

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

Contract No. _____

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CURRENT DRAFT

CONTRACT FOR PUBLIC DEFENSE SERVICES**Contract No. _____**

The State of Oregon ("State"), acting by and through the Oregon Public Defense Commission, ("OPDC" or "Agency") and [legal company name] as registered with the Oregon Secretary of State (and DBA name if applicable)), ("Contractor") (each a Party and collectively, the "Parties,") agree to the provision of public defense Services as outlined below for the period October 1, 2025, to June 30, 2027 in [county/counties] (the "Contract"). Contractor's Contract Administrator is [name], [email, phone].

The following are the underlying bases for this Contract:

- Oregon has a constitutional and statutory responsibility to provide public defense Services, and pursuant to ORS 151.216, the OPDC has responsibility for ensuring those Services are available in circuit and appellate courts.
- OPDC desires to have Services performed for Clients entitled to public defense representation by Contractor, as authorized by law.
- Contractor agrees to accept appointments to represent Clients. Contractor agrees to provide, and OPDC agrees to pay for competent, zealous legal representation to its Clients as required by this Contract.
- OPDC and Contractor agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of Services to Clients of Contractor, the training and educational expenses associated with providing those Services, and overhead costs.

The statements above are incorporated by reference as if set forth in full in the body of this Contract.

The Parties agree as follows:

1. DURATION OF CONTRACT

This Contract shall commence on October 1, 2025 (the "Effective Date") and terminates on June 30, 2027, unless extended or terminated earlier in a manner allowed by this Contract.

2. 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 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 the Circuit Court of Marion County for the State of Oregon in Salem, Oregon; provided, however, if a claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR HEREBY CONSENTS TO THE

PERSONAL JURISDICTION OF THESE COURTS, WAIVES ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVES ANY CLAIM THAT THESE COURTS ARE INCONVENIENT FORUMS. In no way may this section or any other term of this Contract be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.

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 this Contract did not contain the term or provision held 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.

3. DEFINITIONS

- A. Agency Data: means all data and information that resides in the System, whether it is submitted to, directly or indirectly, accessed by Contractor or Contractor Agency pursuant to Contractor's performance hereunder. Agency Data includes without limitation Personal Information, including Personal Information contained in the System, Agency data concerning Users, and information provided to Contractor by Agency related to the Services or to Agency or State information systems and operations.
- B. Business Days: means 8:00 a.m. to 5:00 p.m., Pacific Time, Monday through Friday, excluding State of Oregon holidays.
- C. Calendar Days: mean contiguous days.
- D. Case: any action in this state in which an FTE Attorney has been appointed or authorized to represent or advise a Client in a matter to which there is a right to an appointed Attorney at state expense.
- E. Caseload: is the number of Cases assigned to an FTE Attorney on an annual basis.
- F. Client: a person determined to be eligible for representation by a court-appointed attorney at state expense.
- G. Contract: means all terms and conditions herein, including documents incorporated by reference, and all Exhibits attached hereto.
- H. Contract Administrator: an individual who has been designated by Contractor to be responsible for duties prescribed in Section 19. This role is separate and distinct from the role of Contract Administrator as described under ORS 279A.159.
- I. Effective Date: means the date specified in Section 1 or the date on which this Contract is fully executed and approved according to applicable Laws, rules and regulations, whichever is later.
- J. Full Time Equivalent Attorney (FTE) ("Attorney"): an Attorney providing public defense Services pursuant to a caseload contract with the Oregon Public Defense Commission (OPDC).

- K. Maximum Attorney Caseload (MAC): the annual limits of the number of Cases for FTE Attorneys set out in Exhibit B to this Contract.
- L. Misappropriation of Funds: 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.
- M. Parties: means Agency and Contractor.
- N. Party: means either Agency or Contractor.
- O. Reasonably Accurate: Caseload or Workload reports that are consistent, factually accurate, complete, auditable, properly formatted, submitted on time, and meet requirements of Section 12, Subsection E.
- P. Representational Services ("Services"): the Services for which OPDC is to pay Contractor are Representational Services, which includes legal Services and appropriate support staff services, investigation, appropriate sentencing and disposition advocacy, 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. Representational Services for which OPDC is to pay Contractor do not include fees and expenses authorized as routine expenses or preauthorized expenses as defined by OPDC.
- Q. Roster of Costs ("ROC"): the breakdown of Contractor's staff roster and associated costs for this Contract, as incorporated into the Contract through Exhibit A.
- R. Workload: the number of open Cases assigned to an FTE Attorney at a given point in time.

4. INDEPENDENT CONTRACTOR

Contractor is, for all purposes arising out of this Contract, an independent contractor, and neither Contractor nor its employees, members, agents, individual Attorneys, or successors are deemed employees of the State, OPDC or the federal government. Further, Contractor's Attorneys are not officers or agents of the State as defined in ORS 30.260 and 30.265. 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 OPDC, except as specified in this Contract. Contractor shall certify its status in accordance with Exhibit D.

5. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract, delegate, or assign any of the Services or duties required under this Contract.

6. CONTRACTOR'S EMPLOYEES, MEMBERS, OFFICE, AND EQUIPMENT

Contractor agrees that it has secured or shall 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 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 Services.

7. 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 Services and to comply with the requirements of this Contract, Oregon and federal judicial opinions regarding the right to counsel, and all applicable laws, standards and policies, including, but not limited to, the following:

- Oregon Rules of Professional Conduct, <https://www.osbar.org/docs/rulesregs/orpc.pdf>
- Oregon State Bar Performance Standards, [Oregon State Bar Performance Standards](#)
- American Bar Association, [ABA Ten Principles of a Public Defense Delivery System](#); and
- [OPDC Policies and Procedures](#)

Contractor agrees to adhere to the Caseload and Workload standards in Exhibit B and the additional performance standards in Exhibit C.

8. ATTORNEY TRAINING

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

Contractor shall ensure all FTE Attorneys comply with the CLE requirements of the Oregon State Bar and obtain 12 hours of CLE credit specific to their public defense Contract area (criminal or juvenile) during this Contract period.

9. COMPENSATION AND METHOD OF PAYMENT

Payments made to Contractor are subject to ORS 293.462 and will be made in accordance with the ROC. Contractor shall submit Caseload Reports as prescribed in Section 12 (Contractor Reporting and Inspection) in lieu of a monthly invoice submission as caseload reports capture all Services performed.

Compensation may be amended during the term of this 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 FTE Attorneys are determined by the types of Cases FTE Attorneys are qualified and agree to accept. All funds provided pursuant to this Contract are provided for the sole purpose of provision of Services to Clients of Contractor, the training and educational expenses

associated with providing those Services, and overhead costs.

Contractor shall not (i) expend funds under this Contract for work performed outside the scope of this Contract, (ii) accept funds from anyone other than OPDC 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 (iii) solicit or accept payment from a Client for Services on a matter within the scope of Services of this Contract or on a matter which Contractor has been appointed by the court.

If Contractor fails to substantially comply with any terms and conditions of this Contract, OPDC reserves the right to withhold any payment until corrective action described in Section 14 has been taken or completed. This option is in addition to and not in lieu of OPDC's right to termination as provided in Section 15 of this Contract.

At the time this Contract is executed, sufficient funds either are available within the OPDC's current appropriation, limitation and expenditure authority or the funds 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, and OPDC, in its reasonable administrative discretion. If the Oregon Legislative Assembly fails to approve sufficient appropriations, limitations, or expenditure authority to OPDC, OPDC may modify, suspend, or terminate this Contract. OPDC shall seek to apportion expenditure reductions equally and fairly among all public defense contract agencies. OPDC shall seek first to modify this 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. OPDC may unilaterally suspend or terminate this Contract if the parties cannot agree to modification.

10. CONTRACT MODIFICATION AND ADJUSTMENTS

If there are two (2) distinct occurrences where Contractor's monthly caseload increases or decreases by 15%, OPDC shall notify Contractor and schedule a meeting to discuss the circumstances surrounding the increase or decrease. Prior to adjusting a Contractor's Attorney FTE, or the financial value attached, OPDC will consider whether Contractor's declination of court appointments was pursuant to Section 16 (Notices). OPDC may adjust FTE in this 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 FTE Attorney amount no longer corresponds with Caseload needs;
- The introduction or discontinuation of a specialty court; or
- OPDC determines that an increase or decrease in FTE Attorney capacity is necessary.

11. ESTABLISHMENT AND MAINTENANCE OF RECORDS

- A. Contractor shall maintain accounts and records, including Client Case files, personnel records, property records, and financial records in accordance with generally accepted accounting principles, that sufficiently and properly reflect all direct and indirect costs of Services performed in the performance of this Contract.
- B. Contractor's records must show that all disbursements or expenditures of Contract funds were ordinary, reasonable and necessary, and related to providing direct Services required under this

Contract or Services necessary to the performance of this Contract.

- C. Contractor shall maintain records pertaining to this Contract for a period of six (6) years or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later, unless permission to destroy the records is granted by OPDC. Contractor acknowledges and agrees that OPDC and the Oregon Secretary of State's Office and their duly authorized representatives may access such financial records and other Records that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and to make excerpts and transcripts.

In addition, Contractor shall retain all public defense Client Case files as required by the Oregon State Bar, with a minimum of ten (10) years from the time of closure for all Cases except murder offenses, which must be preserved for a minimum of twenty (20) years.

12. CONTRACTOR REPORTING AND INSPECTION

Contractor agrees to audits and inspections, and shall submit to OPDC 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 OPDC withholding payment until the required reports are submitted or OPDC invokes a corrective action plan under Section 14 (Corrective Action).

A. Caseload and Workload Reports

For the first year of the Contract, Contractor shall submit a monthly report by the 15th day of the month as specified below:

For the second year of the Contract, Contractor shall submit a monthly report by the 10th of the month as specified below:

Due dates for reports are as follows:

Reports Due 1 st Year	Reports Due 2 nd Year
October 15, 2025	October 10, 2026
November 15, 2025	November 10, 2026
December 15, 2025	December 10, 2026
January 15, 2026	January 10, 2027
February 15, 2026	February 10, 2027
March 15, 2026	March 10, 2027
April 15, 2026	April 10, 2027
May 15, 2026	May 10, 2027
June 15, 2026	June 10, 2027
July 15, 2026	
August 15, 2026	
September 15, 2026	

B. Other Reports

Contractor shall provide OPDC with other reports during the term of this Contract if OPDC determines that additional reporting obligations are necessary and OPDC provides a template to Contractor to submit the reports.

C. Audit, Inspection, Records, and Confidentiality

Contractor shall grant OPDC 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 (10) Business Days' notice during business hours and as often as OPDC may reasonably deem necessary for the duration of this Contract and a period of six (6) years thereafter, Contractor shall provide to OPDC requested records 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 OPDC without breaching such confidentiality or privilege. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any Client will be considered waived by actions taken under this section of this Contract. OPDC will respect the attorney-client privilege.

D. Failure to Provide Reports

Except with prior approval from OPDC, Contractor shall submit timely and Reasonably Accurate reports that:

- (1) Use consistent date values throughout (e.g., the same Client across Case records);
- (2) Reflect actual Case activity and outcomes, with any errors identified by OPDC corrected;
- (3) Include all required Agency Data elements such as Case identifiers, dispositions and PCR activity;
- (4) Are structured in a manner that allows the Agency Data to be tracked and verified over time;
- (5) Follow OPDC's required formatting and pass all system validation checks, and
- (6) Are submitted in accordance with established reporting deadlines.

The following applies when reporting requirements are not met:

1. Late Submission Penalty

If a Reasonably Accurate report is not successfully submitted within 10 days after the reporting deadline, OPDC will impose a penalty of 5% of the contractor's total monthly payment for the month in which the penalty is imposed.

- This penalty will be applied to each subsequent monthly payment until the report is submitted successfully.
- If multiple reports are outstanding, the penalties will be compounded monthly.
- OPDC will not return the withheld penalty.

2. Extended Delinquency and Corrective Action

- If a report is not submitted within 90 days of the due date, OPDC may invoke a Corrective Action Plan under Section 14 (Corrective Action).
- If Contractor fails to submit six reports on time during the Contract cycle, OPDC may also invoke a Corrective Action Plan under Section 14 (Corrective Action).

3. Resubmission of Reports Determined Inaccurate

- If OPDC determines that a submitted report does not meet the definition of Reasonably Accurate, OPDC will notify the Contractor within 60 Business Days of receipt.
- Contractor shall have 10 Calendar Days from notification to correct and successfully resubmit the report.
- If the corrected report is not submitted by the deadline, the late reporting penalty described above will apply.

13. EVALUATION OF CONTRACTOR

OPDC may review information to monitor Contractor activity, including FTE Attorney Caseloads and Workloads, the experience level and supervision of FTE Attorneys who perform Services under this Contract, the amount and content of training provided to such FTE Attorneys and the compensation provided to FTE Attorneys and support staff to ensure Contractor is adhering to the terms and meeting the performance requirements of this Contract.

At the request of either Party, and at least twice per year, OPDC and Contractor shall 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 Services, these meetings will include a review by OPDC of the number of appointments made to each contractor. If the review shows that there is a substantial disparity between the different contractors' Caseloads contemplated under the contracts and the actual Caseloads reported, OPDC shall notify the court and contractors that Case appointments must be adjusted and provide guidance for adjustment.

14. CORRECTIVE ACTION

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

1. OPDC will notify Contractor in writing of the nature of the breach.
2. Contractor shall respond in writing within five (5) Business 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 Contractor into compliance.
3. OPDC will notify Contractor in writing of OPDC's determination as to the sufficiency of Contractor's facts or corrective action plan. The determination of the sufficiency of Contractor's corrective action plan will be at OPDC's discretion 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 this Contract as a whole. If Contractor does not concur with the determination, Contractor may request a review of the decision by OPDC's Executive Director. Contractor shall work with OPDC to implement an appropriate corrective action plan.

If Contractor does not respond to OPDC's notification within the appropriate time, or Contractor's corrective action plan for a substantial breach is determined by OPDC to be insufficient, OPDC may commence termination of this Contract in whole or in part pursuant to Section 15 (Contract Termination and Suspension).

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

15. CONTRACT TERMINATION AND SUSPENSION

A. OPDC may terminate this Contract in whole or in part upon ten (10) Business Days' written notice to Contractor if:

- i. Contractor substantially breaches any duty, obligation, or Services required pursuant to this Contract;
- ii. Contractor engages in Misappropriation of Funds; or
- iii. The duties, obligations, or Services herein become illegal, or not feasible.

Before OPDC terminates this Contract pursuant to Section 15 A.1, OPDC 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 OPDC within ten (10) Business Days from the date of OPDC's notice. If Contractor elects to submit a written response, OPDC will review the response and make a determination within ten (10) Business Days after receipt of Contractor's response. If Contractor does not concur with the determination, Contractor may request a review of the decision by OPDC's Executive Director. The Contract will remain in full force pending communication between OPDC's Executive Director and Contractor. If OPDC's Executive Director reaffirms termination, the Contract shall terminate ten (10) Business Days from the date of the OPDC Executive Director's final decision.

B. OPDC may immediately terminate this Contract upon written notice if OPDC fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by OPDC's budget or spending plan and OPDC determines, in its assessment and ranking of the policy objectives explicit or implicit in its budget or spending plan, that it is necessary to terminate this Contract. Nothing in this Contract may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OPDC's payment for amounts due after the last Calendar Day of the current State of Oregon biennium is contingent upon OPDC receiving funding, appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow OPDC, in the exercise of its reasonable administrative discretion, to continue to compensate Contractor.

C. Contractor may terminate this Contract with cause with 30 Business Days' written notice should OPDC substantially breach any duty, obligation, or service pursuant to this Contract.

D. If this Contract expires or is terminated, Contractor shall continue to represent Clients that were

previously assigned. OPDC and Contractor shall enact wind down procedures as follows:

1. Contractor shall provide a list of all open Cases under this Contract to their OPDC Program Analyst within seven (7) Business Days. For purposes of this section an open Case is defined as any Case that has not been closed per Case closure guidelines in Exhibit B.

The list must include the following information:

- a. Client name;
 - b. Case number;
 - c. Assignment date;
 - d. Custody status;
 - e. Attorney assigned;
2. Case specific notes indicating status of Case and when withdrawal would be detrimental to the Client (e.g. impending trial or hearing, mental health issues, etc.)
 3. OPDC Program Analyst will review the list of open Cases to determine which Cases should be reassigned and which should remain with current counsel. For any Cases that are identified for reassignment, OPDC Program Analyst will check to see if any local contractors have capacity in their contract.
 4. After the OPDC Program Analyst completes their review, the OPDC Program Analyst will provide a written recommendation to the entity based on the list of Cases provided. At which time OPDC may request that Contractor attempt to withdraw from one or more Cases. If a motion to withdrawal is not granted OPDC will honor hourly payment at the standard rate to Contractor upon judicial verification that continued representation is required.
 5. Any Cases taken by local contractors would be counted as new appointments.
 6. OPDC Program Analyst and Contractor will finalize any remaining Cases that should be taken hourly.
 7. Timelines for this process will be in keeping with Section 15 (Contract Termination and Suspension).
- E. If termination is due to Misappropriation of Funds, non-performance of the scope of Services, or fiscal mismanagement, Contractor shall return to OPDC those funds, unexpended or misappropriated, which, at the time of termination, have been paid to Contractor by OPDC.
 - F. 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.
 - G. Nothing herein will be deemed to constitute a waiver by either Party of any legal right or remedy for wrongful termination or suspension of this Contract.

16. NOTICES

Contractor shall immediately notify OPDC 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 FTE Attorney who is a member of Contractor's staff or working for Contractor.

- B. Criminal Charges or Conviction. When it becomes aware that an FTE 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 3.
- E. Reached Ethical Capacity. When Contractor believes they have reached their ethical capacity under Oregon State Bar's Rules of Professional Conduct, Section 1.7.

17. 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 OPDC, 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 this Contract term comprehensive general liability insurance that includes coverage for personal and advertising injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract, 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 FTE Attorneys maintain, professional liability insurance that covers any and all acts which occur during the course of their work for Contractor that meets the minimum required as established by the Oregon State Bar.

C. Workers' Compensation

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

D. Automobile Liability

For all vehicles used in connection with the Services performed under this Contract, this Contractor (or its FTE Attorneys) must maintain automobile liability insurance with limits of not less than those required by the Oregon Financial Responsibility Law.

E. Network Security and Privacy Liability

Contractor shall maintain network security and privacy liability insurance for the duration of this Contract and for the period of time during which this Contractor maintains, possesses, stores or has access to State Data, whichever is longer, with a combined single limit of no less than \$100,000 for 10 or fewer attorneys, or \$250,000 for 11 or more attorneys, per claim or incident; it must include coverage for third-party claims and for losses, thefts, unauthorized disclosures, access or use of State Data (which may include, but is not limited to, Personally Identifiable Information (“PII”), Payment Card Data and Protected Health Information (“PHI”)) in any format, including coverage for accidental loss, theft, unauthorized disclosure access or use of the data.

State Data is defined as all data provided to this Contractor under this Contract, including the State’s data collected, shared, used, stored, or generated electronically by this Contractor in connection with the Services, and produced from electronically stored information (“ESI”). State Data does not include data that is provided to the Contractor either by Clients or as a direct result of a particular Case, including, but not limited to, discovery.

Contractor’s network security and privacy liability insurance must protect Clients’ and Case data at a level no less than that provided by or recommended by the Oregon State Bar.

18. HOLD HARMLESS AND INDEMNIFICATION

Contractor shall protect, indemnify, defend, and hold harmless the State of Oregon, OPDC and their officers, employees and agents 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 Contract. Notwithstanding the above, Contractor has no duty to indemnify, defend, or hold harmless OPDC for its actions, decisions, work, activities, or failures to act related to this Contract.

Related to Contractor’s requirement to indemnify OPDC and the state of Oregon, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interest of, the State or its officers, employees and agents prior to such action or representation. The State, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time.

Contractor’s obligation to pay for all costs and expenses include those incurred by the State in assuming its own defense and that of its officers, employees, or agents.

19. RESPONSIBILITY OF CONTRACT ADMINISTRATOR

Contractor shall name one designated Contract Administrator. Typical Contract administration duties include, without limitation, the following:

- Fill vacancies promptly as they occur for positions needed to provide Services under this Contract;
- Promptly assign Cases to ensure Client contact is made in accordance with the timelines in Section B of Exhibit C and to FTE Attorneys who are qualified for that level of Case;
- Ensure timely and Reasonably Accurate reporting to OPDC per Section 12;
- Manage and disburse Contract funds;
- Work with OPDC to attend regular meetings to review data and to ensure sufficient support to achieve program expectations;

- Consult with judges, court staff, and other system partners to ensure high quality representation and efficient Case processing;
- Correspond with OPDC regarding Contract inquiries or complaints, including changes in FTE Attorneys and staff that might impact Contractor's ability to meet their Contractual obligations;
- Maintain all Case reporting, financial, and other records regarding this Contract and records created as a result of Services performed and make such records available to OPDC upon request;
- Negotiate new contracts and Contract changes with OPDC as necessary;
- Actively participate in system improvement initiatives including but not limited to multi-disciplinary training, system and partner meetings, training and mentorship programs for FTE Attorneys and core staff and the meetings prescribed in Section 13;
- Ensure all FTE Attorneys have a succession plan in accordance with Section F of Exhibit C; and
- Work with OPDC to ensure that a departing FTE Attorney's Caseload is covered with as minimal disruption as possible to Client's Case timeline as prescribed in Exhibit C.

20. 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 Services to be performed 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 to the extent that they are applicable to this Contract and required by law to be so incorporated.

A. Contractor's Compliance with Tax Laws

Contractor must, throughout the term of this Contract, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this subsection constitutes a material breach of this Contract. Further, any violation of Contractor's warranty in Section 25 of this Contract, also constitutes a material breach of this Contract. Any violation entitles OPDC to pursue any or all of the remedies available under this Contract, at law or in equity, including but not limited to:

1. Termination of this Contract, in whole or in part;
2. Exercise of the right of setoff, or garnishment, if applicable, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and

3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. OPDC shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract.

These remedies are cumulative to the extent the remedies are not inconsistent, and OPDC may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

B. Pay Equity Requirements

As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and not unlawfully discriminate against any of its employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, veteran status, disability, or age. Contractor's compliance with this section is a material term of this Contract, and Contractor's failure to comply constitutes a breach entitling OPDC to terminate this Contract or any Contract for cause.

Further, Contractor may not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

C. Oregon False Claims Act

Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Contract that constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Contract, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State or OPDC under this Contract or any Contract or any other provision of law.

21. 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 Contract.

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

22. CONFLICT OF INTEREST

A. Interest of Members of OPDC and Contractor

As required by ORS 244.120, no officer, employee, or agent of OPDC, 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 without prior disclosure and approval as defined by ORS 244.130.

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 OPDC.

23. AMENDMENTS

The Parties may amend this Contract to the extent permitted by applicable statutes and administrative rules. No amendment to this Contract is effective unless it is in writing, is signed by the Parties, and has been approved as required by applicable law.

Effective contract management requires OPDC to monitor each Contractor's performance and compliance. Changes in funded positions, contracted attorney qualification levels, funding, or other obligations must be memorialized by a formal contract amendment. Contracts for public defense Services can be amended each quarter, in January, April, July, and October to add, remove, or change the FTE for a funded position, or to change the funding level for an FTE Attorney. Such changes to a Contract will only be made prospectively and will not be made retroactively. The only exception will be the addition or removal of any funded positions.

To allow sufficient time to prepare amendments, any Contractor requesting a change to a Contract must notify OPDC of its request as soon as practicable but no later than 30 days prior to the effective date of the proposed Contract amendment, unless approved by OPDC in writing. If the OPDC Program Analyst does not receive written notification from Contractor, then the understanding of the Parties is that there has been no change to the ROC. Funding for additional FTE Attorneys under a Contract must be approved in advance by OPDC. Contractor must notify OPDC of any requested changes utilizing the Contract change request form.

OPDC will prepare and deliver Amendments to Contractor for review no later than the 1st Business Day of the effective month. OPDC must receive the signed amendment from Contractor no later than the tenth (10th) day of the effective month or the last Business Day prior to the tenth 10th.

24. FORCE MAJEURE

Neither Agency nor Contractor may be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

25. TIME IS OF THE ESSENCE

Contractor agrees that time is of the essence under this Contract.

26. NOTICE

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder must be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the email address, postal address or telephone number set forth in this Contract, or to such other addresses or numbers as either party may indicate pursuant to this Section 6. Any communication or notice so addressed and mailed is effective five business days after mailing. Any communication or notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any communication or notice given by personal delivery is effective when actually delivered. Any notice given by email is effective when the sender receives confirmation of delivery, either by return email, or by demonstrating through other technological means that the email has been delivered to the intended email address.

27. NO THIRD-PARTY BENEFICIARIES

Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or may be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

28. SURVIVAL

All rights and obligations cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of this Contract, including without limitation this Section 28, and provisions regarding Contract definitions, warranties and liabilities, independent Contractor status and taxes and withholding, maximum compensation, Contractor's duties of confidentiality, ownership and license of intellectual property and Deliverables, confidentiality and non-disclosure, Contractor's representations and warranties, control of defense and settlement, remedies, return of Agency property, dispute resolution, order of precedence, maintenance and access to records, notices, severability, successors and assigns, third party beneficiaries, waiver, headings, and integration.

29. ORDER OF PRECEDENCE

This Contract incorporates the following documents that are listed in descending order of precedence:

The terms and conditions of this Contracts, less its exhibits;

Exhibit B (Caseload and Workload Standards);

Exhibit C (Additional Performance Requirements);

Exhibit F (SPPE Provisional Licensee)

Exhibit A (Compensation);

Exhibit D (Certification as Independent Contractor and Compliance with Oregon Tax Laws);

Exhibit E (Notice);

Roster of Costs.

30. MISCELLANEOUS

Representations and Warranties: Contractor represents and warrants to OPDC that:

- A. Contractor is not an "officer," "employee," or "agent" of OPDC, as those terms are used in ORS 30.265;
- B. Contractor is not in arrears in the payment of any monies due and owing the State of Oregon, or any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and will not become so during the Term of this Contract;
- C. Contractor has no undisclosed liquidated and delinquent debt owed to the State or any agency, board, commission, department or division of the State;
- D. Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Services, and Contractor's provision of the Services shall not violate any such law, ordinance, regulation or order;
- E. To the best of Contractor's knowledge, Contractor's performance under this Contract creates no potential or actual conflict of interest, as defined by ORS 244, for either Contractor or any Contractor personnel that will perform the Services under this Contract;
- F. Contractor (to the best of Contractor's knowledge), for a period of no fewer than six calendar years preceding the Effective Date, faithfully has complied with:
 1. All tax laws of this State, including but not limited to ORS 305.380(4), ORS 305.620 and ORS chapters 316, 317, and 318;
 2. Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Services performed by Contractor;
 3. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, Services, or property, whether tangible or intangible, provided by Contractor; and
 4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- G. Disclosure of Social Security Number. Contractor shall provide Contractor's Social Security number

unless Contractor provides a federal tax identification number. This number is requested pursuant to ORS 305.385, OAR 125-246-0330(2)(d), and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal, and local tax laws.

H. Recyclable Products Requirement. Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the Services described in this Contract.

I. Prompt Payment Requirements. Contractor shall:

- i. Make payment promptly, as due, to all persons supplying to this Contractor labor or material for the performance of the Services provided for in this Contract.
- ii. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- iii. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- iv. This does not apply to Services to support the legal representation of Clients assigned to Contractor that are approved and paid directly by OPDC through either OPDC routine expenses or pre-authorized expenses.

31. MERGER CLAUSE

This writing, together with Exhibits A, B, C, D, E and F, any attached addenda and the Roster of Costs (ROC) constitutes the entire agreement between the Parties. There are no other oral or written understandings, agreements, or representation regarding this Contract. No waiver, consent, modification, or change of the terms of this Contract 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 Services pursuant to this Contract, have read this Contract, understand it, and agree to be bound by its terms.

Agreed:

[CONTRACTOR], Contractor:

Signature: _____ Date: _____
Authorized Signature or Designee

Print Name, Title: _____

Federal Tax ID: _____ Oregon Tax ID: _____

Oregon Public Defense Commission

Signature: _____ Date: _____
OPDC Director or Designee

EXHIBIT A – COMPENSATION

The compensation for this Contract is detailed below. These amounts may be adjusted:

- By mutual assent of the parties;
- Following receipt of Contractor's proposed revision to its ROC, based upon a change in Services, such as the attorney qualification status of its attorneys, and based on OPDC's approval of such revision, subject to a Contract modification authorized by Section 23;
- When Contractor fails to submit reports as required by Section 12 of the Contract; or
- In response to the breach, corrective action, and termination provisions established in Sections 14 and 15.

A. Contractor Roster and Costs for this Contract

For representational services provided pursuant to this Contract, a breakdown of Contractor's staff roster and associated costs for this Contract, is incorporated into the Contract through this reference. OPDC shall pay the total value in monthly installments as shown in the ROC. OPDC will make payments by direct deposit into the Contractor's designated account.

B. Attorney Vacancy Funding

When Contractor has an attorney vacancy, OPDC will fund the vacancy at 50% of the attorneys funding rate for 60 days, beginning on the first day following the attorney's last day of employment with Contractor. The purpose in providing 60 days of continued partial funding for an attorney vacancy is to allow the Contractor flexibility and support while Contractor works to fill the vacancy.

In order to receive partial funding for a vacancy, Contractor must intend to, and be actively working toward, filling the vacant position. Contractor shall notify OPDC of an impending vacancy within 48 hours of becoming aware an attorney is planning to leave the contract.

At its discretion, OPDC will provide an additional 60 days of funding for overhead only. To be eligible for the additional 60 days of overhead funding, 90% of the entity's and the attorney's work must be court appointed cases.

Funding for overhead only shall not exceed 60 days and shall only apply to the following entities:

- Non-profit public defender offices;
- Law firms, with more than one member, that contract directly with the agency; and
- Law firms within consortia that have more than one member taking public defense cases.

This provision only applies to barred attorney vacancies and does not apply to extended leave.

C. Offset from Previous Contract

Pursuant to a public defense Services Contract between OPDC and Contractor for the period from July 1, 2025, through September 30, 2025, OPDC paid Contractor a total of \$ [REDACTED]. Contractor is due an additional \$ [REDACTED].

CURRENT DRAFT

EXHIBIT B – CASELOAD STANDARDS FOR CRIMINAL CONTRACT

Contractor agrees that its attorneys will provide representational services in accordance with the following caseload standards:

- A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide representational services in accordance with this Contract to those eligible clients, when requested by OPDC, unless doing so would violate Section D of this Exhibit or the caseload limits. 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 OPDC agrees in writing. Attorney MAC may be adjusted by the mutual assent of OPDC and Contractor if a portion of Contractor's responsibilities include supervision or specialty courts.
- B. Rolling Annual Caseload Limits: The Maximum Attorney Caseload (MAC) a 1.0 FTE attorney can take is based on the standards below which capture the number of cases an attorney could be assigned in a 12-month period from one case type.

1. Murder/PCR Murder:	6
2. Jessica Law/PCR Jessica Law:	6
3. Ballot Measure 11:	45
4. Major (A/B) Felonies:	138
5. Minor (C) Felonies:	165
6. Misdemeanors:	300
7. Probation Violation:	825
8. Civil Commitments:	230
9. PCR/Habeas:	45
10. PCR Appeal	50
11. Civil Commitment Appeals:	60

Contractors shall distribute case assignments accepted under the contract relatively evenly each month while allowing for normal fluctuations in an attorney's caseload. Contractor shall ensure availability to provide representation to existing clients in circumstances such as, but not limited to, new case filings, cases coming back after warrant, increase in highest charge, and probation violations.

A 1.0 FTE attorney is expected to accept 0.083 MAC weight per month unless the attorney qualifies for an adjusted caseload. Cases assigned each month shall be proportional to an attorneys FTE status. Each case type receives the following MAC weight per case:

1. Murder/PCR Murder:	0.167
2. Jessica Law/PCR Jessica Law:	0.167
3. Ballot Measure 11:	0.022
4. Major (A/B) Felonies:	0.007
5. Minor (C) Felonies:	0.006
6. Misdemeanors:	0.003
7. Probation Violation:	0.001
8. Civil Commitments:	0.004
9. PCR/Habeas:	0.022
10. PCR Appeals:	0.020
11. Civil Commitment Appeals	0.167

- C. Reduced Caseload Program for First Year Attorneys: A 1.0 FTE attorney in the Reduced Case Load Program (RCP) will have a caseload equivalent of 200 misdemeanor cases for the first year of employment. Attorneys in the RCP will not be required to have monthly prorated MAC limits, nor will it result in a reduction of contract funding.

1. Reduced Caseload Program Application: If an OPDC contractor hires an attorney in their first year of Oregon State Bar (OSB) licensure and the contractor believes that the attorney qualifies to be in the RCP, the contractor must apply and receive OPDC approval prior to the attorney entering into the RCP program. The application will include the attorney's education and legal employment experience. For attorneys previously admitted in another jurisdiction the application will also include an explanation why the attorney should be admitted to the RCP.
2. Reduced Caseload Program Qualification:
 - Be in their first year of licensure by OSB or have less than one year of experience of direct representation of public defense clients as a licensed attorney if attorney is or was licensed in another state; and
 - Be part of a mentoring or supervision program that meets the supervision requirements of their OPDC contract; and
 - Be qualified (directly or with supervision) by OPDC to take criminal misdemeanor cases.
 - Not have participated in the Supervised Portfolio Practice Examination (SPPE) program.
3. Attorneys must remain qualified at their initial qualification level to participate in the RCP. For example, if an attorney is upgraded from criminal misdemeanor to criminal felony they would no longer be eligible for the RCP.
4. Co-counsel: Attorneys in the RCP can co-counsel lesser felony cases without losing the RCP status, if co-counseling is part of the OPDC-approved mentoring and supervision program.

5. RCP Attorneys Changing Entities: If an attorney in the RCP moves from one Contractor to another Contractor, their time in the RCP continues based on their RCP beginning date. The new Contractor must be under a qualifying contract and have a OPDC approved mentoring or supervision program, or the attorney will lose RCP status.

If an attorney in the RCP leaves a Contractor to become part of the OPDC Trial Division, their time in the RCP will continue based on their RCP beginning date.

- D. Exceed Caseload Program: If any of Contractor's attorneys are approved to exceed the MAC weight in Section B, OPDC will allow them to increase by the following MAC weight increments per month 0.004, 0.008, or 0.013. Approval will be granted to an attorney who, due to their experience, is able to efficiently use their time, and not violate ethical standards. Approval is based on the following criteria:

1. Have at least four years of public defense experience;
2. Be lesser felony qualified or Criminal Attorney Level 2;
3. Have been actively accepting appointments in felony level cases for at least 2 years;
4. Have at least a 0.90 FTE across all public defense contracts with at least 0.50 FTE devoted to criminal cases;
5. Have no open investigations by bar ethics counsel;
6. Agree to comply with OPDC data and reporting requests, as needed;
7. Affirm that they have, and will review, all available discovery in all cases; and
8. Affirm that they have the ethical capacity to take on the additional MAC.

Not all attorneys who meet the criteria above will be approved. OPDC will approve based on jurisdictional needs over time. If an attorney does not meet the criteria above but is still interested, Contractor may contact OPDC to explain why an exception is warranted.

- E. 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 OPDC in its monthly caseload reports.

- F. Case Closure: Contractors will close a client's criminal case:

1. When the final judgment or order is entered into the court register and the Contractor has met all contractual obligations:
 - If the appointment was for a probation violation, the attorney shall close the case upon disposition of the probation violation; or
 - A judgment of dismissal constitutes a final judgment; or
 - When a judge has signed an order removing the attorney from the case; or

- A bench warrant for a client's failure to appear has been active for 180 consecutive days.

2. 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.

G. Case Weighting when Contractor Closes the Case Prior to Final Judgment: Full case weight is based on an attorney completing all necessary tasks for a client's case prior to the case closing. Withdrawal prior to the completion of all contractual obligations will result in a partial weighting of that case. OPDC will assign partial weight in the following manner:

1. Criminal misdemeanors: From 0 to 5 days from case assignment the attorney will receive no MAC weight for the case, from 6 to 14 days the case will receive 50%, from 15 to 40 days the case will receive 75%, after 40 days the case will receive 90% case weighting.
2. Criminal felonies other than murder: From 0 to 5 days from case assignment the attorney will receive no MAC weight for the case, from 6 to 59 days the case will receive 50%, from 60 to 120 days the case will receive 75%, after 120 days the case will receive 90% case weighting.
3. Criminal murder: From 0 to 5 days from case assignment the attorney will receive no MAC weight for the case, from 6 to 179 days the case will receive 50%, from 180 to 365 days the case will receive 75%, after 365 days the case will receive 90% case weighting.
4. If an attorney closes a case because a client has had a warrant issued for 180 days, the date of withdrawal for the purpose of calculating the length of time an attorney was appointed to the case is the date that the warrant was issued.

Nothing in this contract should be construed to limit an attorney's duties of representation to any of their clients. OPDC recognizes that all cases are unique and that not all cases may be completed within the timelines outlined above. OPDC is committed to attorneys being compensated for their work on cases and attorneys who feel that the amount of work they performed on a case is not reflected in this section may request extraordinary case weighting as prescribed in Section K of this Exhibit B.

H. Partial Case Weight for Subsequent Attorney: When reassigning cases because of the withdrawal of an attorney, or if an attorney is otherwise unavailable to continue representation, the case should be reassigned in this order:

1. To a different attorney within the same firm;
2. To a different attorney within the same contract entity; then
3. To another Contractor within the same judicial district.

After a change of attorney within the same firm the subsequently appointed attorney, if appointed under contract, will receive 50% of the MAC weight for the case. If the subsequent attorney withdraws the partial weighting in Section G of this Exhibit B will apply to the 50% MAC weight they received. If deemed necessary, the subsequent attorney may request extraordinary case weighting for additional credit per Section K of this Exhibit B.

- I. 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 MAC weight described in Section B of this Exhibit B. An attorney shall endeavor to accept appointments to current clients in other counties to support the best practice of one client, one attorney. This additional out of county weighting does not apply to Murder or Jessica's Law cases
- J. Additional Case Weighting: In addition to the assigned case weight, an attorney may treat the case as a new appointment and receive a new case weight when:
 1. A case, other than a murder or Jessica's Law case, has been delayed for a year or more pursuant to a bench warrant, a dismissal without prejudice, or issues surrounding aid and assist; and;
 2. The case is retried following a hung jury; or
 3. The case returns for a new trial or sentencing following a direct appeal or post-conviction relief.
- K. 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 OPDC'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 OPDC for this purpose.
- L. Attorney Vacancy and MAC Obligations: When a Contractor submits a vacancy notice to OPDC per Section B of Exhibit E, it's the understanding of all Parties that the Contractor is not responsible for the MAC weight during the vacancy period.
- M. Attorney Shutoff and MAC Obligations: When a Contractor submits a shutoff notice to OPDC per Section C of Exhibit E, the understanding of all Parties is as follows:
 - Reached Monthly MAC: Contractor or one of its attorneys has reached its monthly MAC weight as captured in the ROC.
 - RPC 1.7 Ethical Capacity: One or more contract attorneys is unable to take new clients due to Oregon State Bar Rules of Professional Conduct Section 1.7 which relates to an attorney's ethical capacity. A shutoff for this reason means an attorney(s) is unable to take any new legal work until they have additional capacity.

- Events: One or more contract attorneys is unable to take new clients due to any of the events listed below:
 - o FMLA/OFLA
 - o Medical issued unrelated to FMLA/OFLA
 - o Bereavement
 - o Vacation/Planned Absence/Sabbatical
 - o Natural Disaster
 - o Victim of Crime (Embezzlement, burglary, etc.)
- Disciplinary Action and/or Criminal Charges: One or more contract attorneys is unable to take new clients due to disciplinary action and/or criminal charges. If a Contractor or any of its attorney's shutoff for any of the reasons above the Contractor will be responsible for the MAC weight during the shutoff period unless the entity would like to remove the funding from their Contract.

EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR CRIMINAL CONTRACT

Contractor shall provide representational services in accordance with the following:

- 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 shall make reasonable efforts to ensure that one attorney is assigned to all cases for a client during the term of this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals. Nor does it prohibit Contractor 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: An attorney must conduct a client interview as soon as practicable after representation begins. They must thereafter maintain regular contact with the client explaining the allegations and nature of the proceedings, conduct a conflict check, obtain necessary case information from the client, consult with the client about decisions affecting the course of the defense, and respond to their requests for information or assistance concerning the case. For clients who are in custody, the initial interview should take place no more than 48 hours after appointment. For out of custody clients, outreach to schedule an initial interview should occur no more than 72 hours after appointment.
- C. Conflicts/Withdrawal: Conflicts of interest may arise in numerous situations in the representation of clients. Contractor shall screen all cases for conflict as soon as possible upon assignment and as needed 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 once a new attorney is appointed.
- D. Attorney Transition between Contractors: When an attorney leaves a Contractor, they shall comply with the Oregon State Bar Rules of Professional Conduct and are required to continue to represent clients until other arrangements can be made for their cases. If an attorney leaves a Contractor and continues doing public defense work funded by OPDC, the attorney shall take their existing cases with them unless OPDC authorizes otherwise. If authorized, the attorney shall work collaboratively with their former Contractor, their new Contractor, and OPDC to ensure the due administration of justice and the rights of their existing clients are protected. If withdrawal is granted by the court, cases should be reassigned within the contract before transferring them to other local contracts.
- E. Attorney Transition to Hourly or Departure from Public Defense:

In the event an attorney is leaving a capacity-based contract to hourly compensation or is not moving to another contract the attorney's cases will be converted to hourly compensation and the attorney may bill OPDC starting from an agreed date. Attorneys are required to continue to represent clients until other arrangements can be made for their cases. Contractor and/or attorney shall work with OPDC to verify the transition. If the attorney is unable to continue representation of their cases and is allowed to withdraw by the court, the Contract Administrator and OPDC will collaborate to reassign the cases. If withdrawal is granted by the court, Contractor shall attempt to reassign the case within the contract before transferring them to other local contracts.

An attorney who withdraws from their cases because they are leaving public defense work will be ineligible to accept new public defense cases for up to 6 months, subject to agency discretion. If the attorney returns to public defense, the attorney will be required to accept any of their withdrawn cases which are still active prior to accepting other cases.

F. Attorney Succession:

1. Contract Administrator shall maintain a written contingency plan addressing actions when an attorney becomes unable accept public defense cases under the contract. Contractor shall:
 - a) Provide to OPDC the name and contact information for the individual who knows the location of the firm's client files, digital files including any passwords necessary to access that information, and who has agreed to facilitate access to that information to any other attorney taking over the cases.
 - b) Maintain a plan for ensuring clients receive adequate communication in the event of the attorney's incapacity.
2. Contract Administrator shall facilitate succession plans in the event of an attorney's departure from the contract. When attorneys depart the contract:
 - a) Contract Administrator shall work with OPDC to ensure that the attorney's caseload is covered with as little disruption to the client's cases as possible; and
 - b) Contract Administrator shall make reasonable efforts to reassign the departing attorney's cases within the contract before transferring them to other local contracts.
 - c) If no local contractors are available OPDC may assign cases to the OPDC Trial Division, non-contract hourly counsel, or request that cases be placed on OJD's unrepresented list.
3. Contract Administrator shall ensure attorneys working under their contract will take reasonable steps to ensure their files are up to date and include:

- a) the most recent client contact information;
 - b) pending deadlines;
 - c) the names of any experts and investigators retained on the case; and
 - d) any other information that would assist a subsequent attorney in advocating on the client's behalf.
4. An attorney who leaves Contractor's employment may complete his previously assigned case load and receive payment in the event attorney is unwilling to accept new appointments.
 5. Contract Administrator shall ensure clients continue to receive representation when an attorney leaves their employment.
 6. If an attorney departing Contractor's employment is moving from a capacity-based contract to another capacity-based contract within the same practice area the attorney's cases will transfer to the new contract.
 7. If an attorney departing Contractor's employment is moving from a capacity-based contract to hourly compensation or is not moving to another contract the attorney's cases will be converted to hourly compensation and the attorney may bill OPDC starting from a date upon which OPDC has agreed.
 8. Contract Administrator shall ensure departing attorneys work with their OPDC Analyst to verify the transition and reporting plan. If the attorney is unable to continue representation of their cases and is allowed to withdraw by the court, the contract administrator and OPDC will collaborate to reassign the cases.
- G. 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.
- H. Pre-appointment Representation: Pre-appointment representation means representation of a client prior to appointment by the court in order to preserve and protect the rights of the client.

Contractor may commence pre-appointment representation only with pre-approval from OPDC. In determining whether to authorize pre-appointment representation, OPDC will consider whether:

- The individual is a clear target of an investigation that could result in criminal charges;

- The Contractor has a good faith basis to conclude the individual seeks an attorney;
- It is reasonable for the Contractor to believe the person qualifies for public defense attorney; and
- The case is of a magnitude for which pre-indictment/petition appointment is reasonable.

I. Initial Appearances: Contractor shall provide representation at all arraignment and first appearance hearings, unless OPDC agrees. Contractor shall work with OPDC 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.

J. Representation Obligations Following the Commencement of Proceedings: Contractor shall ensure that during the pendency of a case through judgment or final order of the court, including, but not limited to:

- Ensure that the assigned attorney provide representation at all scheduled hearings and court proceedings. An attorney should appear for their own cases but may arrange coverage for non-substantive hearings if needed;
- Seek pretrial release of all detained clients when the client so desires;
- Filing timely and appropriate motions;
- Filing or arranging for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which an attorney is appointed.
- Devoting sufficient time to interviewing and counseling clients;
- Ensure investigation is conducted;
- Consult with and/or retain all necessary experts or other professional service providers. Utilizing the PAE system if necessary;
- Pursue all avenues of discovery from the prosecution, both formal and informal;
- Review all available discovery in each case. Clients may waive this obligation after consultation with attorney. Attorney should obtain waiver in writing for the file;
- Conduct or supervise sufficient legal research to fully understand and prepare legal briefings on client's case;
- Sufficiently prepare for all hearings, trials, and sentencings; and
- Obtain and review all applicable records including, but not limited to, medical, dental, school, employment, military, and mental health records.

K. Post-Judgment Obligations: Following the entry of judgment or other final order in a case, an attorney shall provide post-judgment representation in accordance with the Oregon State Bar 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 an appellate attorney 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 an attorney 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 attorney.

L. Supervisors In order to receive supervisor funding contractor must have at least 3 attorneys, OPDC will fund supervisors at the rate of 0.1 supervisor FTE for every 1.0 FTE Attorney. No MAC will be associated with any supervisor FTE. A supervisor may still carry a caseload if they supervise fewer than 10.0 FTE Attorneys. The sum of supervision FTE and attorney FTE for any individual under contract shall not exceed 1.0 MAC.

Contractors who manage supervisors must ensure:

- Supervising attorneys maintain an OPDC qualification level higher than the attorneys whom they supervise.
- Maintain and provide OPDC with a copy of a supervision program that includes:
 1. Names and OPDC qualification levels of all supervisors and supervised attorneys;
 2. A process for regular check-ins with each supervised attorney. The frequency of these check-ins, the time scheduled for the check-ins, and a procedure for supervisory attorneys to document concerns raised about individual attorneys must all be included.
 3. A process for random observation of supervised attorneys in court. Court observations must be documented, including but not limited to type of case, type of hearing observed, whether witnesses were called during the hearing, etc. The supervision plan must also include a procedure for supervising attorney to document concerns raised about individual attorney performance.
 4. Random and scheduled file reviews with each supervised attorney.
- A procedure for case assignment and monitoring.
- A procedure for addressing complaints or concerns from a client, judge, or opposing counsel.
- Quarterly progress reviews and an annual performance evaluation for each attorney. At the conclusion of each year, each supervising attorney shall submit an affidavit or declaration affirming

their compliance with the supervision plan and that the contracting entity has the documentation required by the supervision plan.

CURRENT DRAFT

**EXHIBIT D – CERTIFICATION AS INDEPENDENT CONTRACTOR AND COMPLIANCE WITH
OREGON TAX LAWS**

Contractor:

I, the undersigned, make the following certifications:

A. Certification as Independent Contractor

I, the undersigned duly authorized representative of the Contractor, certify under penalty of perjury that the Contractor is a corporation or an independent contractor as indicated below.

CHECK ONE OF THE FOLLOWING:

Contractor is a corporation; and/or

Contractor meets the following standards:

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapter 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 THREE (3) OR MORE OF THE FOLLOWING: (check those that apply)

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 Contractor qualifies as an independent contractor as described above.

Signature _____ Date

B. Compliance with Oregon Tax Laws

I, the undersigned duly authorized representative of Contractor, hereby certify that Contractor is not, to the best of my knowledge, in violation of any Oregon tax law. For purpose of this certification, "Oregon Tax Laws" are ORS Chapters 118, 119, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, chapter 533, Oregon Laws 1981 as amended by Chapter 16, Oregon Laws 1982 (special session); the Homeowners and Renters Property Tax Relief Program under ORS 310.630 to 310.690; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature:

Name:

Date:

EXHIBIT E – NOTICE

- A. Each party to this Contract shall provide to the other all notices regarding this contract, except notices regarding vacancies in the Contract and Contractor's inability to accept appointments to represent Clients:

(a) In writing, and

(b) Delivered to the other Party at the email address below or to such person and email address as the Parties provide to each other from time to time:

OPDC:

Contract.Notice@opds.state.or.us

Contractor:

[Administrator Name]

[Administrator Email]

- B. Contractor shall provide notice regarding any vacancies in this Contract using the [Attorney Vacancy Form](#) located on the OPDC website.
- C. Contractor shall provide notice regarding Contractor's inability to accept appointments to represent eligible clients using the [Contractor Shutoff Form](#) located on the OPDC website.

Exhibit F - SPPE Provisional Licensee**1. SPPE Provisional Licensees**

OPDC may authorize Contractor to add Provisional Licensee(s) under the Supervised Practice Portfolio Exam (SPPE) program to their contract subject to the following:

- A. Before OPDC adds a Provisional Licensee to a contract the Contractor must:
 - 1. Email the SPPE Provisional Licensee's preliminary Certificate of Attorney Qualification, the Supplemental Questions form, the applicant's Provisional License number, and proof of eligibility to OPDS.Atty.Qualifications@opdc.state.or.us.
 - 2. Receive confirmation that OPDC has approved the applicant's Attorney Qualifications.
 - 3. Communicate to OPDC an anticipated vacancy within the jurisdiction that the applicant could fill upon completing the SPPE program.
- B. Provisional Licensees and SPPE Supervising Attorneys must adhere to all Oregon State Bar rules and requirements of the Oregon Supervised Practice Portfolio Examination.
- C. OPDC will provide contract funding for Provisional Licensee(s) at the annual Provisional Licensee contract rate based on their FTE.
- D. OPDC will compensate Contractor for supervision of a Provisional Licensee at a 0.1 FTE per 1.0 Provisional Licensee FTE. If necessary, OPDC will adjust the supervising attorney's Maximum Attorney Caseload (MAC) to ensure their combined regular caseload and supervision duties do not exceed 1.0 FTE. Supervision FTE for this purpose will be removed once the Provisional Licensee successfully completes the SPPE program and their MAC will be restored to its previous level.
- E. Contractor may not use a Provisional Licensee to fill an attorney vacancy. Provisional Licensee(s) will be added to a contract as additional FTE for that contract. If the Provisional Licensee successfully completes the SPPE program, OPDC may allow Contractor to add FTE to the contract. FTE used for Provisional Licensee(s) is not guaranteed to continue into contract FTE.
- F. Vacancy funding is not available for Provisional Licensee(s) who leave the firm.
- G. A Provisional Licensee may provide public defense representation under a contract at less than 1.0 FTE.
- H. Provisional Licensee(s) are subject to the following caseload expectations:
 - 1. For the first six (6) months a 1.0 FTE Provisional Licensee is expected to accept 0.012 MAC weight per month which is the equivalent of 15% of the MAC standards in Exhibit B of the contract.

2. For the remaining six (6) to twelve (12) months a 1.0 FTE Provisional Licensee is expected to accept 0.021 MAC weight per month which is the equivalent of 25% of the MAC standards in Exhibit B.

2. Provisional Licensee Supervisor Minimum Qualifications

- A. An attorney supervising a Provisional Licensee practicing criminal law under this contract must have maintained OPDC Certification for Major Felonies for the preceding three (3) years prior to supervision.
- B. An attorney supervising a Provisional Licensee practicing juvenile delinquency law under this contract must have maintained OPDC Certification for Juvenile Major Felonies for the preceding three (3) years prior to supervision.
- C. An attorney supervising a Provisional Licensee practicing juvenile dependency under this contract must have maintained OPDC Certification for Termination of Parental Rights for the preceding three (3) years prior to supervision.

3. Provisional Licensee Attorney Qualification Certification

Provisional Licensees whom OPDC certifies are qualified "with supervision."

The Provisional Licensee must submit an updated Attorney Qualification form once the Provisional Licensee is admitted to the Oregon State Bar and before accepting appointments for any case type for which OPDC has not previously confirmed their qualifications.

4. Limitations on Client Representation

Provisional Licensees may only appear on behalf of a client with the client's written consent as well as approval by the SPPE Supervising Attorney and the Court. Client consent must be filed with the Court as a part of the case record.

Provisional Licensees may not appear on behalf of a client without a SPPE Supervising Attorney, even with consent from the client, in the following circumstances:

- A. Civil commitment proceedings;
- B. Any case where the client may be subject to a felony conviction;
- C. Any delinquency matter in which a juvenile is alleged to have committed acts which, if committed by an adult, would constitute a felony; and
- D. Any case type for which OPDC has not confirmed their qualifications.

5. Timeline to Complete

- A. Unless given extension by OPDC, a Provisional Licensee funded under this policy must:
 1. Submit proof to OPDC that they submitted their Interim Portfolio within six (6) months; and

2. Be admitted to the Oregon State Bar within one (1) year.
- B. It is the Provisional Licensee's responsibility to ensure timely Portfolio submissions to meet these deadlines. Documentation should be submitted to OPDC by email at OPDS.Atty.Qualifications@opdc.state.or.us.
- C. OPDC will not fund Provisional Licensee beyond one (1) year.

6. Reporting Requirements

- A. Provisional Licensees shall comply with reporting requirements for Oregon State Bar licensed attorneys.
- B. At OPDC's request, Provisional Licensees will make all submissions to the Oregon State Bar available to OPDC, including any time sheets.