OREGON PUBLIC DEFENSE COMMISSION CONTRACT FOR PUBLIC DEFENSE SERVICES
Hourly Contract
Contract No. ________

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CONTRACT FOR PUBLIC DEFENSE SERVICES
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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]. Contractor's Contract Administrator is [name], [email, phone].

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 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, diligent 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.

- OPDC may publish the names of Contractor's attorneys, along with information on the types of cases that those attorneys are qualified to provide legal services, to a list provided to the circuit courts.

- This contract does not guarantee case assignment.

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. <u>Interpretation of Terms</u>: 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 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 the 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. Business Days: means 8:00 a.m. to 5:00 p.m., Pacific Time, Monday through Friday, excluding State of Oregon holidays.

B. Calendar Days: mean contiguous days.

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

D. Caseload: is the number of Cases assigned to an FTE Attorney on an annual basis.

E. Client: a person determined to be eligible for representation by a court-appointed attorney at state expense.

F. Contract: means all terms and conditions herein, including documents incorporated by reference, and all Exhibits attached hereto.

G. 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.

H. 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.

I. Full Time Equivalent Attorney (FTE): an Attorney providing public defense Services pursuant to a Caseload contract with the Oregon Public Defense Commission (OPDC).

J. Hourly Attorney: An Hourly Attorney is an attorney who accepts case assignments to represent persons entitled to public defense services and be compensated on an hourly rate basis.

K. Maximum Attorney Caseload: 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. 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,, and 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.

P. Workload: The number of open cases assigned to an 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
- ABA Ten Principles of a Public Defense Delivery System
- 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 attorney to keep abreast of changes and developments in the law, procedure, and court rules and to assure continued rendering of competent assistance of counsel. Contractor shall require sufficient training of all its 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 of its attorneys comply with the CLE requirements of the Oregon State Bar and obtain 12 hours of CLE credit specific to their Contract during the Contract period.

9. COMPENSATION AND METHOD OF PAYMENT

OPDC 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 will be made in a timely manner after the attorney submits their billing to the agency. Attorneys are required to bill monthly. Payments shall be made promptly by direct deposit into the account designated by Contractor. Compensation rates for Attorneys are determined by the types of cases accepted. Appointed counsel will only be compensated for work on case types for which OPDC has certified their qualifications. If counsel is appointed to a case for which OPDC has not certified their qualifications, they must contact OPDC immediately to determine whether their qualifications can be certified or if they must move to withdraw from the representation. 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.

In the event of Contractor failure to substantially comply with any terms and conditions of this Contract or to provide the Services, OPDC reserves the right to withhold any payment until corrective action described in Section 13 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 14 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 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. OPDC may unilaterally suspend or terminate the Contract if the Parties cannot agree to modification.

10. 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, and 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 the Contract or Services necessary to performance of the 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 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 must be preserved for a minimum of 20 years.

11. CONTRACTOR REPORTING AND INSPECTION

Contractor agrees to audits and inspections, and it agrees to 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 the Corrective Action procedures in Section 13 (Corrective Action).

A. <u>OPDC Requested Reports</u>

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

B. <u>Audit, Inspection, Records, and Confidentiality</u>

Contractor agrees to 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 the Contract and a period of six 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 the Contract. OPDC will respect the attorney-Client privilege.

12. EVALUATION OF CONTRACTOR

OPDC 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 Services under the Contract, the amount and content of training provided to such attorneys, the compensation provided to attorneys and support staff to ensure that the 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 will meet to discuss case assignment trends and any other matters needed to determine Contract compliance or any necessary Contract modifications.

13. 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.

14. CONTRACT TERMINATION AND SUSPENSION

A. OPDC may terminate this Contract in whole or in part upon 10 Business 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 OPDC terminates this Contract pursuant to Section 14 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 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 10 Business 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 OPDC's Executive Director. In the event OPDC's Executive Director reaffirms termination, the Contract shall terminate 10 Business Days from the date of the OPDC Executive Director's final decision. The Contract will remain in full force pending communication between OPDC's Executive Director and Contractor. A decision by the OPDC Executive Director affirming termination shall become effective 10 Business Days after it is communicated to Contractor.

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. Contractor may terminate this Contract without cause with 30 Business Days' written notice if Contractor is a sole proprietor.

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 with be in keeping with Section 15 (Contract Termination and Suspension).

E. 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 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 the Contract.

15. 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 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 3.

E. Ability to Perform Representational Services to Clients. When it becomes aware that Contractor is unable to perform Representational Services to Clients.

16. 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.

17. 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 duty 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.

18. RESPONSIBILITY OF CONTRACT ADMINISTRATOR

Contractor shall name one designated Contract Administrator, who is responsible for Contract administration duties regarding the Services provided under this Contract. Typical Contract administration duties include, without limitation, the following:

- Fill vacancies promptly as they occur for positions needed to provide Services under the Contract;
- Assign cases in accordance with attorney qualification level and core staff standards and oversee case

assignments;

- Ensure timely and accurate reporting to OPDC;
- Manage and disburse Contract funds;
- Work with OPDC to organize 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 attorneys and staff that might impact Contractor's ability to meet their Contractual obligations;
- Maintain all case reporting, financial, and other records regarding the Contract and records created as a result of Services performed and making such records available to OPDC upon request;
- Negotiate new contracts and Contract changes with OPDC as necessary;
- Actively participate in system improvement initiatives and meetings prescribed in Contact Section 18, including multi-disciplinary training and partner meetings and providing training and mentorship to attorneys and core staff;
- Ensuring adoption and timely submission of a Service continuation plan to OPDC.

19. 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. <u>Contractor's Compliance with Tax Laws</u>

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. <u>Pay Equity Requirements</u>

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. <u>Oregon False Claims Act</u>

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.

20. 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.

21. 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.

22. 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.

23. 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.

24. Time is of the Essence

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

25. 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.

26. 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.

27. 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.

28. 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 A (Compensation);

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

Exhibit E (Notice);

Roster of Costs.

29. 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 the 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 the 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.

30. MERGER CLAUSE

This writing, together with Exhibits A, B, C, D, and E, 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 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 Defender Commission

Signature: ____ Date: ________________

OPDC Director or Designee

LEGAL SUFFICIENCY APPROVAL:

Signature: ____ Date: ________________

Print Name, Title: ____

Contractor is willing to accept appointment on the following case types:

____

____

Contractor is willing to accept appointment in the following counties:

____

____

EXHIBIT A – COMPENSATION

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

- By mutual assent of the Parties;
- By OPDC, in response to the breach, corrective action, and termination provisions established in Sections XIV and XV.

A. Fee Schedule

OPDC will provide payment for properly submitted invoices, pursuant to OPDC's Invoice Submission Form Procedure.

OPDC will pay via direct deposit within 45 days of receipt of the invoice and OPDC approval. FTE Attorneys are required to invoice at least monthly.

B. Hourly Rates

The following rates apply to all Cases appointed on or after July 1, 2025:

Tier 1
Murder, JLAW, Measure 11, AFEL, BFEL, Appeals, Habeas Corpus, Mandamus, Post Conviction Relief and all Juvenile cases:

$155/hr.

Tier 2

All other case types:

$140/hr.

EXHIBIT B – CASELOAD STANDARDS FOR HOURLY CONTRACT

A. Contractor agrees that it will provide Services in accord with the following caseload and workload standards:

When Contractor is offered appointments to represent Clients, and to provide Services in accord with this Contract to those Clients, it will not accept appointment if doing so would violate the Oregon State Bar Rules of Professional Conduct. OPDC Annual Caseload Limits are described in subsection B, below, for reference. Contractor agrees that it will only accept appointments to case types for which they are qualified and for which they have capacity to represent competently. Contractor shall not accept appointments on hourly cases that would cause them to exceed a workload equivalent to 100% of a 1.0 FTE MAC without seeking and receiving OPDC approval.

B. <u>Rolling Annual Caseload Limits</u>: 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.

a. Murder:	6
b. Jessica Law:	6
c. Ballot Measure 11:	45
d. Major (A/B) Felonies:	138
e. Minor (C) Felonies:	165
f. Misdemeanors:	300
g. Probation Violation:	825
h. Civil Commitments:	230
i. PCR/Habeas:	45
j. PCR Appeal	50
k. Civil Commitment Appeals:	60

C. <u>Workload</u>: 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*.

D. <u>Case Closure</u>: 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 C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR HOURLY 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. A lawyer must conduct a Client interview as soon as practicable after representation begins and thereafter establish a procedure to maintain regular contact with the Client in order to explain the allegations and nature of the proceedings, meet the ongoing needs of the Client, obtaining necessary information from the Client, consult with the Client about decisions affecting the course of the defense, conduct a conflict check, and respond to requests from the Client 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, initial 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 indigent persons. Contractor agrees to 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 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 OPDC and obtaining OPDC's written permission. If a public defense attorney leaves a Contract 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 (if any), and OPDC 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, upon written approval from OPDC Contractor may commence representation of a Client prior to appointment by the court in order to preserve and protect the rights of the Client.. In determining whether to authorize pre-appointment representation, the 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 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. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation according to OPDC's best practice standards during the pendency of a case through the final order of the court on the case, including, but not limited to:

- Assure that assigned attorney provide representation at all scheduled hearings and court proceedings. Attorneys 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 counsel is appointed. OPDC may have special counsel for this case type and attorneys may request special counsel;
- Devoting sufficient time to interviewing and counseling Clients;
- Assure investigation is conducted;
- Consult with and/or retain all necessary experts or other professional service providers. Utilize 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; and
- Sufficiently prepare for all hearings, trials, and sentencings.

H. Post-Judgment Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with OPDC Best Practices and 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 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.