

INDIGENT DEFENSE LEGAL SERVICES CONTRACT  
BETWEEN STATE COURT ADMINISTRATOR AND

\_\_\_\_\_ (Contractor) \_\_\_\_\_

GENERAL TERMS  
AND  
SPECIFIC TERMS

[Value-Based/Outputs/Death Penalty]

\_\_\_\_\_ (contract start date) TO \_\_\_\_\_ (contract end date) \_\_\_\_\_

J.D. \_\_\_\_\_ (JD #) \_\_\_\_\_

\_\_\_\_\_ County(ies)

Circuit Court

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# GENERAL TERMS

## 1 DEFINITIONS AND CASE CREDIT RULES

### 1.1 Interpretation of Terms

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

### 1.2 Construction and Jurisdiction

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

### 1.3 Severability

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

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

### 1.4 Definitions

#### 1.4.1 SCA

"SCA" and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of SCA and State of Oregon.

#### 1.4.2 Contractor

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

#### 1.4.3 Public Defender

A "public defender" is a nonprofit organization established solely to provide contract services to persons qualifying for indigent defense representation.

#### 1.4.3 Law Firm

A "law firm" is a sole practitioner, partnership, or professional corporation which provides contract services to persons qualifying for indigent defense representation and which may engage in non-indigent defense legal representation.

#### 1.4.3 Consortium

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

representation.

#### 1.4.4 Indigent

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

#### 1.4.5 Appointment

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

#### 1.4.6 Case

A "case" is any action in this state in which Contractor has been appointed to represent an indigent under the terms of this contract. Specific definitions of case types are listed in Appendix F.

#### 1.4.7 Credit

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

#### 1.4.8 Value

The "value" of a credit is the negotiated rate by type of credit as set forth in Appendix H.

#### 1.4.9 Complex Case

A "complex case" is an appointment on a case type valued at \$1,000 or more.

### 1.5 Rules for Counting Appointments

An appointment is credited, according to the following rules:

#### 1.5.1 Complex Case Credit

An original appointment to an indigent on a complex case is one credit. No extra credit may be taken for multiple incident dates or charges. A withdrawal for conflict of interest changes the credit type to "Other".

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

- (a) An original appointment on criminal charges alleged to have occurred on the same **specific calendar day** is one credit, regardless of the number of charges or number of victims involved.
- (b) An original appointment on criminal charges alleged to have occurred on **indeterminate dates** (e.g., "on or between January 1, 1996, and July 1, 1996") is a credit for each count charged in the charging instrument which can be determined to allege different calendar days.
- (c) Separate counts in a charging instrument that allege alternative theories of criminal liability on the same date are only one credit.
- (d) No additional credit may be taken due to the following circumstances:
  - (l) more than one charging instrument (including Uniform Traffic Citation (UTC)) is filed;

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- (ii) more than one case number is assigned; or
- (iii) the case is appointed in district or juvenile court, dismissed and refiled in circuit court, or defendant is bound over to circuit court.

**1.5.3 Case Type Credit**

The case type credited is for the most serious offense alleged to have occurred on a specific calendar day, even if the charge is later changed to a different case type.

**1.5.4 Credit for Recommended Representation**

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

- (a) 365 Days After Aid and Assist Delay**  
more than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or
- (b) 180 Days After Bench Warrant**  
more than 180 days have passed since a bench warrant was issued; or
- (c) 18 Months with Repeated Bench Warrants**  
more than 18 months have passed since Contractor was originally appointed and the case is recommenced and no additional credit has been received because of Section 1.5.4(b); or
- (d) 180 Days After Pre-Indictment Dismissal**  
on a felony case, more than 180 days have passed since a dismissal of a case pre-indictment; or
- (e) After Appeal or Postconviction Relief**  
a new trial or sentencing follows an appeal or postconviction relief; or
- (f) After Interlocutory Appeal**  
a case resumes at the trial level, following an interlocutory appeal by the state; or
- (g) After Mistrial or Hung Jury**  
a new trial follows a mistrial or hung jury; or
- (h) After Prosecutorial Misconduct**  
a case is refiled after dismissal without prejudice because of the prosecution's malfeasance.

**1.5.5 Probation Violation Credit**

An appointment to a probation violation case is a separate credit from any appointment to represent the indigent on a new criminal case. Each court case number to which Contractor is appointed is one probation violation credit. Provided however that if Contractor is appointed to more than one case number, additional credit is received ONLY for those case numbers in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

**1.5.6 Diversion Show Cause or Conditional Discharge Hearing Credit**

An original appointment for a diversion show cause or conditional discharge hearing is a credit only if Contractor has not previously represented the individual on the underlying charge(s).

**1.5.7 Juvenile Case Credit**

**1.5.7.1 General Provisions**

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

**1.5.7.2 Prepetition Matters**

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

**1.5.7.3 Delinquency Petitions**

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

**1.5.7.4 Dependency and Termination Petitions**

An original appointment to represent children, parents, or legal guardians in a discrete juvenile court proceeding is generally one credit (see Section 1.5.7.4.1 for exceptions).

**1.5.7.4.1 Representation of Multiple Children**

An original appointment to represent two or more related children in a dependency or termination of parental rights proceedings is a maximum of two credits if:

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

**1.5.7.4.2 Maximum Credit for Representing Parents**

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

**1.5.7.5 Postdispositional Juvenile Hearings**

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

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**1.5.7.6 Juvenile Probation Violation Hearings**

Juvenile probation violation hearings are governed by Section 1.5.5.

**1.5.7.7 Waiver Proceedings**

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

**1.5.8 Mental Health Case Credit**

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

**1.5.9 Contempt Case Credit**

An original appointment to represent an indigent on a contempt matter or matters is a credit. Contractor receives no additional credit for appointments on new allegations of contempt if the original contempt matter(s) on which Contractor was appointed has not been adjudicated.

**1.5.10 Postconviction Relief and Habeas Corpus Case Credit**

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

**1.6 Appointments That Do Not Qualify for Credit**

**1.6.1 Verification Removal**

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

**(a) Finding of Ineligibility**

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

**(b) Withdrawal of Application for Counsel**

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

**1.6.2 Client Retains Counsel**

An appointment to represent a client who later retains counsel on the same case does not qualify for credit.

**1.6.3 Reassignment Within Consortium**

When a consortium member withdraws from a case because of a conflict and the case is reassigned to another consortium member, the case counts as one appointment only.

**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, SCA may agree in writing to alternative measures.

**3 RIGHTS OF SCA**

**3.1 Subcontracts**

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

**3.2 Assignment of Contract**

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

**3.3 SCA Powers for Failure to Obtain Workers Compensation**

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

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

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

At any time and by written instructions, SCA 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

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- (c) time in which, or place at which, Contractor must submit any required report or other document. (See Section 6.2)

**3.5 Termination by SCA for Cause**

**3.5.1 Reasons for Contract Termination**

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

- (a) Contractor's material breach of this contract including material misuse of contract funds;
- (b) Contractor's willful or habitual disregard of the procedures required by the courts in which Contractor provides services;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's willful or habitual failure to abide by minimum standards of performance and rules of professional ethics; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate legal services under this contract or fulfill the obligations of this contract.

**3.5.2 No Appointments After Notice**

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

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

At the time this contract is executed, sufficient funds either are available within the Oregon Judicial Department'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. SCA may propose to modify, suspend, or terminate this contract if SCA reasonably believes that funds will not be sufficient to pay anticipated costs of indigent defense services and SCA has complied with the procedures set out below in Section 6.3 (State Funding Shortfall).

**3.7 Increasing Workload: Renegotiation at SCA Option**

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

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

SCA will not pay Contractor for credits in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to

Contractor's assignment to such excess cases.

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

**3.8.1 Request**

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

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

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

SCA may conduct fiscal or performance audits to monitor and evaluate the services provided under this contract. SCA will give reasonable written notice to Contractor before any evaluation. On SCA's proper request, Contractor shall provide access to its facilities and make records available to SCA or SCA's designee or agent at all reasonable times. SCA 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 indigent or Contractor employee are waived by Contractor.

**3.8.3 Other Information**

Upon the SCA's determination that a significant question exists of Contractor's ability to perform this contract and

subject to client confidentiality, personnel confidentiality and de minimus limits (Sections 4.4, 4.5 and 6.2), Contractor shall provide any other information that SCA reasonably identifies and requests as needed to ensure proper disbursement of state funds.

**3.8.4 Timely Reports by SCA**

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

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

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. Any equipment Contractor acquires with funds expressly provided by this contract under Section 14.2 shall be used for these purposes.

**3.10 Return of Equipment Purchased with Contract Funds**

Any equipment purchased with expressly identified contract funds under Section 14.2 shall accrue to SCA when this contract is terminated or expires and no new contract is

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agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or indigent defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;
- (b) had an original dollar value of \$500.00 or more; and
- (c) whose useful life exceeds the term of this contract.

### 3.11 Limit on Return of Equipment to SCA

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

## 4 RIGHTS OF CONTRACTOR

### 4.1 Termination By Contractor For Cause

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

### 4.2 Court Appointments Outside Contract

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

appointments do not interfere with Contractor's ability to fulfill this contract. SCA shall pay for noncontract legal services under ORS 151.430(5). SCA shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

### 4.3 Request for Additional Credit

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

#### 4.3.1 In General

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

#### 4.3.2 Complex Cases in Which Contractor Withdraws

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

### 4.4 Client Records

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

- (a) privileged because of the attorney/client relationship; or
- (b) work product identifiable to a particular case or client

unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow SCA or SCA's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

### 4.5 Personnel Records

Contractor grants no right to SCA or designee of SCA 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 SCA or SCA'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 by certified mail or in person; and

## SEC. 5 MUTUAL OBLIGATIONS

- (d) become effective not less than 60 days from delivery by certified mail or in person for non-willful breach.

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

SCA 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, SCA may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

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

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

### **5.6 Renegotiation Shall Minimize Reductions in Staff**

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

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

### **5.7 Periodic Review**

At the request of either party, SCA and Contractor will periodically review case assignment trends, requests for additional credit and any other matters needed to determine contract compliance or any necessary contract modifications.

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

In counties where more than one Contractor provides legal services, periodic review shall include a review by SCA, the court, and the Contractors of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates and the rates contemplated under the contracts, SCA shall notify the court and Contractors that appointment rates must be adjusted and corrected, to the extent total cases are available.

Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, SCA will notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

### **5.7.2 Fungibility**

The parties agree that SCA is contracting for the provision of legal representation by Contractor, as measured by [cases/hours/credits/value], and that the estimated workload, by case type, is the parties' expectation as to the distribution of the cases which may be available during the contract period. The parties expressly agree that Contractor may substitute one type of case for another, for the purposes of contract performance, with [cases/hours/credits/value] being fungible, except as specifically provided to the contrary in this contract.

### **5.8 Other Contractors and Vendors**

SCA may undertake or award other contracts for additional or related work. Contractor shall cooperate with SCA and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for indigent defense services.

Contractor shall reasonably assist nonattorney vendors in billing for services provided at Contractor's request, including providing to the vendor a fee statement/certification form with all information completed and copies of court orders preauthorizing the services.

## **6 OBLIGATIONS OF SCA**

### **6.1 Indemnity of Contractor by SCA**

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

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

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

### **6.3 State Funding Shortfall**

#### **6.3.1 SCA to Seek Additional Funding**

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

#### **6.3.2 Negotiations**

If the Emergency Board or legislature does not appropriate sufficient funds, SCA shall seek to apportion expenditure reductions equally and fairly among all indigent defense service providers, including the private bar. SCA shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider both cost and the level of representation that meets minimum allowable professional standards. SCA may suspend or terminate the contract if the parties cannot agree to modification.

SEC. 6 OBLIGATIONS OF SCA

**6.4 Accounting Model**

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

**6.5 Payments in Addition to Contract Price**

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

**(a) Discovery**

Discovery expenses;

**(b) Preauthorized Extraordinary Expenses**

Extraordinary case expenses requested by Contractor and preauthorized by the court or other authority designated to approve extraordinary expenses in compliance with the requirements of ORS 151.430(6) and ORS 135.055(3). Unless the services are performed by Contractor's staff or subcontractors, extraordinary expenses include, but are not limited to:

- (i) medical and psychiatric evaluations;
- (ii) expert witness fees and expenses;
- (iii) interpreters;
- (iv) polygraph, forensic and other scientific tests;
- (v) computerized legal research;
- (vi) investigation expenses; and
- (vii) any other extraordinary expenses the court or other authority designated to approve extraordinary expenses preauthorizes and finds necessary and proper for the investigation, preparation, and presentation of a case; and

**(c) Lay Witness Fees**

Lay witness fees and expenses incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses.

**7 OBLIGATIONS OF CONTRACTOR**

**7.1 Obligations To Appointed Clients**

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

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

suspension hearings, civil forfeiture proceedings, domestic relations proceedings and other civil proceedings.

**7.1.2 Standards of Representation**

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

**7.1.3 Specific Representation Services**

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

- (a) having an attorney present at regularly scheduled arraignments or other initial appearance to make the necessary contact and appointments with clients assigned to Contractor (Contractor may make alternative arrangements with the court for actual presence);
- (b) establishing and following procedures to ensure prompt notification to the court of the specific attorney assigned to each case;
- (c) filing all necessary motions, including pre- and post-judgment motions;
- (d) representation through judgment or other final order of the court on the case, including:
  - (i) orders entering conditional discharge and any ultimate disposition of such cases, and
  - (ii) all prejudgment proceedings arising from a petition for a writ of mandamus or habeas corpus related to the case on which counsel was appointed;
- (e) legal assistance to individuals who would be eligible for counsel at state expense if charged with a crime and where exigent circumstances preclude an appointment order (e.g., interrogation);
- (f) preparing all documents, letters, research and referrals to appropriate agencies;
- (g) continuous legal and support staff services, during case substitutions, to the extent necessary to ensure continuous representation and the establishment of the new attorney/client relationship;
- (h) assisting in filing a notice of appeal, unless appellate counsel agrees to the timely filing of the notice of appeal;
- (i) to the extent ethically possible, representing a client at a show cause hearing to determine client's indigence; and
- (j) to the extent ethically possible, consulting with appellate or postconviction relief counsel on an appeal or postconviction relief proceeding.

SEC. 7 OBLIGATIONS OF CONTRACTOR

**7.1.4 Client Contact**

**7.1.4.1 In-Custody Initial Interviews**

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

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

**7.1.4.2 Out-of-Custody Interviews**

Within 72 hours of the appointment, Contractor shall arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what client must do to schedule an interview time.

**7.1.5 Contractor Responsibilities -- Non-Indigent Clients**

Contractor shall comply with the requirements of federal and Oregon constitutions, the Oregon Code of Professional Responsibility, and consider OSB Ethics Opinion 1991-34 if Contractor learns that the client is ineligible for state-funded legal services under this contract.

**7.2 Withdrawal From Case Only on Court Approval**

Contractor may withdraw only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course.

**7.3 Special Obligations To State of Oregon**

**7.3.1 Indemnity of SCA By Contractor**

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

**7.3.2 Independent Status of Contractor**

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

**7.3.2.1 Ineligibility for Public Employee Benefits**

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

**7.3.2.2 Wages and Taxes**

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

**7.3.2.3 Workers' Compensation**

As an independent contractor, as expressly certified in Appendix E, 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 656.017 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 (Pub L No. 101-336), including Title II of that Act, ORS 659.425, and all regulation and administrative rules established pursuant to those laws.

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

Within thirty (30) days of the effective date of this contract, Contractor shall supply SCA with a certificate of insurance listing the coverage and additional insured information set out below.

**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.

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

## SEC. 7 OBLIGATIONS OF CONTRACTOR

### **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, the Oregon Judicial Department, 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 SCA. 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, the Oregon Judicial Department, and their divisions, officers and employees.

### **7.3.6 Malpractice Insurance**

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

### **7.3.7 Internal Controls**

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

## **7.4 Staff and Equipment**

### **7.4.1 Staffing Levels**

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

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

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

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

#### **7.4.2.2 Supervision**

Contractor shall have more experienced attorneys closely supervise lesser experienced attorneys' performance. Contractor shall provide information on the extent of supervision on SCA's request. However, Contractor shall not provide to SCA or any other person the contents of any

employee's personnel files unless Contractor's employee expressly, knowingly, and voluntarily agrees in writing.

### **7.4.2.3 Certification**

Contractor shall provide to SCA and each relevant court the name and qualifications of any attorneys added during the contract term to perform contract services. The newly added attorney shall meet the qualification standards established by SCA effective August 1, 1990, for the type of cases that will be assigned. A "certificate of attorney qualification" shall be filed with the court and SCA for each newly added attorney.

### **7.4.3 Interpreters**

Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor and provide in-court interpretation comply with all certification requirements established by SCA and the Code of Professional Responsibility for Interpreters in Oregon.

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

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

## **7.5 Record Keeping**

### **7.5.1 Case Records**

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

### **7.5.2 Financial Records**

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

### **7.5.3 Retention Period**

For purposes of this contract only, Contractor agrees to preserve all appointment, service and financial records for a period of five (5) years after this contract expires.

## **7.6 Reports to SCA**

### **7.6.1 Case Inventory**

Within twenty (20) days of the end of each month, Contractor shall provide to SCA and the court, in a format specified by SCA, a reasonably accurate monthly case inventory report for the preceding month. Contractor may submit amended case inventory reports as necessary. However, amended case inventory reports shall not be submitted to SCA after 45 days from the expiration of the contract term.

### **7.6.2 Case Disposition**

Within twenty (20) days of the end of each month, Contractor shall provide to SCA, in a format specified by

## SEC. 7 OBLIGATIONS OF CONTRACTOR

SCA, reports for each case disposed of by Contractor during the preceding month for cases as described in Section 17. Contractor may provide a monthly summary of the information contained in the individual disposition reports, provided Contractor maintains the individual case information locally and makes it available for SCA or the court to review on request.

### **7.6.3 Case Withdrawal**

Within twenty (20) days of the end of each month, Contractor shall provide to SCA, in a format specified by SCA, a report of each withdrawal from a contract case during the preceding month.

### **7.6.4 Financial**

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

In addition, within forty-five (45) days of the expiration of the contract term, Contractor shall provide to SCA an accrual-based financial report for the entire contract term; i.e., beginning balance, revenue, expenditures reported on an accrual basis, liabilities, and an end-of-contract balance.

### **7.6.5 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, SCA may withhold the next monthly payment until SCA or the court receives the report and supporting documentation.

### **7.6.6 Enforceability**

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

### **7.7 Costs and Expenses**

Except for the expense items listed in Section 6.5, Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial; and
- (c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

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

### **7.8 Special Notices**

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

- (a) Contractor's ability to carry out this contract, including changes in staff attorney names, staffing levels and office location;

- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

### **7.8.1 Time Requirement for Notices**

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

### **7.8.2 Specific Notices Required**

#### **7.8.2.1 Insurance Cancellation or Change**

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

#### **7.8.2.2 Staffing Changes**

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

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

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

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

Contractor shall notify SCA within 14 days of when Contractor learns that one of the following has occurred:

##### **(a) Criminal Charges**

A member of Contractor's attorney or investigator staff has been charged with a crime in which the alleged victim is or was a client or witness in a contract case.

##### **(b) Criminal Conviction**

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

##### **(c) Formal Bar Complaint**

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

##### **(d) Bar Discipline**

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

##### **(e) Uninsured Practice of Law**

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

SEC. 7 OBLIGATIONS OF CONTRACTOR

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

Contractor shall notify SCA immediately upon determining that:

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

Within 45 days of notification to SCA that the court is not assigning Contractor to cases available for appointment, SCA shall propose a plan to Contractor and the court to remedy the nonassignment of available cases.

**7.8.2.6 Independent Audit, Report, or Management Letter**

To the extent only that it relates to this contract, Contractor shall provide to SCA, a copy of any independent audit, report, or management letter prepared for Contractor.

**7.9 No Dual Payments for Contract Work**

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract;
- (b) accept funds from anyone other than SCA for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) accept or keep credit for a case for which Contractor's attorney is subsequently retained.

**7.10 Independent Auditor's Certification**

Contractor, upon request of the SCA, shall provide a certification of "Agreed upon Procedures" from an independent Certified Public Accountant. The "Agreed upon Procedures" are that:

- (a) the financial records are current;
- (b) the books are closed monthly; and
- (c) the amount of money received from the State for this contract has been placed into Contractor's business accounts.

**7.10 Independent Audit Required**

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

**7.11 Limits on Pro Bono Work**

Nonprofit public defenders may provide pro bono representation only for:

- (a) cases covered by contractor's or another's malpractice insurance; and
- (b) cases that are:
  - (i) related to cases to which contractor's attorneys have been appointed; or
  - (ii) unrelated to contract cases, provided the pro bono services are rendered outside of the contract.

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

Attorneys employed full time by nonprofit public defender offices shall not accept employment on a retained basis.

**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**

**9.1 Refund for Shortage**

Unless SCA agrees in writing otherwise, at the expiration or termination of the contract Contractor shall refund to SCA the average value per credit for each credit not assigned to Contractor below the [total workload value stated in Section 14.1 / minimum stated in Section 16.2].

**9.2 Wind-Down Procedures**

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

**9.2.1 Negotiations**

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

**9.2.1 Negotiations**

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

**9.2.2 Reduction in Contractor's Caseload**

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

# SPECIFIC TERMS

## 10 PARTIES TO CONTRACT

Pursuant to ORS 151.460, this contract is between the State Court Administrator ("SCA") and \_\_\_\_\_ ("Contractor").

## 11 APPENDICES TO CONTRACT

The following documents are attached to this contract as appendices and are incorporated within this contract by reference:

- Appendix A: List of Contractor's Attorneys.
- Appendix B: List of Contractor's Other Staff.
- Appendix C: Contractor's Estimated Allocation of Contract Funds.
- Appendix D: Certificate of Compliance with Oregon Tax Laws, subscribed and sworn to by Contractor. Contractor understands and agrees that this contract is subject to and conditioned on the representations made in Appendix D and on Contractor's timely delivery of Appendix D, completed and duly executed, to SCA.

Appendix D must be provided for the consortium (corporation) as well as for each consortium member.

- Appendix E: Certificate of Contractor's Independent Status. Contractor understands and agrees that this contract is subject to and conditioned on the representations made in Appendix E, and on contractor's timely delivery of Appendix E, completed and duly executed, to SCA.
- Appendix F: Appointment Type Definitions.
- Appendix G: Payment Schedule.
- Appendix H: Caseload and Case Value Matrix.

## 12 TERM OF CONTRACT

The contract term shall be from \_\_\_\_\_ (contract start date) through \_\_\_\_\_ (contract end date).

## 13 NOTICE

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

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

SCA:

State Court Administrator  
Supreme Court Building  
1163 State Street  
Salem, Oregon 97310

Contractor:

\_\_\_\_\_  
(contract contact person)  
\_\_\_\_\_  
(mailing address)  
\_\_\_\_\_  
(mailing address)

## 14 CONTRACT PAYMENT

### 14.1 Total Workload Value and Payment Schedule

For representation provided pursuant to this contract, SCA shall pay Contractor a total of \_\_\_\_\_ (total contract value for workload) during the term of this contract, (\$\_\_\_\_\_ for the period \_\_\_\_\_ to \_\_\_\_\_; \$\_\_\_\_\_ for the period \_\_\_\_\_ to \_\_\_\_\_). SCA shall pay the total workload value in monthly installments, as shown in Appendix G.

### 14.2 Capital Reimbursement

In addition, SCA shall reimburse Contractor the actual cost, not to exceed \$\_\_\_\_\_, for capital purchases and/or one-time expenses listed below, after proper submission of two or more bids and approval by SCA, and proper detailed invoices. Authorized one-time expenses: \$\_\_\_\_\_. Any capital purchases directly funded by SCA shall not be depreciated on Contractor's budget.

## 15 CASE TYPES INCLUDED

Contractor shall provide legal representation in the Circuit of \_\_\_\_\_ County(ies) for the types of cases listed below:

[For Death Penalty contracts:  
(1) capital murder cases;  
(2) noncapital murder cases; and  
(3) complicated felony or other cases, at the request of Indigent Defense Services Division.]

- (1) \_\_\_\_\_ noncapital murder cases;
- (2) \_\_\_\_\_ felony cases;
- (3) \_\_\_\_\_ misdemeanor cases, including appeals to district or circuit court from municipal or justice court (tried *de novo* and considered trial court appointments);
- (4) \_\_\_\_\_ probation violation proceedings;
- (5) \_\_\_\_\_ contempt proceedings;
- (6) \_\_\_\_\_ juvenile court proceedings brought pursuant to ORS Chapter 419B or 419C;
- (7) \_\_\_\_\_ mental commitment proceedings brought pursuant to ORS Chapter 426 or 427, but excluding appeals under ORS 426.135;
- (8) \_\_\_\_\_ extradition proceedings, pursuant to ORS 133.743 - 133.857, including a petition for a writ of habeas corpus filed pursuant to a pending extradition proceeding;
- (9) \_\_\_\_\_ habeas corpus and postconviction relief cases; and
- (10) \_\_\_\_\_ "other" cases (see definition in Appendix F).

**16 WORKLOAD**

[Contractor will provide legal representation for   (county percentage)   percent of the indigents qualifying for court-appointed counsel (excluding conflicts) in the types of cases in the courts and counties as designated in Section 15.]

**16.1 [Estimated] Number of Cases**

Contractor's [estimated] workload is    cases, valued at   , for the contract term, (   cases for the period    to   ;    cases for the period    to   ). Appendix H is the caseload and case value matrix agreed to by SCA and Contractor.

**16.2 Leeway**

Assignment to cases [with a total value] within    percent (   -    [\$/cases]) of the total caseload [value/number] will not require the parties to renegotiate the contract price or terms, subject to the limitations stated in Section 16.3, below.

**16.3 Caps, Limitations, or Parameters on Number of Certain Cases**

[Describe here, if any.]

[For Death Penalty contracts:  
**16.1 Estimated Number of Hours**  
Contractor's workload is estimated to be    hours for the contract term   (contract start date)   to   (contract end date)  . The parties anticipate that Contractor's case hours will be equivalent to    capital murder cases or    noncapital murder cases. Case hours within    percent of the estimated number of case hours will not require renegotiation under paragraph D. below. Up to    hours may be administrative hours and contract administration

**19 MERGER CLAUSE**

THIS WRITING 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.

\_\_\_\_\_  
**KINGSLEY W. CLICK**  
**STATE COURT ADMINISTRATOR**  
**STATE OF OREGON**

\_\_\_\_\_  
**(Contractor)**

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

unrelated to a particular case. CLE hours may not be claimed as administrative or case-related hours.

**16.2 Caps, Limitations, or Parameters on Number of Certain Cases**

Subject to SCA's prior approval on each case, Contractor may substitute hours spent on complicated felony or other cases in    County(ies).]

**17 ADDITIONAL AGREEMENTS AFFECTING APPLICABILITY OF THE GENERAL TERMS OF THIS CONTRACT**

[For Death Penalty contracts:  
Section 7.6.2 is amended to read:  
Contractor shall provide to SCA, in a format specified by SCA, a reasonably accurate disposition report for each case Contractor was appointed to, including withdrawals, within thirty days of disposition.]

[Contractor is required to provide case disposition reports under Section 7.6.2 for all Ballot Measure 11 and complex cases.]

[Contractor is required to provide case disposition reports under Section 7.6.2 for all cases appointed in    (two month period) .]

**18 ADDITIONAL AGREEMENTS UNRELATED TO THE GENERAL TERMS**

[Describe here, if any.]

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

**APPENDIX A  
TO CONTRACT BETWEEN SCA AND           (Contractor)            
CONTRACTOR'S ATTORNEYS**

Contractor certifies that each attorney intended to perform services under this contract is listed in Appendix A and that each attorney listed satisfies the qualification standards that SCA has established for the types of cases to which that attorney will be assigned. (List vacant positions as well.)

List attorneys by firm or office.

<u>FIRM OR OFFICE</u>	<u>NAME</u>	<u>BAR #</u>	<u>CONTRACT WORK PERCENTAGE*</u>
-----------------------	-------------	--------------	----------------------------------

\* Percentage of time attorney expects to spend on contract-related work.

**APPENDIX B  
TO CONTRACT BETWEEN SCA AND           (Contractor)            
CONTRACTOR'S OTHER STAFF**

Directions: List every nonattorney position allocated to perform work under the contract.

List attorneys by firm or office.

<u>FIRM OR OFFICE</u>	<u>POSITION TITLE</u>	<u># OF PERSONS</u>	<u># OF FTE</u>	<u>CONTRACT WORK PERCENTAGE*</u>
-----------------------	-----------------------	---------------------	-----------------	----------------------------------

\* Percentage of time person(s) expects to spend on contract-related work.

**APPENDIX C  
TO CONTRACT BETWEEN SCA AND \_\_\_\_\_ (Contractor)  
ESTIMATED ALLOCATION OF CONTRACT FUNDS FOR  
\_\_\_\_\_ (Contractor)**

Directions: Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. **Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work.**

<b>1. GROSS SALARIES</b>	<u>First Year</u>	<u>Second Year</u>
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) _____# _____FTE	_____	_____
Secretarial/Reception/Clerical Staff _____# _____FTE	_____	_____
Paralegal/Legal Assistant Staff _____# _____FTE	_____	_____
Investigation Staff _____# _____FTE	_____	_____
Other Staff (identify _____ ) _____# _____FTE	_____	_____
<b>SUBTOTAL:</b>	_____	_____
 <b>2. STAFF BENEFITS</b>		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health Insurance	_____	_____
Life/Disability Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
<b>SUBTOTAL:</b>	_____	_____
 <b>3. STAFF EXPENSES</b>		
Malpractice Insurance check _____ PLF or _____ NLADA	_____	_____
Other Professional Insurance (describe _____ ) _____ )	_____	_____
OCDLA--Membership Dues	_____	_____

**3. STAFF EXPENSES (continued)**

First Year

Second Year

OSB--Membership Dues

\_\_\_\_\_

\_\_\_\_\_

Other Membership Dues Necessary to Contract  
(explain \_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_

\_\_\_\_\_

Professional Licenses/Certificates  
(explain \_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_

\_\_\_\_\_

Education Training/CLE's--Attorneys

\_\_\_\_\_

\_\_\_\_\_

Education Training--Other Staff  
(explain \_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_

\_\_\_\_\_

Attorney Travel

\_\_\_\_\_

\_\_\_\_\_

Other Staff Travel

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**4. OVERHEAD (OCCUPANCY)**

Office Rent/Lease

\_\_\_\_\_

\_\_\_\_\_

Office Insurance

\_\_\_\_\_

\_\_\_\_\_

Building Utilities

\_\_\_\_\_

\_\_\_\_\_

Building Maintenance

\_\_\_\_\_

\_\_\_\_\_

Real Estate Taxes (if separate from rent)

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**5. OVERHEAD (OPERATIONS)**

Phone Services (Equipment/Local Calls)

\_\_\_\_\_

\_\_\_\_\_

Long Distance Calls

\_\_\_\_\_

\_\_\_\_\_

Office Supplies

\_\_\_\_\_

\_\_\_\_\_

Postage

\_\_\_\_\_

\_\_\_\_\_

Outside Photocopying/Printing

\_\_\_\_\_

\_\_\_\_\_

Library

\_\_\_\_\_

\_\_\_\_\_

Subscriptions

\_\_\_\_\_

\_\_\_\_\_

Other Case Expenses  
(explain \_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**6. OVERHEAD (NONCAPITAL EXPENSES)**

First Year

Second Year

Furniture & Equipment Leases  
 Description                      Annual Cost  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Equipment Repairs/Maintenance

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**7. OVERHEAD (OTHER)**

Personal Property Taxes

\_\_\_\_\_

\_\_\_\_\_

Professional Contract Services (specify)

\_\_\_\_\_

\_\_\_\_\_

Miscellaneous (specify)

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**8. TOTAL OPERATIONS (total of 1-7)**

\_\_\_\_\_

\_\_\_\_\_

**9. CAPITAL (Items costing over \$500 each and funded separately under Section 14.2)**

Computer--Hardware

\_\_\_\_\_

\_\_\_\_\_

Description      Quantity      Unit Cost

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Computer--Software

\_\_\_\_\_

\_\_\_\_\_

Description      Quantity      Unit Cost

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Office Furniture

\_\_\_\_\_

\_\_\_\_\_

Description      Quantity      Unit Cost

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Office Equipment

\_\_\_\_\_

\_\_\_\_\_

Description      Quantity      Unit Cost

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**10. GRAND TOTAL\* (total of 8 and 9):**

=====

=====

* Grand total must equal total annual contract price.
---

**10. ATTORNEY COMPENSATION**

List ANNUAL direct and indirect compensation levels for attorneys who devote full-time to contract legal services.

For attorneys devoting less than full-time, list the anticipated ANNUAL amount to be paid as gross salary (after deducting overhead and F.I.C.A. self-employment taxes, if any) and the indirect compensation using contract funds. In the "Percent of Contract Work" column, estimate the percentage of time the attorney will devote to contract-related work; i.e., if an attorney is expected to work approximately one-third of his or her total billable hours, then enter .33. Please define or state assumptions made in determining percentages. Specifically, what basis is used to establish 100 percent of an attorney's time; i.e., \_\_\_\_\_ billable hours per year, 40 hours per week, etc. Assumptions:

---



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---



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When listing compensation, use one line for each proposed annualized rate during the term of the contract. Vacant positions must be listed last and identified as such.

<u>ATTORNEY</u>	<u>PERCENT OF CONTRACT WORK*</u>	<u>TIME PERIOD</u>	<u>ANNUAL RATE OF COMPENSATION FROM CONTRACT FUNDS</u>	
			<u>DIRECT (salary)</u>	<u>INDIRECT (benefits)</u>

---

\* Estimated percent of position's time spent on contract-related work.

**11. OTHER STAFF COMPENSATION**

In the same manner as "Attorney Compensation," list ANNUAL direct and indirect compensation levels for other contract staff, including directors and administrators, who devote full-time to contract work.

For contract staff devoting less than full-time, list the anticipated ANNUAL amount to be paid as salary and indirect compensation using contract funds. Assumption is that 100 percent of time is the equivalent of 40 hours work per week, unless stated otherwise.

<u>STAFF PERSON</u>	<u>PERCENT OF CONTRACT WORK*</u>	<u>TIME PERIOD</u>	<u>ANNUAL RATE OF COMPENSATION FROM CONTRACT FUNDS</u>	
			<u>DIRECT (salary)</u>	<u>INDIRECT (benefits)</u>

---

\* Estimated percent of position's time spent on contract-related work.

**APPENDIX D  
TO CONTRACT BETWEEN SCA AND \_\_\_\_\_ (Contractor)  
CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS**

I, the undersigned, being first duly sworn,

Mark only one: ( X )

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

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

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

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

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 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 (first 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: \_\_\_\_\_

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

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

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

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_\_.

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

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

**APPENDIX E**  
**TO CONTRACT BETWEEN SCA AND           (Contractor)**  
**INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657, and 701:

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 furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- A. You work primarily at a location separate from your residence.
- B. You have purchased commercial advertising, business cards, or have a trade association membership.
- C. You use a telephone listing and service separate from your personal residence listing and service.
- D. You perform labor or services only pursuant to written contracts.
- E. You perform labor or services for two or more different persons within a period of one year.
- F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.

I hereby certify that the above information is correct.

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

Entity \_\_\_\_\_

**APPENDIX F**  
**TO CONTRACT BETWEEN SCA AND \_\_\_\_\_ (Contractor)**  
**APPOINTMENT TYPE DEFINITIONS**

( ) denotes the applicable appointment code.

**A. CRIMINAL CASES**

1. Appointments After Diversion Agreement (SCDV): For all criminal cases, Contractor shall report separately on cases where Contractor is first appointed:
  - (a) after the court grants a diversion petition, and
  - (b) when the court orders the defendant to show cause why defendant's diversion agreement should not be terminated.

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

2. Capital Murder Case (CMUR): A capital murder case is any appointment to represent a person charged with aggravated murder as defined by ORS 163.095 except as provided under paragraph A.3., below.
3. Noncapital Murder Case (MURD): A noncapital murder case is any appointment to represent a person charged with:
  - (a) criminal homicide as defined by ORS 163.115;
  - (b) aggravated murder as defined by ORS 163.095 where the prosecution has agreed not to seek a death sentence or life without parole under ORS 163.150; and
  - (c) aggravated murder where the defendant is a juvenile who is remanded to circuit court on the charge (a convicted juvenile cannot be sentenced to death or life without parole under ORS 161.620).
4. Felony Case: A felony case is any appointment to represent a person charged with one or more crimes described by ORS 161.525, excluding capital murder and noncapital murder. It includes manslaughter and negligent homicide. A case is a felony case if it includes a felony charge at any time after defendant appears in circuit court, even if later reduced to a misdemeanor.
  - a. Measure 11 Felony (AM11, BM11, JM11): Other than murder, a felony that is the subject of Measure 11 (section 1, chapter 2, Oregon Laws 1995) and ORS 137.700 and ORS 137.707 (1995 and 1997 revised). AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15, 16 or 17 year old is indicted as an adult in circuit court.
  - b. Class A Felony (AFEL): A Class A felony is a crime that a statute expressly designates as a Class A felony.
  - c. Class B Felony (BFEL): A Class B felony is a crime that a statute expressly designates as a Class B felony.
  - d. Class C Felony (CFEL): A Class C felony is a crime that a statute expressly designates as a Class C felony, other than a traffic felony.
  - e. Traffic Felony (TFEL): A traffic felony is limited to felony driving while suspended or revoked (ORS 811.182(3)).
  - f. Unclassified Felony (UFEL): A felony crime that the statute(s) do not expressly designate as a Class A, B, or C Felony.
  - g. Domestic Violence Class C Felony (DVIO): An Assault IV domestic violence case which is elevated to a Class C felony due to the defendant having a prior conviction for assaulting the same alleged victim or if the assault is witnessed by a minor child residing in the household of the defendant or alleged victim.
5. DUII (DUIS): A DUII case is any appointment to represent a person charged with driving under the influence of intoxicants.
6. Misdemeanor Case (MISS): A misdemeanor case is any appointment to represent a person charged with one or more crimes described by ORS 161.545 or by local ordinance as a misdemeanor, excluding DUII, misdemeanor contempt and the misdemeanor traffic cases defined below.
7. Misdemeanor Traffic Case: A misdemeanor traffic case is any appointment to represent a person on a misdemeanor traffic charge for which a convicted defendant may be incarcerated as an original sentence under the Oregon Vehicle Code, other than a traffic offense charged as a felony or DUII. For statistical purposes, report cases in the following categories:

- a. DWS Misdemeanor as "DWSS".
  - b. Other Traffic Misdemeanor as "OTMS".
8. Extradition Case (EXTR): An extradition case is any appointment to represent a person in a proceeding under the Uniform Criminal Extradition Act, ORS 133.743 - 133.857. It includes representation on a writ of habeas corpus filed in a pending extradition proceeding.

**B. PROBATION VIOLATIONS**

Probation Violation: A probation violation is any appointment or reappointment to represent a person in a probation violation proceeding arising out of a criminal or civil contempt conviction(s) and sentencing(s), under Section 1.5.5. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

- 1. Felony PV (FPV): A felony probation violation case is any appointment to represent a person in a probation violation proceeding arising out of a felony conviction, including a traffic felony.
- 2. Misdemeanor PV (MPV): A misdemeanor probation violation case is any appointment to represent a person in a probation violation proceeding arising out of a misdemeanor conviction, including a traffic misdemeanor, except DUII.
- 3. DUII PV (DPV): A DUII probation violation is any appointment to represent a person in a DUII probation violation proceeding arising out of a DUII conviction.

**C. CONTEMPT CASES**

Contempt Case: A contempt case is any appointment to represent a person charged with contempt of court.

For statistical purposes, report cases in the following three categories:

- 1. FAPA (FAPA): Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.730) restraining order.
- 2. Support (SUPP): Contempt for failure to comply with an order or judgment in domestic relations or juvenile court proceeding for the payment of suit money, attorney's fees, spousal support, child support, maintenance, nurture, or education.
- 3. Contempt (CONT): Contempt that is not a "FAPA" or "Support" contempt.

**D. CIVIL COMMITMENT CASE**

Civil Commitment Case (MHMI): A civil commitment case is any appointment to represent a person in a proceeding brought under ORS Chapter 426 or 427.

**E. JUVENILE CASES**

Juvenile Case: A juvenile case is any appointment or a reappointment to represent a person(s) in a proceeding brought under ORS Chapter 419B or 419C.

For statistical purposes, report juvenile cases in the following categories:

- 1. Juvenile Felony (JUDF): If committed by an adult, alleged act would constitute a felony.
- 2. Juvenile Misdemeanor (JUDM): If committed by an adult, alleged act would constitute a misdemeanor.
- 3. Juvenile Other (JUDO):
  - (a) if committed by an adult, alleged act would constitute a violation or infraction;
  - (b) alleged act is a status offense;
  - (c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);
  - (d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340, ORS 419C.349, and ORS 419C.352).
- 4. Probation Violation or Motion to Modify (JPV): Proceeding based on allegation(s) that the child has violated the terms of probation or a proceeding based on a motion to modify a disposition.

5. Juvenile Dependency Case: A juvenile dependency case is any appointment to represent a person based on a new petition alleging that a child is within the jurisdiction of the juvenile court under ORS 419B.100(1)(a) - (g).
  - a. Parent (JDEP): Appointment to represent parent(s) or guardian(s).
  - b. Child (JDEC): Appointment to represent child(ren).
6. Postdispositional Proceeding: A postdispositional proceeding is any appointment in a juvenile court proceeding to represent a person at a court or Citizen Review Board review hearing and shelter care hearings held after the original disposition. It does not include probation violation proceedings. Probation violation proceedings are a separate category under delinquency.
  - a. Parent (JPDP): Appointment to represent parent(s) or guardian(s).
  - b. Child (JPDC): Appointment to represent child(ren).
7. Termination of Parental Rights Case: A termination of parental rights case is any appointment to represent the parent or child in a proceeding under ORS 419B.500 - 419B.530 OR in a contested adoption matter (Zockert v. Fanning).
  - a. Parent (JUTP): Appointment to represent parent(s) or guardian(s), including contested adoption proceedings.
  - b. Child (JUTC): Appointment to represent child(ren), including contested adoption proceedings.

#### F. OTHER CIVIL CASES

1. Habeas Corpus Case (CVHC): A habeas corpus case is any appointment to represent a person in a proceeding for a writ of habeas corpus under ORS 34.355, excluding:
  - (a) habeas corpus petitions filed in a pending extradition proceeding (EXHC); and
  - (b) habeas corpus petitions filed for a client whom Contractor represents on a related matter (not a separate appointment under the contract).
2. Postconviction Relief Case (CVPC): A postconviction relief case is any appointment to represent a person under ORS 138.510 - 138.687.
3. Psychiatric Security Review Board Case (PSRB): A Psychiatric Security Review Board case is any appointment by the PSRB to represent a person under ORS 161.346(11).

#### G. OTHER CASE

Other Case (OTHR): An other case is a complex case from which Contractor withdraws due to a conflict of interest, an appointment to represent a material witness or a case for which no other case type applies.

**APPENDIX G**  
**TO CONTRACT BETWEEN SCA AND \_\_\_\_\_ (Contractor)**  
**PAYMENT SCHEDULE**

End of Month (Unless noted)	Monthly Payment
January 1999	\$ _____
February 1999	\$ _____
March 1999	\$ _____
April 1999	\$ _____
May 1999	(b payment) \$ _____
June 1999	(a payment) \$ _____
July 10, 1999	\$ _____
July 1999	\$ _____
August 1999	\$ _____
September 1999	\$ _____
October 1999	\$ _____
November 1999	\$ _____
December 1999	\$ _____
<i>First Year Subtotal</i>	\$ _____
January 2000	\$ _____
February 2000	\$ _____
March 2000	\$ _____
April 2000	\$ _____
May 2000	\$ _____
June 2000	\$ _____
July 2000	\$ _____
August 2000	\$ _____
September 2000	\$ _____
October 2000	\$ _____
November 2000	\$ _____
December 2000	\$ _____
<i>Second Year Subtotal</i>	\$ _____
<b>Total Payments</b>	\$ _____

**APPENDIX H  
TO CONTRACT BETWEEN SCA AND \_\_\_\_ (Contractor) \_\_\_\_  
CASELOAD AND CASE VALUE MATRIX**

Case Types	Value	Number of Cases	Total Value
1/1/99 - 12/31/99			
	\$____	_____	\$____
	\$____	_____	\$____
	\$____	_____	\$____
	\$____	_____	\$____
	\$____	_____	\$____
First Year Total		_____	\$____
	Minimum	Midpoint	Maximum
__% range	\$____	\$____	\$____
1/1/00 - 12/31/00			
	\$____	_____	\$____
	\$____	_____	\$____
	\$____	_____	\$____
	\$____	_____	\$____
	\$____	_____	\$____
Second Year Total		_____	\$____
	Minimum	Midpoint	Maximum
__% range	\$____	\$____	\$____
Contract Total		_____	\$____
	Minimum	Midpoint	Maximum
__% range	\$____	\$____	\$____