

**PUBLIC DEFENSE SERVICES COMMISSION**  
**REQUEST FOR QUALIFICATIONS (RFQ)**  
**FOR**  
**PUBLIC DEFENSE LEGAL SERVICES CONTRACTS**

July 1,2023 to June 30, 2025

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## PART I - GENERAL INFORMATION

### 1.1 Request For Statements of Qualification (RFQ) Description

The Public Defense Services Commission (PDSC) is seeking Statements of Qualification in order to award contracts to attorneys and entities to provide legal services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense. Contracts are predicated on the number of full-time equivalent (FTE) attorneys providing public defense services pursuant to caseload standards adopted by the PDSC. The PDSC will establish how many FTE attorneys will be funded and the financial value of those contracts.

The PDSC is accepting statements of qualification for criminal (jurisdiction specific and statewide), juvenile, and Parent Child Representation Program (PCRP) contracts. The financial values of the criminal and juvenile contracts are tiered and contingent upon the types of cases for which an attorney agrees to make themselves available to receive court appointments.

The financial values of those contracts is not yet known, but the agency intends to fund FTE attorneys at two tiers. Contract attorneys must select a level of qualification that will determine the types of cases for which they are willing to receive appointments, pursuant to the PDSC's Qualification Standards for Court Appointed Counsel. If an attorney does not want to accept court appointments up to the most serious case type for which they are currently qualified, the applicant must identify this adjustment in its submission.

PDSC may allow existing contractors to forgo the RFQ process by sending the contractor a letter asking them to declare their intent to continue contracting with the agency. If a contractor receives this notification, it can respond as directed in the letter and forgo submitting the RFQ documents.

PDSC will review the statements of qualification to determine which attorneys and entities it will award contracts to, pursuant to the FTE need for each jurisdiction. The agency will then make recommendations to the commission. The contracts awarded will be for 24 months, beginning July 1, 2023.

This RFQ contains the applicable procedure, instructions, and requirements for submissions. It is organized in four parts:

Part 1) General Information

Part 2) Application Instructions

Part 3) Application

## Part 4) Contract General Terms

### 1.2 Applicable Contracting Procedure

ORS 151.216 authorizes PDSC to adopt policies and procedures regarding the contracting of public defense services. As part of the Judicial Branch, the PDSC is not subject to the Department of Administrative Services administrative rules and procedures that govern contracting for personal services contracts. PDSC adopts the policies, procedures, instructions, requirements, and other provisions of this RFQ as the PDSC procedures for contracting for personal services.

### 1.3 Authority

ORS 151.219 authorizes the PDSC executive director to “negotiate contracts, as appropriate, for providing legal services to persons eligible for appointed counsel at state expense.”

PDSC may contract with individual attorneys or entities that include attorneys. Awarding these contracts is a proprietary function of PDSC. All such contracts are:

- 1) subject to PDSC's express approval under ORS 151.216(1)(d), and
- 2) contracts with independent contractors for personal services.

PDSC reserves the right to determine which attorneys and entities to whom it will award contracts, including the types of contracts. PDSC reserves the right to seek additional information from attorneys and entities in determining to whom it will award contracts. PDSC reserves the right to amend or cancel this RFQ without liability if it is in the best interest of the state and public to do so.

### 1.4 Funding Source

The Legislature appropriates funds to the PDSC to pay for legal representation and other expenses related to the legal representation of financially eligible persons for which PDSC is responsible, including contract payments under ORS 151.219.

### 1.5 Schedule of Events

Release of RFQ	April 14, 2022
2022 submission deadline	May 8, 2023
Notice of intent to award contracts	June 5, 2023
Commission review and approval of contracts	June 21, 2023

The PDSC presently intends to award public defense legal services contracts according to the schedule of events described above. By publishing this schedule, PDSC does not

represent, agree, or promise that any contract will be awarded on a specified date or any other time in any particular county or judicial district. PDSC intends, however, to adhere to these time frames as closely as possible.

PDSC will provide notice of its intent to award contracts to all applicants at least seven (7) days before the award of contracts, unless exigent circumstances require a shorter period of notice.

## **1.6 Submission Review Procedures**

The instructions and information necessary to prepare and submit statements of qualification (“submissions”) are found in Part II of this RFQ. PDSC will evaluate submissions based on the contents of the applications and any other information available to PDSC. Applicants must submit a completed submission using the forms and format provided. Applications must be received by PDSC by May 8, 2023.

### **A. Inadequate Submissions**

PDSC may immediately reject submissions that do not meet the minimum RFQ requirements. If a submission is inadequate, PDSC may give the submitter an opportunity to correct the submission. If PDSC finds the corrected submission inadequate, PDSC’s decision to reject the submission will be final and not subject to appeal.

### **B. Facially Adequate Submissions**

PDSC will evaluate submissions as set forth in Part II of the RFQ. PDSC will evaluate each submission based on the statements of qualification and any other information available to PDSC. During the evaluation period, PDSC may:

- 1) request additional information from applicants to clarify information or material in the submission; and
- 2) consult with judges, court administrative staff, attorneys, and others who have knowledge of the attorney or entity or the local caseloads and practices to aid in the review of the submitter’s merits.

### **B. Contract Awards**

Award of any contract will be final only when the applicant and PDSC have properly completed and executed the contract documents.

### C. General Contract Terms

PDSC will offer all applicants the same general contract provisions. Successful applicants will enter into a contract substantively similar to the general contract document in Part 4 of this RFQ, unless otherwise specifically agreed by PDSC.

### 1.7 **Submission Evaluation Criteria**

PDSC shall evaluate statements of qualification based on the criteria listed below:

- 1) The submitted statement of qualification is complete and timely, in conformance with the RFQ.
- 2) The applicant and any additional attorneys providing services under the contract meet the minimum attorney qualification standards for the types of cases proposed, as specified in PDSC's Qualification Standards for Court-Appointed Counsel.
- 3) The submission is adequate to ensure effective legal representation. Among the factors PDSC may consider are the quality of legal representation, the experience of the attorneys, staffing patterns, available support staff and other services, and caseload per attorney.
- 4) The submission meets the needs and best interests of the court(s), county(ies), judicial district(s), and region(s) involved. Among the factors PDSC may consider are the other service providers available and the applicant's ability to work with PDSC, the court(s), and other service providers.
- 5) The number of 1.0 FTE attorney requests included in the submission, with increased weight given to those submitters willing to do full-time public defense work.
- 6) Applicant's efforts to attract and retain a diverse workforce, including persons providing services under the contract who are fluent in the languages of persons in the community to be served by applicant.
- 7) Applicant's efforts to become or remain informed about current trends and developments in the provision of public defense services statewide and nationally, such as by attendance at conferences that focus on these matters.
- 8) Applicant's efforts to become or remain informed and involved in matters affecting its local public safety system, such as involvement with a Local Public

Safety Coordinating Council, Criminal Justice Advisory Council, and/or Juvenile Court Improvement Program.

PDSC has the sole discretion to award or not to award contracts. PDSC reserves the right to solicit submissions after the close of the RFQ process if, in a particular jurisdiction, no sufficient statement of qualification is received, caseload exceeds original estimates, or other circumstances require an additional provider(s).

## **1.8 Submission Records**

Materials submitted will not be available for public review until all contracts awarded pursuant to this RFQ have been fully executed.

Written inquiries on preparing applications may be sent to: [rfq@opds.state.or.us](mailto:rfq@opds.state.or.us).

## **PART II - STATEMENT OF QUALIFICATION APPLICATION INSTRUCTIONS AND REQUIREMENTS**

This part of the RFQ contains the instructions and requirements for preparing and submitting statements of qualification for public defense legal services contracts.

## **2.1 Qualifications Sought**

PDSC is seeking qualified attorneys to provide legal representation to financially eligible individuals throughout Oregon. PDSC will enter into contracts with attorneys or entities pursuant to the following framework. Contract attorneys must select the types of cases for which they are willing to receive appointments, pursuant to the PDSC's Qualification Standards for Court-Appointed Counsel. If an attorney does not want to accept court appointments up to the most serious case type for which they are currently qualified, the applicant must identify this adjustment in its submission.

Jurisdiction Specific Trial-Level Criminal Contracts: All jurisdictions, with the following levels of qualification:

- A. Murder
- B. Major Felony (includes Ballot Measure 11 and Jessica's Law cases)
- C. Minor Felony and Civil Commitment
- D. Misdemeanor

Statewide Criminal Contracts: Provide legal services statewide, with the following levels of qualification:

- A. Trial-level Murder
- B. Trial-level Post-Conviction Relief

- C. Trial-level Habeas Corpus
- D. Psychiatric Security Review Board Representation
- E. Miscellaneous Appellate-level Representation
  - Post-conviction relief
  - Habeas corpus
  - Civil commitment
  - Juvenile dependency and delinquency

Juvenile Contracts: All jurisdictions except for PCRP jurisdictions, with the following levels of qualification:

- A. Juvenile Delinquency Only
- B. Juvenile Dependency Only
- C. Juvenile Dependency and Delinquency
- D. Juvenile Dependency and Delinquency – Murder

PCRP Contracts: Benton, Clatsop, Columbia, Coos, Douglas, Lincoln, Linn, Multnomah, Polk, and Yamhill counties, with the following levels of qualification.

- A. Juvenile Dependency
- B. Juvenile Dependency and Delinquency

## 2.2 Submitting Statements of Qualification

The applicant is responsible for any costs incurred in preparing or delivering the submission. The applicant is responsible for ensuring that the submission is received timely by PDSC. There is no implied promise to award a contract to any applicant based upon the submitted statement of qualification.

### A. Form of Submission

Submissions **MUST** be submitted as an email attachment in a Portable Document Format (PDF) that has been formatted with optical character recognition (OCR). The PDF must not be password protected nor copy protected.

Any text in the body of the transmitting email will not be reviewed and will not be considered part of the submission.

The email should be sent to: [rfq@opds.state.or.us](mailto:rfq@opds.state.or.us)

### B. Deadline

**Statements of qualification must be received by PDSC no later than May 8, 2022.**

If the applicant fails to submit the statement of qualification to PDSC in accordance

with the deadline, PDSC will disqualify the submission unless authorization for late submission is granted in writing by PDSC. Consideration for late submission will be based on PDSC's needs, both regional and by case type, and the reason for the late submission.

### **2.3 Application Format**

Applicants must use the attached application format for submissions and must answer all questions or state the reason why a specific question is not relevant to the particular submission. PDSC may disqualify any submission that is not in the required format or is incomplete.

### **2.4 Acceptance of RFQ and General Contract Terms**

- A. Applicants are responsible for reviewing the terms and conditions of the RFQ and the general terms of the contract.
- B. By signing and returning the application form, the applicant acknowledges that the applicant accepts and intends to abide by the terms and conditions of the RFQ. Further, the applicant accepts the terms and conditions of the general terms of the contract contained in Part III.

### **2.5 Modification of Submissions**

#### **A. When Permitted**

Applicants may not modify statements of qualification after the submission deadline, unless PDSC agrees thereto, upon written request by applicant. Until the submission deadline, an applicant may modify its statement of qualification in writing. Modifications must be:

- 1. prepared on the applicant's letterhead;
- 2. signed by an authorized representative(s); and
- 3. must state whether the new document supersedes or modifies the prior submission.

#### **B. Delivery**

Applicants must deliver any modifications in the same manner as required by Section 2.2.A for original submission.



C. Included in Submission File

All documents relating to the modification of submissions will be made part of the submission file.

**2.6 Mistakes in Submissions**

A. When Corrections Permitted

PDSC will permit applicants to correct mistakes on a submission only to the extent correction is not contrary to PDSC's interest or to the fair treatment of other applicants. PDSC has sole discretion to allow an applicant to correct a mistake. PDSC will notify the applicant if and when PDSC allows corrections to submissions.

B. Procedure When PDSC or Applicant Discovers Mistake

If PDSC or the applicant discovers a mistake before the submission deadline, the applicant may amend the error using the procedures for submission modification in Section 2.5 above.

PDSC will proceed as follows when PDSC discovers or is notified of mistakes in submissions after the deadline but before contract awards are made:

1) Minor Inaccuracies

PDSC may waive or correct minor inaccuracies or insignificant mistakes. Minor inaccuracies are:

- a) matters of form rather than substance that are evident from the submission documents; or
- b) insignificant mistakes that do not prejudice other applicants; e.g., the inaccuracy or mistake does not affect price, quantity, quality, delivery, or contractual conditions.

2) Mistakes Where Intended Correct Statement of Qualifications is Evident

If the mistake and the intended correct submission are clearly evident on the face of the submission or can be determined from accompanying documents, PDSC may consider the submission. Examples of mistakes that may be clearly evident on the face of the submission are typographical errors, transposition errors, and mathematical errors.

3) Mistakes Where Intended Correct Statement of Qualification is Not Evident

PDSC may not consider a submission in which a mistake is clearly evident on the face of the submission, but the intended correct submission is not evident or cannot be determined from accompanying documents, including requests for correction or modification under Sections 2.5 and 2.6.

4) Included in Submission File

All documents relating to correcting a mistake will be made part of the submission file.

## **2.7 Withdrawal of Submissions**

A. Request to Withdraw

An applicant may withdraw a submission at any time by written request. Requests to withdraw a submission from consideration must be:

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) submitted to PDSC in the same manner as required by Section 2.1.A for original submissions.

B. Included in Submission File

All documents relating to the withdrawal of submissions will be made a part of the submission file.

## **2.8 Evaluation of Submitted Statement of Qualification**

PDSC will begin to evaluate submissions upon receipt, subject to the procedures and criteria described in Part I.

## PART III - RFQ APPLICATION SUMMARY AND FORMS

### 3.1 SUMMARY OF INFORMATION SOUGHT

- A. Applicant Information Form (Section 3.2)
- B. Certification of Compliance with Oregon Tax Laws (Section 3.3)
- C. Independent Contractor Certification Statement (Section 3.4)
- D. Current Statement of Attorney Qualification (Section 3.5)
  - Total Current Attorney FTE working under existing contract, including the following information:
    - Each attorney's name
    - Years of experience for each attorney in contract type sought (juvenile/criminal)
    - Highest level of qualification, pursuant to the PDSC's Qualification Standards, for contract type sought (juvenile/criminal)
    - Qualification sought for '23-'25 contract
  - Total number of support staff, as defined in the proposed general terms, including their names and percent FTE.
  - Total number of investigators, including their name and percent FTE.
  - Any specialty court that the attorney/entity currently staffs, and the attorney FTE currently funded to staff the court.
- E. Summary of Contract Sought (Section 3.6):
  - Total FTE, including contract type (juvenile/criminal) and a breakdown of the levels of qualification sought.
  - Proposed number of FTE investigators
  - Proposed specialty court the attorney/entity would like to staff, along with the number of weekly attorney hours needed to staff the court
- F. Typed document, no longer than 2 pages, on how the applicant meets the criteria articulated in section 1.7 of this RFQ

### 3.2 APPLICANT INFORMATION AND CERTIFICATION

Name and Type of Business Entity (e.g., LLC, non-profit, corporation):

---

Contact Person for Application: \_\_\_\_\_

County or Counties to be served: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Fed ID No or SSN \_\_\_\_\_

I hereby certify that I have the authority to submit this statement of qualification on behalf of the applicant and that I have read the terms and conditions of the general terms of the contract.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

### 3.3 CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

**MARK ONLY ONE:** ( X )

\_\_\_\_\_ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

\_\_\_\_\_ authorized to act on behalf of \_\_\_\_\_  
(name and address of firm, corporation, or partnership *[PLEASE TYPE]*)

\_\_\_\_\_ hereby certify under penalty of perjury that \_\_\_\_\_  
(name of firm, corporation, or partnership *[PLEASE TYPE]*)

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118 and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature:\_\_\_\_\_

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

Federal ID # or  
Social Security #:\_\_\_\_\_

Subscribed and sworn to before me this\_\_day of\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:\_\_\_\_\_

### 3.4 INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS 670.600:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You are customarily engaged in an independently established business, as follows:

YOU MUST MEET AND INITIAL **THREE (3)** OR MORE OF THE FOLLOWING:

- \_\_\_ A. You maintain a business location separate from the business or work location of the person or organization for whom services are provided.
- \_\_\_ B. You bear the risk of loss related to the business or provision of services.
- \_\_\_ C. You provide contracted services for two or more different persons within a 12-month period, or you routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts or provide similar services.
- \_\_\_ D. You make significant investment in the business through means such as purchasing tools or equipment necessary to provide the services, paying for the premises or facilities where the services are provided, or paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_ E. You have the authority to hire other persons to provide or to assist in providing the services and have the authority to fire those persons.

I hereby certify that the applicant qualifies as an independent contractor as described above and have initialed three (3) or more of the criteria listed above.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Contracting Entity Name \_\_\_\_\_

**Please submit one form for each contract sought (adult criminal, juvenile, PCRCP).**

Total Current Attorney FTE working under existing contract, including the following information:

- Attorney name
- Percent FTE Sought in 23-25 contract (Each attorney listed must be .5 FTE or greater).
- **Highest level of qualification sought for the 23-25 contracts.** If an attorney is seeking appointments to more serious case types than the attorney is currently qualified, OPDS must receive an updated attorney qualification form, which must be evaluated and approved before attorney is eligible to be assigned those cases.

Under qualification sought, please select one of the below options for the contract sought. For criminal contracts, please check the appropriate box to indicate whether the attorney is eligible to receive appointments to civil commitment cases.

<b>Trial-Level Criminal Contracts: All jurisdictions, with the following levels of qualification:</b>	<b>Statewide Criminal Contracts: Provide legal services statewide, with the following levels of qualifications:</b>
A. Murder	A. Trial-level Murder / Jessica's Law
B. Major Felony (includes Ballot Measure 11 and Jessica's Law Cases)	B. Trial-level Post-Conviction Relief
C. Minor Felony	C. Trial-level Habeas Corpus
D. Misdemeanor <ul style="list-style-type: none"> <li>• Civil Commitment : Y/N</li> </ul>	D. Psychiatric Security Review Board Representation
<b>Juvenile Contracts: All jurisdictions except for PCRCP jurisdictions, with the following level of qualification:</b>	E. Miscellaneous Appellate-Level Representation <ul style="list-style-type: none"> <li>• Post-conviction relief</li> <li>• Habeas corpus</li> <li>• Civil commitment</li> <li>• Juvenile dependency and delinquency</li> </ul>
A. Juvenile Delinquency Only	<b>PCRCP Contracts: Benton, Clatsop, Columbia, Coos, Douglas, Lincoln, Linn, Multnomah, Polk, and Yamhill counties.</b>
B. Juvenile Dependency Only	A. Juvenile Dependency
C. Juvenile Dependency and Delinquency	B. Juvenile Dependency and Delinquency
D. Juvenile Dependency and Delinquency - Murder	

### 3.5 Current Statement of Attorney Qualification (Section 3.5)

**Contract Sought:**

Select One:

## Criminal

## Juvenile

Statewide

PCR<sup>P</sup>[illegible]

\*More rows available on page 6



### 3.5 Current Statement of Attorney Qualification (Section 3.5)

Total number of support staff, as defined in the proposed general terms, including their names and percent FTE.

[illegible]

Total number of investigators, including their name and percent FTE.

[illegible]

Any specialty court that the attorney/entity currently staffs, the currently funded FTE, and an estimate of the FTE needed to continue staffing this specialty court

[illegible]

### 3.6 Summary of Contract Sought:

Please submit one form for each contract sought (adult criminal, juvenile, PCRP).

Total FTE requested, including contract type (criminal/juvenile) and a breakdown of the levels of qualification sought.

If you are seeking funding for additional attorney FTE than you current receive, those funds will be paid at the lowest qualification rate until attorney establishes what their highest level of qualification is pursuant to the PDSC's Qualification Standards

- Proposed number of FTE investigators
- Proposed specialty court(s) the attorney/entity would like to staff

Statewide Criminal Qualification Type	# FTE
Trial-Level Post-Conviction Relief	
Trial-Level Habeas Corpus	
Appellate-Level	
Psychiatric Security Review Board Representation	
Trial-level Murder / Jessica's Law	
<b>Total FTE Requested</b>	

Juvenile Qualification Type	# FTE
Dependency	
Delinquency	
Dependency and Delinquency	
Dependency and Delinquency Murder	
<b>Total FTE Requested</b>	

Criminal Qualification Type	# FTE
Murder	
Major Felony	
Minor Felony / Civil Commitment	
Misdemeanor	
<b>Total FTE Requested</b>	

PCRP Qualification Type	# FTE
Dependency	
Delinquency	
Dependency and Delinquency	
<b>Total FTE Requested</b>	

Total Number of Investigators Sought:

[illegible]

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.  <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number											
				-				-			
or											
Employer identification number											
				-							

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ►	Date ►

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note: ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.



**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.**

You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

**\*Note:** The grantor also must provide a Form W-9 to trustee of trust.

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records From Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

## PART IV - CONTRACT GENERAL TERMS

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

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# CONTRACT FOR PUBLIC DEFENSE SERVICES

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

The following are the underlying bases for the Contract:

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

The parties agree as follows:

## **I. DURATION OF CONTRACT**

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

## **II. RULES**

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

B. Construction and Jurisdiction: This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit arising under this contract to a court of competent jurisdiction in the State of Oregon.

C. Severability: If a court of competent jurisdiction declares, or the parties agree that any term or provision of this contract is illegal or in conflict with any other law, the remaining terms and provisions shall remain valid, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the term or provision held to be invalid.

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

### **III. DEFINITIONS**

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

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

C. Full Time Equivalent Attorney (FTE): A FTE Attorney is an attorney under contract with the PDSC to provide representational services. FTE Attorneys shall be eligible for appointment to the maximum number of cases as described in Exhibit B, based upon their time commitment to the PDSC. A FTE attorney must provide at least .5 of a maximum attorney caseload, unless the attorney provides services to a specialty court and the agency concludes it's in the best interest to fund the attorney pursuant to this contract.

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

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

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

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

H. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term shall include the disbursement of funds for which prior approval is required but is not obtained.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

Contractor shall not expend funds under this contract for work performed outside the scope of this contract; accept funds from anyone other than PDSC for work performed under the scope of this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or solicit or accept payment from a client for representational services on a matter within the scope of services of this contract or on a matter which Contractor has been appointed by the court.

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

At the time this contract is executed, sufficient funds either are available within the Contract Authority's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability and appropriation of funds. The PDSC may modify, suspend, or terminate this contract if it reasonably determines that funds will not be sufficient to pay anticipated costs of the contract. The PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense contract agencies. The PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the legal requirements to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. The PDSC may unilaterally suspend or terminate the contract if the parties

cannot agree to modification.

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

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

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

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

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

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

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

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

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

### **A. Position Profile**

Contractor shall submit to the PDSC on September 1, and the first day of each subsequent

quarter, a profile of Full-Time Equivalent (FTE) positions for both legal and support staff who perform work on this Contract, distributed by type of case. The report will designate the name, and the case types to which each attorney is eligible to receive appointments, in a format to be provided by the PDSC. The PDSC will not release this information except as required by law. If the employee splits his/her work between work under this Contract and other business, the report will indicate the amount of time that employee devotes to private matters compared to work under this Contract.

**B. Caseload and Workload Reports**

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

**C. Other Reports**

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

**D. Audit and Inspection and Records**

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

**E. Failure to Provide Reports**

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

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

- 60 days of the original due date: 15% of contract funds
- 90 days of the original due date: 25% of contract funds

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

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

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

### **XIV. CORRECTIVE ACTION**

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

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

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

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

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

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

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

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

B. Contractor reserves the right to terminate this Contract with cause with 30 days written notice should the PDSC substantially breach any duty, obligation or service pursuant to this Contract. Contractor reserves the right to terminate this Contract without cause with 30 days written notice if Contractor is a sole proprietor.

C. In the event of the termination of this Contract, Contractor shall continue to represent clients that were previously assigned and the PDSC will be liable for any payments owed for the completion of that work. The PDSC and Contractor shall negotiate wind-down terms that allow Contractor to continue to provide representational services for existing clients. If wind-down terms cannot be agreed to, the PDSC shall pay Contractor at the existing PDSC hourly rate to wind-down their caseload. The PDSC may request that Contractor attempt to withdraw from any case assigned and not completed. Should a court require, after Contractor has attempted to withdraw, the appearance of counsel from Contractor on behalf of any client previously represented by Contractor where such representation is no longer the obligation of Contractor pursuant to the terms of this Contract, the PDSC will honor payment to Contractor upon judicial verification that continued representation is required.

D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, Contractor shall return to the PDSC those funds, unexpended or misappropriated, which, at the time of termination, have been paid to Contractor by the PDSC.

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

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

## **XVI. NOTICES**

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

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

## **XVII. CONTRACTOR INSURANCE**

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

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

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

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

**B. Professional Liability Insurance**

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

**C. Workers' Compensation**

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

**XVIII. HOLD HARMLESS AND INDEMNIFICATION**

Contractor shall protect, indemnify, defend, and hold harmless the PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that are related to, result from, or arise out of Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement. Notwithstanding the above, Contractor has no duty to indemnify, defend, or hold harmless the PDSC for its actions, decisions, work, activities, or failures to act related to this Agreement.

**XIX. RESPONSIBILITY OF CONTRACT ADMINISTRATOR**

Contractor shall name a Contract Administrator, who is responsible for contract administration duties in this contract. Typical Contract administration duties include, without limitation, the following:

- Selection of prospective contract attorney members;
- Assigning cases in accordance with contract attorney qualification level and oversight of case assignments;
- Timely and accurate tracking and reporting of caseloads to PDSC;
- Management and disbursement of contract funds;
- Working with PDSC to organize regular meetings to review data and ensure sufficient support to achieve program expectations;
- Consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing;
- Corresponding with PDSC regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations;
- Maintaining records of all case reporting, financial and other records regarding contract members and making such records available to PDSC upon request;

- Negotiating new contracts and contract changes with PDSC as necessary;
- Actively participating in system improvement initiatives including multi-disciplinary training and partner meetings and providing training and mentorship to contract attorneys and staff.

Contract administrators and PDSC will meet a minimum of three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

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

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

## **XXI. NONDISCRIMINATION**

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

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

## **XXII. CONFLICT OF INTEREST**

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

No officer, employee, or agent of the PDSC, or the State of Oregon, who exercises any



functions or responsibility in connection with the planning and implementation of the services funded herein shall have any personal financial interest, direct or indirect, in this Contract, or Contractor.

**B. Interests of Contract Administrators and Officers**

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

**XXIII. MERGER CLAUSE**

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

Agreed:

\_\_\_\_\_  
PDSC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

## EXHIBIT A – COMPENSATION

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

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

Compensation authorized by this contract may be withheld:

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

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

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

In addition, the contract contains the following funds:

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

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

- A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the Oregon State Bar Rules of Professional Conduct or the caseload and workload limits described below. Contractor agrees that all attorneys will accept appointments to case types that they are qualified, competent, and reimbursed. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts. Due to jurisdictional differences in practice, the annual caseload limits are subject to a 15% variance.
- B. Annual Caseload Limits: Below is the maximum number of cases a 1.0 FTE attorney may be assigned per calendar year, if the attorney was assigned only cases from one case type.
- Murder: 6
  - Jessica Law: 6
  - Ballot Measure 11: 45
  - Major (A/B) Felonies: 138
  - Minor (C) Felonies: 165
  - Misdemeanors: 300
  - Probation Violation: 825
  - Civil Commitments: 230
- C. Case Weighting and Annual Caseload Limits: The annual caseload limit for a 1.0 FTE attorney is 300 weighted cases per year, which corresponds to 25 weighted cases per month. Excluding murder and Jessica law cases, the number of appointments per month for a 1.0 FTE shall not be 15% greater than 25 weighted cases per month without written preapproval by the PDSC, and that limitation shall be adjusted proportionally to the attorney's FTE. The maximum number of cases an FTE Attorney may be assigned is equal to the product of their percentage of FTE Attorney and the percentage of the year they are under contract (300 Weighted Cases x Percent FTE x Percent of Year under Contract). Each case type receives the following weights:
- Murder: 50
  - Jessica Law: 50
  - Ballot Measure 11: 6.7
  - Major (A/B) Felonies: 2.2

- Minor (C) Felonies: 1.8
- Misdemeanors: 1
- Probation Violation: .36
- Civil Commitments: 1.3

- D. Workload: Contractor agrees that it will monitor attorney workloads to ensure those attorneys can meet their ethical obligations to each of their clients. Contractor agrees to adhere to the Oregon State Bar Rules of Professional Conduct and the ABA's *Eight Guidelines of Public Defense Related to Excessive Workloads*. Contractor agrees to report attorney workload information to the PDSC in its monthly caseload reports.
- E. Partial Representation Weighting: When an attorney's representation ends prior to the entry of a final order or judgment, the attorney shall be assigned a percentage of the case weight described in B, based upon the following formula:
- 0-5 Days, no credit
  - 6-30 Days, 50%
  - 31 Days or more, 100%
- F. Out of County Weighting: When an attorney accepts an appointment to a case outside the county or counties for which this contract is contemplated, the case shall receive twice the case weighting described in B. An attorney shall endeavor to accept appointments to current clients in other counties to support the best practice of one client, one lawyer.
- The additional weighting does not apply to Murder or Jessica's Law cases;
  - If an attorney is assigned to an out of county client with more than one case, the most serious case type will be the case for which double credit is assigned.
- G. Additional Case Weighting: In addition to the assigned case weight in B, an attorney may treat the case as a new appointment and receive a new case weight:
- The attorney has represented the client for a year or more on a case other than a murder or Jessica Law case, and the case has been delayed pursuant to a bench warrant, a dismissal without prejudice, or issues surrounding aid and assist;
  - The case is retried following a hung jury; or
  - The case returns for a new trial or sentencing following a direct appeal or post-conviction relief.
- H. Extraordinary Case Weighting: Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to the PDSC's discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by PDSC for this purpose.

I. Case Closure: Contractor shall close a client's case when:

1. The final judgment or order has been entered into the court register, and the Contractor has met all other contractual obligations:
  - If the appointment was for a probation violation, the attorney shall close the case upon disposition of the probation violation.
  - A judgment of dismissal constitutes a final judgment.
  - An attorney may not close a case that has been entered into a deferral, diversion, or conditional discharge agreement until the final judgment has been entered into the court register;
2. A judge has signed an order removing the attorney from the case; or
3. A bench warrant for a client's failure to appear has been active for 180 days.

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

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

- A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the Oregon State Bar Rules of Professional Conduct or the caseload and workload limits described below. Contractor agrees that all attorneys will accept appointments to case types that they are qualified, competent, and reimbursed. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts. Due to jurisdictional differences in practice, the annual caseload limits are subject to a 15% variance.
- B. Annual Caseload Limits: Below is the maximum number of cases a 1.0 FTE attorney may be assigned per calendar year, if the attorney was assigned only cases from one case type.
- |                       |     |
|-----------------------|-----|
| • Murder:             | 6   |
| • Delinquency         | 132 |
| • Dependency          | 69  |
| • Probation Violation | 825 |
- C. Case Weighting and Annual Caseload Limits: No 1.0 FTE attorney shall be assigned more than 300 weighted cases per year, which corresponds to 25 weighted cases per month. Excluding murder and Jessica law cases, the number of appointments per month for a 1.0 FTE shall not be 15% greater than 25 weighted cases per month without written preapproval by the PDSC, and that limitation shall be adjusted proportionally to the attorney's FTE. The maximum number of cases an FTE Attorney may be assigned is equal to the product of their percentage of FTE Attorney and the percentage of the year they are under contract (300 Weighted Cases x Percent FTE x Percent of Year under Contract). Each case type receives the following weights:
- |                       |     |
|-----------------------|-----|
| • Murder:             | 50  |
| • Delinquency         | 2.3 |
| • Dependency          | 4.3 |
| • Probation Violation | .36 |
- D. Workload: Contractor agrees that it will monitor attorney workloads to ensure those attorneys can meet their ethical obligations to each of their clients. Contractor agrees to adhere to the Oregon Rules of Professional Conduct and the ABA's *Eight Guidelines of*

*Public Defense Related to Excessive Workloads.* Contractor agrees to report attorney workload information to the PDSC in its monthly caseload reports.

- E. Partial Representation Weighting: When an attorney's representation ends prior to the entry of a final order or judgment, the attorney shall be assigned a percentage of the case weight described in B, based upon the following formula:
- 0-5 Days, no credit
  - 6-30 Days, 50%
  - 31 Days or more, 100%
- F. Out of County Weighting: When an attorney accepts an appointment to a case outside the county or counties for which this contract is contemplated, the case shall receive twice the case weighting described in B. An attorney shall endeavor to accept appointments to current clients in other counties to support the best practice of one client, one lawyer.
- The additional weighting does not apply to Murder or Jessica's Law cases;
  - If an attorney is assigned to an out of county client with more than one case, the most serious case type will be the case for which double credit is assigned.
- G. Juvenile Case Weighting: The following rules apply to juvenile contracts specifically:
- Sibling Groups: When an attorney represents one or more children in a sibling group, they will receive a full case weight for the oldest child and half (0.5) of a case weight for each sibling; up to a maximum total weight of three (3.0). If an attorney represents a parent, they will receive one case weight. This rule applies to both dependency and termination cases.
  - Post Disposition Additional Sibling: If a new petition is filed regarding a sibling of a child client or clients whose cases are post disposition, then the new appointment will receive one (1.0) additional case weight.
  - Formal Accountability Agreements: Representation regarding a formal accountability agreement will receive half (0.5) of a delinquency case weight.
  - Waiver Hearings: If the state files a motion requesting a waiver hearing in a case eligible for waiver, then the case will receive one (1.0) additional case weight. When an attorney continues to represent a client in criminal court after the juvenile court waives jurisdiction, the attorney will receive additional case weighting for the criminal case, consistent with these guidelines.
- H. Additional Case Weighting: In addition to the assigned case weight in B, an attorney may treat the case as a new appointment and receive a new case weight:
- The attorney has represented the client for a year or more on a case other than a murder or Jessica Law case, and the case has been delayed pursuant to a bench warrant, a dismissal without prejudice, or issues surrounding aid and assist;
  - The case is retried; or

- The case returns for a new trial or sentencing following a direct appeal or post-adjudication relief.
- I. Extraordinary Case Weighting: Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to the PDSC's discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by PDSC for this purpose.
- J. Case Closure: Contractor shall close a case when one of the following has been entered into the court register, and the attorney has met their contractual obligations:
- Dependency, permanent guardianship, and termination-of-parental-rights cases
    - An order or judgment dismissing the petition;
    - An order or judgment dismissing the case and/or terminating the wardship over the child;
    - An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
    - An order or judgment disestablishing the parentage of the attorney's client;
    - An order or judgment terminating the parental rights of the attorney's client;
    - An order or judgment granting an adoption of the attorney's client; or
    - An order terminating or vacating the attorney's appointment.
  - Delinquency cases
    - An order or judgment dismissing the petition;
    - An order or judgment dismissing the case and terminating the wardship over the youth;
    - An order terminating or vacating the attorney's appointment;
    - A bench warrant, which has remained in effect for 180 days.



## **EXHIBIT B – CASELOAD AND WORKLOAD STANDARDS FOR PCRPP CONTRACT**

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

- A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the Oregon State Bar Rules of Professional Conduct or the workload limits described below. A 1.0 FTE Attorney shall maintain an open caseload of 80 cases. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts.
- B. General Case Counting Standards
- Representing one parent, legal guardian, or child in a dependency case counts as one case.
  - Representing one parent, legal guardian, or child in a termination-of-parental-rights case counts as one case.
  - Representing multiple children in a dependency case counts as one case for the first child and as 0.5 cases for each additional child.
  - Representing one youth in a delinquency case up through the time of disposition counts as one case.
  - Representing one youth in a delinquency case after disposition counts as .5 of a case.
  - Pre-appointment representation of one child, youth, parent, or legal guardian, preapproved by OPDS, counts one case.
  - Pre-appointment representation of multiple children, preapproved by OPDS, counts as one case for the first child and as 0.5 cases for each additional child.
  - When representation on a case begins and ends within the same calendar month, the case can count toward the attorney's open caseload until the end of that calendar month unless the court allows the attorney to withdraw due to a conflict.
- C. Case Count Adjustments
- Delinquency cases in which the alleged conduct, if committed by an adult, would constitute murder or a crime subject to ORS 137.707 shall be granted an additional case count.
  - Any case in which the attorney accepts an appointment in a county other than those specified in this Contract shall be granted an additional case count.
  - Cases that involve extraordinary circumstances and require work well beyond the

range of work typically required in juvenile cases may be granted additional case counts, subject to OPDS's discretion. No earlier than thirty (30) days after being appointed in any particular case, an attorney seeking approval for extraordinary circumstances case counts for that case shall use the form provided by OPDS.

- For any client or sibling group, the attorney may count a maximum of three cases in their open caseload, except that additional case counts granted pursuant to subsections (a) through (c) above shall be in addition to this maximum.

D. Case Closure

- For dependency, permanent guardianship, and termination-of-parental-rights cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
  - An order or judgment dismissing the petition;
  - An order or judgment dismissing the case and/or terminating the wardship over the child;
  - An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
  - An order or judgment disestablishing the parentage of the attorney's client;
  - An order or judgment terminating the parental rights of the attorney's client;
  - An order or judgment granting an adoption of the attorney's client; and
  - An order terminating or vacating the attorney's appointment.
- For delinquency cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
  - An order or judgment dismissing the petition;
  - An order or judgment dismissing the case and terminating the wardship over the youth;
  - An order terminating or vacating the attorney's appointment; or
  - A bench warrant for a youth's failure to appear has been active for 180 days.

## EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR CRIMINAL CONTRACT

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

- A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 48 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. Contractor shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning Contractor’s representation and case proceedings.
- C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.
- D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC’s written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.

- E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.
- F. Pre-appointment representation. Where an individual would be eligible for appointed counsel at state expense if charged with a crime, but exigent circumstances preclude an appointment order, Contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written approval from the PDSC. In determining whether to authorize pre-appointment representation, the PDSC will consider whether:
- The individual is a clear target of the investigation;
  - The Contractor has a good faith basis to conclude the individual seeks counsel;
  - It is reasonable for the Contractor to believe the person qualifies for public defense counsel; and
  - The case is of a magnitude for which pre-indictment/petition appointment is reasonable.
- G. Initial Appearances. Contractor shall provide representation at all arraignment and first appearance hearings, unless the PDSC agrees in writing otherwise. Contractor shall work with the PDSC and the court to determine schedules for providing representation at arraignments and first appearance hearings in jurisdictions in which there is more than one Contractor. Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. Contractor will include the attorney's contact information in the notice to the client.
- H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:
- Providing representation at all scheduled hearings and court proceedings;
  - Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
  - Filing or arranging for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
  - Devote sufficient time to interviewing and counseling clients;
  - Seek pretrial release of all detained clients when the client so desires;
  - Assure all necessary investigation is conducted;
  - Pursue all avenues of discovery from the prosecution, both formal and informal;

- Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case; and
- Sufficiently prepare for all hearings, trials, and sentencings.

I. Post-Judgment Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- Seeking court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- Filing a motion for new trial;
- Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705, when merited and requested by a former Client;
- Consulting with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
- Upon request, providing copies of the entire file to appellate or post-conviction relief counsel.

## **EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR JUVENILE CONTRACT**

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

- A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 48 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. Contractor shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning Contractor’s representation and case proceedings.
- C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.
- D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC’s written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.

- E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.
- F. Pre-appointment representation. Pre-appointment representation (also referred to as "prepetition representation") means representation of a parent, legal guardian, or child during a child welfare investigation by the Oregon Department of Human Services and representation of a youth during a law enforcement investigation, before a court has appointed counsel for that person and typically before a proceeding under ORS chapter 419B or ORS chapter 419C has been initiated

Contractor may commence pre-appointment representation only with pre-approval from PDSC. In determining whether to authorize pre-appointment representation, PDSC will consider whether the agency has a good faith basis to conclude the individual seeks counsel, and it is reasonable for the agency to believe the person financially qualifies for public defense counsel.

- G. Initial Appearances. Contractor shall provide representation at all shelter hearings, detention hearings, and other initial appearances, unless the PDSC agrees in writing otherwise. The Contractor shall work with The PDSC and the court to determine schedules for providing representation at these hearings in jurisdictions in which there is more than one Contractor. The Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. The Contractor will include the attorney's contact information in the notice to the client.
- H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:
- Providing representation at all scheduled hearings and court proceedings;
  - Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
  - Filing or arranging for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
  - Devote sufficient time to interviewing and counseling clients;
  - Seek pretrial release of all detained clients when the client so desires;
  - Assure all necessary investigation is conducted;
  - Pursue all avenues of discovery from the prosecution, both formal and informal;
  - Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case; and

- Sufficiently prepare for all hearings, trials, and sentencings.

I. Post-Adjudication Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- Seeking court orders or other remedies on behalf of a client if a term of disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- Filing a motion for new trial;
- Filing a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- Filing a motion for a review hearing under ORS 419C.626, as requested by a youth client;
- Consulting with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation; and
- Upon request, providing copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation.



## EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR PCR CONTRACT

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

- A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as “vertical” representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.
- B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 48 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. Contractor shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning Contractor’s representation and case proceedings.
- C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.
- D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC’s written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.

- E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.
- F. Pre-appointment representation. Contractor may commence pre-appointment representation only with pre-approval from PDSC. In determining whether to authorize pre-appointment representation, PDSC will consider whether the agency has a good faith basis to conclude the individual seeks counsel, and it is reasonable for the agency to believe the person financially qualifies for public defense counsel.
- G. Initial Appearances. Contractor shall provide representation at all shelter hearings, detention hearings, and other initial appearances, unless the PDSC agrees in writing otherwise. The Contractor shall work with The PDSC and the court to determine schedules for providing representation at these hearings in jurisdictions in which there is more than one Contractor. The Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. The Contractor will include the attorney's contact information in the notice to the client.
- H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:
- Provide representation at all scheduled hearings and court proceedings;
  - File timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
  - File or arrange for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
  - Attend all meetings as appropriate and as requested by client where DHS, OYA and/or other state actors or parties are present and discussing matters relevant to the case
  - Advocate for client at all court hearings;
  - Meet and communicate with clients before court hearings and CRB reviews; in response to client contact; when a significant change of circumstances needs to be discussed; when notified that a youth or child's placement has been changed; or when a lawyer learns of emergencies of significant events impacting the youth or child.
  - Devote sufficient time to interviewing and counseling clients in a developmentally and culturally appropriate manner;
  - Seek pretrial release of all detained clients when the client so desires;
  - Assure a thorough, continuing, and independent review and investigation of the case is conducted;

- Utilizing independent investigators and case managers/social workers/mitigation specialists, as appropriate, to provide comprehensive representation;
- Pursue all formal and informal avenues of discovery from the prosecution, the juvenile department, law enforcement, DHS, and OYA;
- Obtain and review all applicable recordings including, but not limited to, medical, dental, school, employment, military, and mental health records;
- Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case;
- Sufficiently prepare for all hearings, trials, and sentencings; and
- Endeavor to spend, on average, one-third of their time meeting with clients, one-third of their time on case preparation, and one-third of their time on court appearances and case-related meetings.

I. Post-Judgment Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- Seeking court orders or other remedies on behalf of a client if a term of disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- Filing a motion for new trial;
- Filing a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- Filing a motion for a review hearing under ORS 419C.626, as requested by a youth client;
- Consulting with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation; and
- Upon request, providing copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation.