

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT  
GENERAL TERMS**

**JANUARY 1, 2010 TO DECEMBER 31, 2011**

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KEY: Public Defender

Consortium or Law Firm

# GENERAL TERMS

## 1 DEFINITIONS AND CASE CREDIT RULES

### 1.1 Interpretation of Terms

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

### 1.2 Construction and Jurisdiction

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

### 1.3 Severability

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

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

### 1.4 Definitions

#### 1.4.1 Public Defense Services Commission

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

#### 1.4.2 Contractor

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

#### 1.4.3 Public Defender

A "public defender" is a nonprofit organization established solely 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 engage in non-court-appointed legal representation.

#### 1.4.5 Consortium

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

#### 1.4.6 Client

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

#### 1.4.7 Appointment

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

#### 1.4.8 Case

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

#### 1.4.9 Credit

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

#### 1.4.10 Value

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

#### 1.4.11 Complex Case

A "complex case" is an appointment on a case type valued at \$2,000 or more. Withdrawal or substitution for any reason from a complex case changes the credit type to "Other" (OTHR).

### 1.5 Rules for Counting Appointments

An appointment is credited, according to the following rules:

#### 1.5.1 Criminal Complex Case Credit

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

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

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

SEC. 1 INTRODUCTION

- (i) more than one charging instrument (including Uniform Traffic Citation) is filed; or
- (ii) more than one case number is assigned.

**1.5.3 Case Type Credit**

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

**1.5.4 Credit for Recommended Representation**

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

**(a) 365 Days After Aid and Assist Delay**

more than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or

**(b) 180 Days After Bench Warrant**

more than 180 days have passed since a bench warrant was issued; or

**(c) 18 Months with Repeated Bench Warrants**

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

**(d) 180 Days After Pre-Indictment Dismissal**

on a felony case, more than 180 days have passed since a dismissal of a case pre-indictment; or

**(e) After Appeal or Postconviction Relief**

a new trial or sentencing follows an appeal or postconviction relief; or

**(f) After Interlocutory Appeal**

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

**(g) After Mistrial or Hung Jury**

a new trial is scheduled after a mistrial or hung jury; or

**(h) After Prosecutorial Misconduct**

a case is refiled after dismissal without prejudice and 180 days have passed since the dismissal.

**1.5.5 Probation Violation Credit**

An appointment on a probation violation proceeding arising out of a criminal or civil contempt sentencing(s), is one probation violation credit for each court case number to which Contractor is appointed. Provided however that if Contractor is appointed to more than one case number, additional credit is received ONLY for those case numbers

in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

**1.5.6 Show Cause Hearing for Diversion or Conditional Discharge Agreement**

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

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

**1.5.7 Juvenile Case Credit**

**1.5.7.1 General Provisions**

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

**1.5.7.2 Prepetition Matters**

An appointment to represent a child who is in custody and being interrogated or is otherwise detained is a credit, even if no petition is later filed on the allegations involved. The appointment continues through disposition on any petition that is later filed on those allegations and no additional case credit is received.

**1.5.7.3 Delinquency Petitions**

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

**1.5.7.4 Dependency and Termination Petitions**

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

**1.5.7.4.1 Representation of Multiple Children**

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

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

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### 1.5.7.4.2 Maximum Credit for Representing Parents

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

### 1.5.7.5 Postdispositional Juvenile Hearings

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

### 1.5.7.6 Juvenile Probation Violation Hearings

Juvenile probation violation hearings are governed by Section 1.5.5.

### 1.5.7.7 Waiver Proceedings

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

### 1.5.8 Mental Health Case Credit

An appointment to represent an allegedly mentally ill or mentally retarded person is a credit. The appointment ends at the original disposition of that matter.

### 1.5.9 Contempt Case Credit

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

### 1.5.10 Postconviction Relief Case Credit

An appointment to represent a client on petitions filed at the same time or petitions with sequential numbers counts as one credit. The appointment ends at the original disposition of that matter.

### 1.5.11 Habeas Corpus Case Credit

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

## 1.6 Appointments That Do Not Qualify for Credit

### 1.6.1 Verification Removal

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

### (a) Finding of Ineligibility

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

### (b) Withdrawal of Application for Counsel

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

### 1.6.2 Client Retains Counsel

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

### 1.6.3 Reassignment Within Consortium

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

## 2 MUTUAL RIGHTS

### 2.1 Waiver

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

### 2.2 Attorney Fees

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

### 2.3 Termination

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

## 3 RIGHTS OF PDSC

### 3.1 Subcontracts

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

### 3.2 Assignment of Contract

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



## SEC. 3 RIGHTS OF PDSC

### 3.3 PDSC Powers 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 willful or habitual 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 6.2)

### 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 this contract including material misuse of contract funds;
- (b) Contractor's willful or habitual disregard of the procedures required by the courts in which Contractor provides services;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's willful failure to abide by minimum standards of performance and rules of professional ethics; 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 believes 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 6.3 (State Funding Shortfall).

### 3.7 Increasing Workload: Renegotiation at PDSC Option

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

- (a) the probable number of available cases increases substantially; and
- (b) PDSC determines that renegotiation is in the state's interest.

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

### 3.8 Review, Verification and Inspection of Records

#### 3.8.1 Request

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

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

#### 3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits 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. 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" (1991) when conducting any fiscal or performance audit.

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.

## SEC. 3 RIGHTS OF PDSC

### 3.8.3 Other Information

Upon the PDSC's determination that a significant question exists of Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.4, 4.5 and 6.2), Contractor shall provide any other information that PDSC reasonably identifies and requests as needed to ensure proper disbursement of state funds.

### 3.8.4 Timely Reports by PDSC

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

### 3.9 Use of Equipment Purchased with Contract Funds

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

### 3.10 Return of Equipment Purchased with Contract Funds

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

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

### 3.11 Limit on Return of Equipment to PDSC

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

## 4 RIGHTS OF CONTRACTOR

### 4.1 Termination By Contractor For Cause

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

### 4.2 Court Appointments Outside Contract

Contractor may accept additional court appointments to cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional

appointments do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

### 4.3 Request for Additional Credit

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

#### 4.3.1 In General

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

#### 4.3.2 Complex Cases in Which Contractor Withdraws

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

### 4.4 Client Records

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

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

### 4.5 Personnel Records

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

## 5 MUTUAL OBLIGATIONS

### 5.1 Successors in Interest

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

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**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 279.312, 279.314, 279.316, and 279.320 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) be in writing;
- (b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (c) become effective for willful breach not less than 14 days from delivery by certified mail or in person; and
- (d) become effective not less than 60 days from delivery by certified mail or in person for non-willful breach.

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

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

**5.5 Modification or Termination Due to Decreased Caseload**

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

**5.6 Renegotiation Shall Minimize Reductions in Staff**

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

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

**5.7 Periodic Review**

At the request of either party, PDSC and Contractor will periodically review case assignment trends, requests for

additional credit and any other matters needed to determine contract compliance or any necessary contract modifications.

**5.7.1 Review of Assignments to Multiple Contractors and Mixture of Cases**

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

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

**6.2 De Minimis Changes in Contractor Reports/Documents**

PDSC shall not make any change that would cause more than a de minimis increase in cost or time required to perform the contract except by written agreement signed by both parties. (See Section 3.4)

**6.3 State Funding Shortfall**

**6.3.1 PDSC to Seek Additional Funding**

If PDSC reasonably believes that appropriated funds will not be sufficient, PDSC shall seek additional funds from the Legislative Emergency Board or legislature at the earliest opportunity and, if possible, before modifying, suspending, or terminating this contract.

**6.3.2 Negotiations**

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 both cost and the level of representation that meets minimum allowable professional standards. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

**6.4 Accounting Model**

Payment under this contract shall be based on when work is performed, consistent with Oregon state government accounting procedures. Except for contracts based on number of hours, the accounting model used for payment under the contract assumes the disposition of an average case assigned under the contract occurs within 90 days of the assignment. The model also assumes approximately one-third of the work is performed in the month the case is assigned and one-third of the work is performed in each of the following two months. PDSC shall pay Contractor according to this accounting model out of funds for the biennium during which the work is performed.

**6.5 Payments in Addition to Contract Price**

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

**(a) Discovery**

Discovery expenses;

**(b) Preauthorized Non-Routine Expenses**

Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:

- (i) medical and psychiatric evaluations;
- (ii) expert witness fees and expenses;
- (iii) interpreters;
- (iv) polygraph, forensic and other scientific tests;
- (v) computerized legal research;
- (vi) investigation expenses; and
- (vii) any other non-routine expenses PDSC or other authority designated to approve non-routine expenses

preauthorizes and finds necessary and proper for the investigation, preparation, and presentation of a case;

**(c) Lay Witness Fees**

Lay witness fees and expenses 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, postconviction 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 postconviction relief cases. Contractor is limited to no more than two copies; and

**(f) Other**

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.

**7 OBLIGATIONS OF CONTRACTOR**

**7.1 Obligations To Appointed Clients**

**7.1.1 Representation At All Court Proceedings in the Relevant Court**

Contractor shall provide representation at all stages of a case assigned under this contract as limited by this contract. Representation means the provision of competent legal advice and assistance by appointed counsel to a person that a state court has determined to be financially eligible and entitled to appointed counsel at state expense on all matters related to the appointment, except DMV license suspension hearings, civil forfeiture proceedings, domestic relations proceedings and other civil proceedings.

**7.1.2 Standards of Representation**

Representation further means providing a level of legal service that does not fall below the minimum professional standards and canons of ethics of the Supreme Court of Oregon, the Oregon State Bar, the American Bar Association, and any applicable case law and court rules that define the duties of counsel to their clients.

**7.1.3 Specific Representation Services**

Contractor shall provide services on any and all matters necessary to provide adequate representation of the client, including but not limited to:

- (a) having an attorney present at regularly scheduled arraignments or other initial appearance to make the necessary contact and appointments with clients assigned to Contractor (Contractor may make alternative arrangements with the court for actual presence);

## SEC. 7 OBLIGATIONS OF CONTRACTOR

- (b) establishing and following procedures to ensure prompt notification to the court of the specific attorney assigned to each case;
- (c) filing all necessary motions, including pre- and post-judgment motions;
- (d) representation through judgment or other final order of the court on the case, including but not limited to:
  - (i) filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions,
  - (ii) filing necessary paperwork under ORS 161.705 ("reduction of certain felonies to misdemeanors"), and
  - (iii) all prejudgment proceedings arising from a petition for a writ of mandamus or habeas corpus related to the case on which counsel was appointed;
- (e) legal assistance to individuals who would be eligible for counsel at state expense if charged with a crime and where exigent circumstances preclude an appointment order (e.g., interrogation);
- (f) preparing all documents, letters, research and referrals to appropriate agencies;
- (g) continuous legal and support staff services, during case substitutions, to the extent necessary to ensure continuous representation and the establishment of the new attorney/client relationship;
- (h) consulting with clients regarding appellate review;
- (i) upon request, assisting in filing a notice of appeal and motion for appointment of appellate counsel and timely responding to appellate counsel's questionnaire or questions regarding the case;
- (j) to the extent ethically possible, representing a client at a show cause hearing to determine client's financial eligibility;
- (k) to the extent ethically possible, consulting with appellate or postconviction relief counsel on an appeal or postconviction relief proceeding; and
- (l) upon request, providing copies to appellate or postconviction relief counsel in a timely manner.

### 7.1.4 Client Contact

#### 7.1.4.1 In-Custody Initial Interviews

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

- (a) within 24 hours of appointment; or
- (b) by the next working day if the court appoints Contractor on a Friday, weekend, or holiday.

#### 7.1.4.2 Out-of-Custody Interviews

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 client must do to schedule an interview time.

### 7.1.5 Contractor Responsibilities – Financially Ineligible Clients

Contractor shall comply with the requirements of federal and Oregon constitutions, the Oregon Rules of Professional Conduct, and consider OSB Ethics Opinion 2005-34 if Contractor learns that the client is ineligible for state-funded legal services under this contract.

### 7.2 Withdrawal From Case Only on Court Approval

Contractor may withdraw 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.

### 7.3 Special Obligations To State of Oregon

#### 7.3.1 Indemnity of PDSC By Contractor

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

#### 7.3.2 Independent Status of Contractor

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

##### 7.3.2.1 Ineligibility for Public Employee Benefits

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

##### 7.3.2.2 Wages and Taxes

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

##### 7.3.2.3 Workers' Compensation

As an independent contractor Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 659A 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

## SEC. 7 OBLIGATIONS OF CONTRACTOR

for all actions of its members, officers, employees, parties, agents and subcontractors.

### **7.3.4 Equal Rights of Contractor's Employees**

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659.425, and all regulation and administrative rules established pursuant to those laws.

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

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

#### **7.3.5.1 General Liability Insurance**

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

#### **7.3.5.2 Casualty Insurance**

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

#### **7.3.5.3 Additional Insured**

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

#### **7.3.5.4 Cancellation or Change**

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

#### **7.3.6 Malpractice Insurance**

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

#### **7.3.7 Internal Controls**

Contractor shall establish internal controls, such as

segregation of duties with respect to financial accounting, to ensure that contract funds are properly received, expended, and accounted for.

### **7.3.8 Oregon Judicial Information Network (OJIN)**

For juvenile cases, Contractor shall limit use of OJIN to access only those cases that involve parties Contractor represents.

## **7.4 Staff and Equipment**

### **7.4.1 Staffing Levels**

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

### **7.4.2 Assigning and Associating Attorneys**

#### **7.4.2.1 Diligence in Hiring**

Contractor shall use due diligence to hire, assign, or associate attorneys for this contract who are qualified to provide competent and effective services to their clients and the courts.

#### **7.4.2.2 Supervision**

Contractor shall have more experienced attorneys closely supervise lesser experienced attorneys' performance. Contractor shall provide information on the extent of supervision on PDSC's request. However, Contractor shall not provide to PDSC or any other person the contents of any employee's personnel files unless Contractor's employee expressly, knowingly, and voluntarily agrees in writing.

#### **7.4.2.3 Certification**

Contractor shall provide to PDSC the name and qualifications of any attorney added during the contract term to perform contract services. The newly added attorney shall meet the qualification standards established by PDSC, for the type of cases that will be assigned. A "certificate of attorney qualification" shall be provided to PDSC for each newly added attorney.

### **7.4.3 Interpreters**

For out-of-court attorney/client communications, Contractor shall give preference to interpreters who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. If no certified interpreter is available, Contractor may use a qualified interpreter, as defined in ORS 45.275(8)(b). Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor and provide in-court interpretation comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

### **7.4.4 Limit on Contractor and Staff Noncontract Work**

Contractor and Contractor's staff shall not let noncontract work interfere with adequate representation of court-appointed clients under this contract.

## SEC. 7 OBLIGATIONS OF CONTRACTOR

### 7.5 Record Keeping

#### 7.5.1 Case Records

Contractor shall maintain current information, including case log notes, on individual contract cases. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by PDSC, or PDSC's designee or agent.

#### 7.5.2 Financial Records

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

#### 7.5.3 Retention Period

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

### 7.6 Reports to PDSC

#### 7.6.1 Case Inventory

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

#### 7.6.2 Case Disposition and Withdrawal Data

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

#### 7.6.3 Penalty for Late Reports

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

#### 7.6.4 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 6.5, Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;

- (b) all other routine expenses related to case preparation and trial; and
- (c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

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

#### 7.7.2 Client Clothing

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

### 7.8 Special Notices

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

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

#### 7.8.1 Time Requirement for Notices

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

#### 7.8.2 Specific Notices Required

##### 7.8.2.1 Insurance Cancellation or Change

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

##### 7.8.2.2 Staffing Changes

Contractor shall provide, to PDSC and the affected court, notice of the names of attorneys who are hired or leave Contractor's employ and any other substantial staffing changes. Upon request by PDSC, Contractor shall provide a current list of attorneys and staff positions by full time equivalent.

##### 7.8.2.3 Change in Contractor's Organization

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

SEC. 7 OBLIGATIONS OF CONTRACTOR

**7.8.2.4 Events Which Could Impair the Contract**

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

**(a) Criminal Charges**

A member of Contractor's attorney or investigator staff has been charged with a crime.

**(b) Criminal Conviction**

A member of Contractor's attorney or investigator staff has been convicted of a crime punishable by a term of incarceration of one or more years or involving moral turpitude.

**(c) Formal Bar Complaint**

A formal accusation of misconduct, that is alleged to have occurred with respect to representation provided in a contract case, has been filed by the Oregon State Bar against a member of Contractor's attorney staff.

**(d) Bar Discipline**

Disciplinary action is taken by the Oregon State Bar against one of Contractor's attorney staff.

**(e) Uninsured Practice of Law**

A member of Contractor's attorney staff has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

**7.8.2.5 Nonassignment of Available Cases or Early Quota**

Contractor shall notify PDSC immediately upon determining that:

- (a) the court is not assigning Contractor to cases available for appointment; or
- (b) Contractor will reach its total contract quota before the expiration of the contract.

Within forty-five (45) days of notification to PDSC that the court is not assigning Contractor to cases available for appointment, PDSC shall propose a plan to Contractor and the court to remedy 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;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) accept or keep credit for a case for which Contractor's attorney is subsequently retained.

**7.10 Independent Audit Required**

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

**7.11 Annual Expenditure Report**

Forty-five (45) days after the end of each one-year period under the contract, Contractor shall provide to PDSC a one-year expenditure report listing the amounts of contract funds expended by the same line items as are listed in Contractor's "Estimated Allocation of Contract Funds".

**7.12 Limits on Full Time Public Defender Attorneys**

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

**7.13 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.

**7.14 Public Defender Employee Compensation**

No public defender employee shall receive a salary higher than that set by the legislature for a circuit court judge in ORS 292.415.

**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.

KEY: Public Defender Consortium or Law Firm



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**9 RISKS OF CONTRACTOR**

**9.1 Refund for Shortage**

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

**9.2 Wind-Down Procedures**

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

**9.2.1 Negotiations**

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

**9.2.1 Negotiations**

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

**9.2.2 Reduction in Contractor's Caseload**

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

**10 APPOINTMENT TYPE DEFINITIONS**

( ) denotes the applicable appointment code.

**10.1 CRIMINAL CASES**

**10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)**

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

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

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

**10.1.2 Capital Murder Case (CMUR)**

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

**10.1.3 Noncapital Murder Case (MURD)**

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

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

**10.1.4 Felony Case**

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

**10.1.4.1 Measure 11 Felony (AM11, BM11, JM11)**

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

**10.1.4.2 Class A Felony (AFEL)**

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

**10.1.4.3 Class B Felony (BFEL)**

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

**10.1.4.4 Class C Felony (CFEL)**

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

**10.1.4.5 DUII Felony (DFEL)**

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

**10.1.4.6 Domestic Violence Class C Felony (DVIO)**

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

KEY: Public Defender Consortium or Law Firm

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**10.1.4.7 Unclassified Felony (UFEL)**

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

**10.1.5 DUII (DUIS)**

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

**10.1.6 Misdemeanor Case (MISS)**

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

**10.1.7 Misdemeanor Traffic Case**

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

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

**10.1.8 Extradition Case (EXTR)**

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

**10.2 PROBATION VIOLATIONS**

**10.2.1 Probation Violation**

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

**10.2.1.1 Felony Probation Violation (FPV)**

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

**10.2.1.2 Misdemeanor Probation Violation (MPV)**

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

**10.2.1.3 DUII Probation Violation (DPV)**

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

**10.3 CONTEMPT CASES**

**10.3.1 Contempt Case**

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

**10.3.1.1 Family Abuse Prevention Act (FAPA)**

Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.732) restraining order.

**10.3.1.2 Support (SUPP)**

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

**10.3.1.3 Contempt (CONT)**

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

**10.4 CIVIL COMMITMENT CASES**

**10.4.1 Civil Commitment Case (MHMI)**

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

**10.5 JUVENILE CASES**

**10.5.1 Juvenile Case**

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

**10.5.1.1 Juvenile Felony (JUDF)**

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

**10.5.1.2 Juvenile Misdemeanor (JUDM)**

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

**10.5.1.3 Juvenile Other (JUDO)**

- (a) if committed by an adult, alleged act would constitute a violation or infraction;
- (b) alleged act is a status offense;
- (c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);
- (d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340);
- (e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);

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(f) appointments under ORS 181.823 (Relief from reporting requirement; juvenile offenders) or ORS 181.826 (Relief from reporting requirements; juvenile offenders from different jurisdiction); 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) - (g).

(a) Parent (JDEP): Appointment to represent parent(s) or guardian(s).

(b) Child (JDEC): Appointment to represent child(ren).

**10.5.1.6 Postdispositional Proceeding**

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

(a) Parent (JPDP): Appointment to represent parent(s) or guardian(s).

(b) Child (JPDC): Appointment to represent child(ren).

**10.5.1.7 Termination of Parental Rights Case**

A termination of parental rights case is any appointment to represent the parent or child in a proceeding under ORS 419B.500 - 419B.530 OR in a contested adoption matter (Zockert v. Fanning) 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 Postconviction Relief Case (CVPC)**

A postconviction 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 January 1, 2010 through December 31, 2011.

### 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 address below or to such person and address as the parties provide to each other from time to time:

PDSC:

Public Defense Services Commission  
Contract and Business Services Division  
1320 Capitol St NE, Ste 190  
Salem, Oregon 97301

Contractor:

\_\_\_\_\_  
(Contract Administrator)  
\_\_\_\_\_  
(mailing address)  
\_\_\_\_\_  
(mailing address)

### 8 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE 2009 REQUEST FOR PROPOSALS 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.

### 4 TOTAL WORKLOAD 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 workload value in monthly installments as shown in the Payment Schedule.

### 5 CASE TYPES

Contractor shall provide legal representation in the Circuit Court of \_\_\_\_\_ County for the types of cases included in the Caseload and Case Value Matrix.

### 6 WORKLOAD

#### 6.1 Estimated Number of Cases

Contractor's workload is estimated to be \_\_\_\_\_ cases for the contract term.

#### 6.2 Caps, Limitations, or Parameters on Number of Certain Cases

[Describe here as needed.]

### 7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

[Describe here as needed.]

\_\_\_\_\_  
INGRID SWENSON, EXECUTIVE DIRECTOR  
PUBLIC DEFENSE SERVICES COMMISSION

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE OR REPRESENTATIVE CAPACITY

**CONTRACT BETWEEN PDSC AND CONTRACTOR  
PAYMENT SCHEDULE**

End of Month (Unless noted)	Monthly Payment
January 2010	
February 2010	
March 2010	
April 2010	
May 2010	
June 2010	
July 2010	
August 2010	
September 2010	
October 2010	
November 2010	
December 2010	
<i>First-Year Subtotal</i>	\$0
January 2011	
February 2011	
March 2011	
April 2011	
May 2011	
June 2011	
July 10, 2011	
July 2011	
August 2011	
September 2011	
October 2011	
November 2011	
December 2011	
<i>Second-Year Subtotal</i>	\$0
<b>Total Payments</b>	<b>\$0</b>

**CONTRACT BETWEEN PDSC AND CONTRACTOR  
CASELOAD AND CASE VALUE MATRIX**

Case Types	Value	Number of Cases	Total Value
1/1/10 - 12/31/10			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
First-Year Total		0	\$0
1/1/11 - 12/31/11			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0