

**PUBLIC DEFENSE MITIGATION INVESTIGATION CONTRACT  
BETWEEN PUBLIC DEFENSE SERVICES COMMISSION AND**

**[CONTRACTOR NAME]**

**GENERAL TERMS  
AND  
SPECIFIC TERMS**

**CAPITAL MURDER CASES**

**JANUARY 1, 2018 TO DECEMBER 31, 2019**

# Table of Contents

<b>GENERAL TERMS .....</b>	<b>4</b>
1	DEFINITIONS..... 4
1.1	<i>Interpretation of Terms</i> ..... 4
1.2	<i>Construction and Jurisdiction</i> ..... 4
1.3	<i>Severability</i> ..... 4
1.4	<i>Public Defense Services Commission</i> ..... 4
1.5	<i>Contractor</i> ..... 4
1.6	<i>Client</i> ..... 4
1.7	<i>Case</i> ..... 4
2	MUTUAL RIGHTS ..... 4
2.1	<i>Waiver</i> ..... 4
2.2	<i>Attorney Fees</i> ..... 4
2.3	<i>Termination</i> ..... 4
3	RIGHTS OF PDSC ..... 5
3.1	<i>Subcontracts</i> ..... 5
3.2	<i>Assignment of Contract</i> ..... 5
3.3	<i>PDSC Rights for Failure to Obtain Workers Compensation</i> ..... 5
3.4	<i>De Minimis Changes in Contractor Reports/Documents</i> ..... 5
3.5	<i>Termination by PDSC for Cause</i> ..... 5
3.6	<i>Funding Modification, Suspension, or Termination</i> ..... 5
3.7	<i>Increasing Workload: Renegotiation at PDSC Option</i> ..... 5
3.8	<i>Review, Verification and Inspection of Records</i> ..... 6
3.9	<i>Use of Equipment Purchased with Contract Funds</i> ..... 6
4	RIGHTS OF CONTRACTOR..... 6
4.1	<i>Termination By Contractor For Cause</i> ..... 6
4.2	<i>Public Defense Cases Outside Contract</i> ..... 6
4.3	<i>Client Records</i> ..... 6
4.4	<i>Personnel Records</i> ..... 6
5	MUTUAL OBLIGATIONS ..... 7
5.1	<i>Successors in Interest</i> ..... 7
5.2	<i>Compliance with Applicable Law</i> ..... 7
5.3	<i>Notice of Contract Modification, Suspension, or Termination</i> ..... 7
5.4	<i>Modification or Termination Due to Legislative Action or Court Interpretation</i> ..... 7
5.5	<i>Modification or Termination Due to Decreased Workload</i> ..... 7
6	OBLIGATIONS OF PDSC ..... 7
6.1	<i>State Funding Shortfall</i> ..... 7
6.2	<i>Payments in Addition to Contract Price</i> ..... 7
7	OBLIGATIONS OF CONTRACTOR..... 8
7.1	<i>Standards of Mitigation Investigation</i> ..... 8
7.2	<i>Contractor Responsibilities Regarding Financially Ineligible Clients</i> ..... 9
7.3	<i>Special Obligations To State of Oregon</i> ..... 9
7.4	<i>Record Keeping</i> ..... 10
7.5	<i>Reports to PDSC</i> ..... 10
7.6	<i>Costs and Expenses</i> ..... 10
7.7	<i>Special Notices</i> ..... 11
7.8	<i>No Dual Payments for Contract Work</i> ..... 11
8	MUTUAL RISKS ..... 11
8.1	<i>Impossibility of Performance</i> ..... 11
8.2	<i>Tort Liability</i> ..... 11
9	RISKS OF CONTRACTOR - REFUND FOR SHORTAGE ..... 11

<b>SPECIFIC TERMS.....</b>	<b>12</b>
1 PARTIES TO CONTRACT .....	12
2 TERM OF CONTRACT .....	12
3 NOTICE .....	12
4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE .....	12
5 CASE TYPES.....	12
6 WORKLOAD .....	12
6.1 Caps, Limitations, or Parameters on Number of Certain Cases .....	12
6.2 Limitation of Number of Mitigator Hours .....	12
7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT .....	12
8 MERGER CLAUSE .....	12
<b>CONTRACT BETWEEN PDSC AND CONTRACTOR PAYMENT SCHEDULE .....</b>	<b>14</b>
<b>CONTRACT BETWEEN PDSC AND CONTRACTOR CASELOAD AND CASE VALUE MATRIX .....</b>	<b>15</b>

# GENERAL TERMS

## 1 DEFINITIONS

### 1.1 Interpretation of Terms

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

### 1.2 Construction and Jurisdiction

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

### 1.3 Severability

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

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

### 1.4 Public Defense Services Commission

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

### 1.5 Contractor

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

### 1.6 Client

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

### 1.7 Case

A "case" is any action in this state in which court-appointed counsel has been appointed to represent a client in a matter to which there is a right to appointed counsel at state expense.

## 2 MUTUAL RIGHTS

### 2.1 Waiver

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

### 2.2 Attorney Fees

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

### 2.3 Termination

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

### **3 RIGHTS OF PDSC**

#### **3.1 Subcontracts**

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

#### **3.2 Assignment of Contract**

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

#### **3.3 PDSC Rights for Failure to Obtain Workers Compensation**

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

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

#### **3.4 De Minimis Changes in Contractor Reports/Documents**

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

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

#### **3.5 Termination by PDSC for Cause**

##### **3.5.1 Reasons for Contract Termination**

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

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

##### **3.5.2 No Acceptance of Cases After Notice**

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

#### **3.6 Funding Modification, Suspension, or Termination**

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

#### **3.7 Increasing Workload: Renegotiation at PDSC Option**

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

- (a) the workload will increase substantially due to the number of available cases; and
- (b) Contractor demonstrates that it has a sufficient number of persons providing services under the contract to manage the additional workload
- (c) PDSC determines that renegotiation is in the state's interest.

PDSC is not required to pay Contractor for hours in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor performing the work.

### **3.8 Review, Verification and Inspection of Records**

#### **3.8.1 Request**

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

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

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

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval.

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

#### **3.8.3 Other Information**

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.3, 4.4 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

#### **3.8.4 Timely Reports by PDSC**

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

### **3.9 Use of Equipment Purchased with Contract Funds**

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract.

## **4 RIGHTS OF CONTRACTOR**

### **4.1 Termination By Contractor For Cause**

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

### **4.2 Public Defense Cases Outside Contract**

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

### **4.3 Client Records**

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

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

### **4.4 Personnel Records**

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow

PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

## **5 MUTUAL OBLIGATIONS**

### **5.1 Successors in Interest**

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

### **5.2 Compliance with Applicable Law**

#### **5.2.1 In General**

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

#### **5.2.2 Laws Incorporated by Reference**

The provisions of ORS 279.312, 279.314, 279.316, and 279.320 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

### **5.3 Notice of Contract Modification, Suspension, or Termination**

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

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

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

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

### **5.5 Modification or Termination Due to Decreased Workload**

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

## **6 OBLIGATIONS OF PDSC**

### **6.1 State Funding Shortfall**

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

### **6.2 Payments in Addition to Contract Price**

PDSC shall pay for case expenses as described in the Public Defense Payment Policies and Procedures and this section of the contract from funds available for the purpose.

Contractor agrees to request reimbursement under this agreement for those types of expenses defined and enumerated herein;

- (a) such case-related expenses that are reasonable and necessary to provide an adequate defense that are defined as expenses under ORS 135.055 AND which are not related to office overhead, salaries, benefits, out-of-state travel, airfare, personal services (such as psychologists, and expert witnesses). Routine expenses, for the purpose of reimbursement, primarily include in-state travel expenses, audio and video tapes, records and copy services from outside sources;

- (b) such case-related expenses that there would be a significant risk of error in the proceedings if the service were not provided or the expense were not incurred; and
- (c) such case-related expenses that are reasonable. In instances where the Public Defense Payment Policy and Procedures establishes maximum allowable costs and unless otherwise specifically agreed herein, the presumed "reasonable amount" of an expense is the policy guideline rate. In other instances, a "reasonable amount" is presumed to be the market value of the service or expense or the amount necessary for the provider of the service or expense to recover only its actual cost of providing the service or item. For services or items where there is no opportunity for competitive services or production of items (where the provider is a captive entity) (for example, cost of medical records), Contractor should notify the director of any costs that exceed what Contractor believes is reasonable.

## **6.2.1 Types of Expenses Subject to Reimbursement**

### **6.2.1.1 In-State Lodging**

Reimbursement for in-state lodging is limited to actual costs incurred when Contractor cannot reasonably avoid incurring this expense and the expense is necessary. Contractor shall seek commercial or government rates. The maximum allowable amount for lodging is the current rate for reimbursement according to the payment policy. Amounts exceeding the lodging expense maximums will be disallowed unless the higher rate has been preauthorized by the the Office of Public Defense Services.

### **6.2.1.2 Meals**

Meal allowance amounts are those set forth in the policy. Receipts need not be submitted when requesting a meal allowance.

### **6.2.1.3 Meals in Conjunction with Overnight Travel**

Contractor is entitled to claim a meal allowance for meal expenses incurred in conjunction with overnight travel. Meal allowance amounts are those set forth in the payment policy. Receipts need not be submitted when requesting a meal allowance

### **6.2.1.4 Meals for Day Trips**

If Contractor does not incur lodging costs but, due to departure or return times, could justify a lodging expense, Contractor is entitled to claim a meal allowance based upon the following travel times. The amounts allowed are those set forth in the payment policy for that meal.

- (a) If Contractor leaves home before 6:00 a.m., Contractor is entitled to the breakfast allowance amount.
- (b) If Contractor leaves home before 6:00 a.m. and does not return until after 2:00 p.m., Contractor is entitled to the breakfast and lunch meal allowance amounts.
- (c) If Contractor does not return home until after 8:00 p.m., Contractor is entitled to the dinner allowance amount.

### **6.2.1.5 Routine Expenses Not Related to Travel**

Contractor may seek reimbursement for routine expenses according to Section 3.5 of the Public Defense Payment Policy and Procedures.

## **6.2.2 Types of Expenses Excluded From Payment Unless Preauthorized**

Expenses not specifically described in the contract that require preauthorization as non-routine expenses or that are presumed to be covered under the base contract as overhead expenses.

- (a) Airfare and vehicle maintenance.
- (b) Non-direct travel expenses, such as dry cleaning or laundry services.
- (c) Direct client expenses, such as haircuts, clothing or glasses.
- (d) Transcripts.
- (e) Expenses required to secure the attendance of an out-of-state witness.
- (f) Computer software programs.

# **7 OBLIGATIONS OF CONTRACTOR**

## **7.1 Standards of Mitigation Investigation**

Contractor shall provide mitigation investigation for the purpose of providing cost-effective delivery of services that will allow counsel to meet constitutional, statutory, and other legally mandated standards of representation. Contractor will provide



timely, effective, and efficient case-related services in compliance with the ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases (June 2008).

## **7.2 Contractor Responsibilities Regarding Financially Ineligible Clients**

Contractor shall notify the client's court-appointed counsel if Contractor learns that a client is ineligible for state-funded mitigation investigation under this contract.

## **7.3 Special Obligations To State of Oregon**

### **7.3.1 Indemnity of PDSC By Contractor**

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

### **7.3.2 Independent Status of Contractor**

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

#### **7.3.2.1 Ineligibility for Public Employee Benefits**

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

#### **7.3.2.2 Wages and Taxes**

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

#### **7.3.2.3 Workers' Compensation**

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

### **7.3.3 State Tort Claims Act Not Applicable**

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

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

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

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

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

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

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

#### **7.3.5.2 Casualty Insurance**

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

### **7.3.5.3 Additional Insured**

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

### **7.3.5.4 Cancellation or Change**

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

### **7.3.6 Internal Controls**

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

### **7.3.7 Protection of Consumer Personal Information**

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

## **7.4 Record Keeping**

### **7.4.1 Service Records**

Contractor shall maintain current information on individual cases assigned pursuant to this contract showing services provided and hours of time expended. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection of PDSC, or PDSC's designee or agent.

### **7.4.2 Financial Records**

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

### **7.4.3 Retention Period**

For purposes of this contract only, Contractor agrees to preserve all service records and supporting documentation regarding contract work performed for a period of three (3) years after the expiration of this contract.

## **7.5 Reports to PDSC**

### **7.5.1 Time Records**

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

### **7.5.2 Penalty for Late Reports**

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

### **7.5.3 Enforceability**

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

## **7.6 Costs and Expenses**

Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial, except for those described in 6.2; and
- (c) staff services, unless specifically authorized by PDSC to be paid outside this contract.

## **7.7 Special Notices**

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

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

### **7.7.1 Time Requirement for Notices**

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

### **7.7.2 Specific Notices Required**

#### **7.7.2.1 Insurance Cancellation or Change**

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

#### **7.7.2.2 Change in Contractor's Organization**

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

#### **7.7.2.3 Events Which Could Impair the Contract**

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

- (a) Criminal Charges

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

- (b) Criminal Conviction

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

#### **7.7.2.4 Early Quota**

Contractor shall notify PDSC immediately upon determining that Contractor will reach its total contract quota before the expiration of the contract.

## **7.8 No Dual Payments for Contract Work**

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract without PDSC authorization;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds.

## **8 MUTUAL RISKS**

### **8.1 Impossibility of Performance**

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

### **8.2 Tort Liability**

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

## **9 RISKS OF CONTRACTOR - REFUND FOR SHORTAGE**

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

# **SPECIFIC TERMS**

## **1 PARTIES TO CONTRACT**

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

## **2 TERM OF CONTRACT**

The contract term shall be from January 1, 2018 through December 31, 2019.

## **3 NOTICE**

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

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

PDSC:

mail@opds.state.or.us

Contractor:

          (Contract Administrator email address)

## **4 TOTAL WORKLOAD VALUE AND PAYMENT SCHEDULE**

PDSC shall pay Contractor at the hourly rate of \$\_\_\_ for mitigation investigation provided pursuant to this contract for the period January 1, 2018 through December 31, 2019. Payment will be made within 30 days of receiving and reconciling Contractor's service records. Payments shall be made by direct deposit into the account designated by Contractor.

## **5 CASE TYPES**

Contractor shall provide mitigation investigation in the Circuit Court for the types of cases listed below:

- (a) capital murder cases;
- (b) other cases, at the request of PDSC.

## **6 WORKLOAD**

### **6.1 Caps, Limitations, or Parameters on Number of Certain Cases**

Subject to PDSC's prior approval on each case, Contractor may substitute hours spent on other cases in any county.

### **6.2 Limitation of Number of Mitigator Hours**

In no event will PDSC pay for work performed under this contract in excess of 4,000 hours over the course of this contract without the prior written approval of PDSC following notice by contractor that this limitation may be exceeded.

## **7 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT**

[Describe here as needed.]

## **8 MERGER CLAUSE**

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONTAINED IN THE 2015 REQUEST FOR PROPOSALS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

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

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**NANCY COZINE, EXECUTIVE DIRECTOR  
PUBLIC DEFENSE SERVICES COMMISSION**

**DATE**

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**CONTRACTOR**

**DATE**

---

**TITLE OR REPRESENTATIVE CAPACITY**

## CONTRACT BETWEEN PDSC AND CONTRACTOR PAYMENT SCHEDULE

End of Month (Unless noted)	Monthly Payment
January 2018	
February 2018	
March 2018	
April 2018	
May 2018	
June 2018	
July 2018	
August 2018	
September 2018	
October 2018	
November 2018	
December 2018	
<i>First-Year Subtotal</i>	\$0
January 2019	
February 2019	
March 2019	
April 2019	
May 2019	
June 2019	
July 2019	
August 2019	
September 2019	
October 2019	
November 2019	
December 2019	
<i>Second-Year Subtotal</i>	\$0
<b><i>Total Payments</i></b>	<b>\$0</b>

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

	Hourly Rate	Number of Hours	Total Value
1/1/18 - 12/31/18			
	\$0	0	\$0
			\$0
First-Year Total		0	\$0
1/1/19 - 12/31/19			
	\$0	0	\$0
			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0