class A Felony (AFEL)

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

10.1.4.3 Class B Felony (BFEL)

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

10.1.4.4 Class C Felony (CFEL)

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

10.1.4.5 DUII Felony (DFEL)

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

10.1.4.6 Domestic Violence Class C Felony (DVIO)

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

10.1.4.7 Unclassified Felony (UFEL)

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

10.1.5 DUII (DUIS)

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

10.1.6 Misdemeanor Case (MISS)

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

10.1.7 Misdemeanor Traffic Case

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

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

10.1.8 Extradition Case (EXTR)

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

10.2 Probation Violations

10.2.1 Probation Violation

A probation violation is any appointment or reappointment to represent a person in a proceeding concerning an order of probation, including but not limited to the revoking thereof. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

10.2.1.1 Felony Probation Violation (FPV)

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

10.2.1.2 Misdemeanor Probation Violation (MPV)

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

10.2.1.3 DUII Probation Violation (DPV)

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

10.3 Contempt Cases

10.3.1 Contempt Case

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

10.3.1.1 Family Abuse Prevention Act (FAPA)

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

10.3.1.2 Support (SUPP)

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

10.3.1.3 Contempt (CONT)

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

10.4 Civil Commitment Cases

10.4.1 Civil Commitment Case (MHMI)

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

10.5 Juvenile Cases

10.5.1 Juvenile Case

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

10.5.1.1 Juvenile Felony (JUDF)

If committed by an adult, alleged act would constitute a felony, except those cases referenced in section 10.1.4.2.

10.5.1.2 Juvenile Misdemeanor (JUDM)

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

10.5.1.3 Juvenile Other (JUDO)

- (a) if committed by an adult, alleged act would constitute a violation or infraction;
- (b) alleged act is a status offense;
- (c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);
- (d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340), except those cases referenced in section 10.1.4.2;
- (e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);
- (f) appointments under ORS 163A.130 and ORS 163A.135 (Relief from reporting requirement; juvenile offenders); and
- (g) appointment to a juvenile case for which no other juvenile case type applies.

10.5.1.4 Probation Violation or Motion to Modify (JPV)

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

10.5.1.5 Juvenile Dependency Case

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

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

10.5.1.6 Termination of Parental Rights Case

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

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

10.6 Other Civil Cases

10.6.1 Habeas Corpus Case (CVHC)

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

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

10.6.2 Post-Conviction Relief Case (CVPC)

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

10.6.3 Psychiatric Security Review Board Case (PSRB)

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

10.7 Other Cases (OTHR)

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

SPECIFIC TERMS

1 PARTIES TO CONTRACT

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

2 TERM OF CONTRACT

The contract term shall be from July 1, 2020 through December 31, 2021.

3 NOTICE

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

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

PDSC:
mail@opds.state.or.us

Contractor:
(Contract Administrator email address)

4 TOTAL VALUE AND PAYMENT SCHEDULE

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

5 FTE AND CASES

Contractor shall provide legal representation in the Circuit Court of _____ County for the number of FTE and estimated number of cases included in the FTE and Estimated Case Matrix.

7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

[Add additional agreements as needed.]

8 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE JULY 1, 2020 GENERAL TERMS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

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

C. Lane Borg, Executive Director

DATE

**Office of Public Defense Services
Public Defense Services Commission**

Contractor

DATE

Title or Representative Capacity

**CONTRACT BETWEEN PDSC AND CONTRACTOR
PAYMENT SCHEDULE**

**CONTRACT BETWEEN PDSC AND CONTRACTOR
FTE AND ESTIMATED CASE MATRIX**