



State of Washington
Department of Corrections

Contract No. K_____
737 Contract Attorney

This Contract is entered into by and between the Department of Corrections, hereinafter referred to as the "Department" or "DOC," an agency of the state of Washington, and _____, WSBA Number _____, hereinafter referred to as the "Contractor" or "Counsel," for the express purposes set forth in the following provisions of this contract.

WHEREAS the purpose of this contract is to provide for offender legal representation at community custody hearings when appointed by a Department Hearing Officer for that purpose;

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, the Department and Contractor agree as follows:

I. SCOPE OF WORK

- A. Attachment A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the Department and the Contractor, and specific obligations of both parties.
- B. Attachment B contains the Scope of Work.
- C. Attachment C contains the Standards of Representation.
- D. Attachment D contains Compensation.

II. PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will begin upon execution by the parties and continue for two years from that date or until terminated as provided herein.

III. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this contract shall be subject to and governed by the General Terms and Conditions attached hereto as Attachment A, and the Scope of Work attached hereto as Attachment B, the Standards of Representation attached hereto as Attachment C, and Compensation attached hereto as Attachment D, each incorporated by reference herein.

IV. COMPENSATION AND PAYMENT

- A. Amount of Compensation. Total compensation including expenses payable to Contractor for satisfactory performance of the work under this contract is detailed in Attachment D – Compensation.

Compensation is contingent upon Contractor meeting the performance standards and attaining the outcome measures for the contracted services that are detailed in the Scope of Work, Attachment B. Any additional services provided by the Contractor must have the prior written approval by the Contract Manager as detailed in Attachment D - Compensation.

- B. Time of Payment. Payment shall be considered timely if made by the Department within 30 days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor. The Department may, at its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.
- C. Method of Payment. Compensation for services rendered shall be payable within 30 days of submittal of properly completed invoices as detailed in Attachment D - Compensation.
- D. Requests for payment under this contract shall be submitted by the Contractor on Invoices (Form A-19) prepared in the manner prescribed by the Department and as detailed in Attachment D - Compensation.

V. INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this contract.

The Contractor must provide Malpractice Insurance coverage maintained in full force and effect during the term of this contract, as follows:

The Malpractice Insurance Policy must include contractual liability, in adequate quantity to protect against legal liability arising out of the contract activity, but no less than \$100,000 per occurrence.

In addition, the Contractor must ensure that any Subcontractors provide adequate insurance coverage arising out of their subcontracts.

The Malpractice Insurance must be issued by an insurance company authorized to do business within the state of Washington. Proof of the insurance must be sent to the Contract Manager within 30 days of executing this contract. All insurance policies shall be primary to any other valid and collectable insurance. The Contractor must instruct the insurers to give the Department advance notice of any insurance cancellation or modification.

VI. CONTRACT REPRESENTATIVES

- A. The Department's Contract Manager for this contract shall be the Hearings Administrator, Dominga Soliz, (360) 725-8586. The Contract Manager is responsible for monitoring the performance of the Contractor, the approval of actions by the Contractor, approval for payment of billings and expenses submitted by the Contractor, and the acceptance of any reports by the Contractor.

- B. The Contractor's representative for this contract shall be _____, (xxx) xxx-xxxx, who shall be responsible for all communications and billings regarding the performance of work under this contract.

VII. INDEPENDENT CONTRACTOR STATUS

The Contractor is not an employee of the Department of Corrections. By signing this contract, the Contractor certifies that he is not a current Department employee, and will advise the Department immediately should this status change. This contract shall become null and void if the Contractor accepts employment with the Department. The Contractor shall not hold himself out as nor claim to be an officer or employee of the State of Washington by reason hereof. The Contractor agrees not to make any claim, demand, or application to or for any right or privilege applicable to a Department employee or state of Washington employee including but not limited to, workmen's compensation coverage or retirement membership or credit or any other benefit which would accrue to a civil service employee.

VIII. DEFINITIONS

The following definitions apply to the contract.

- A. "BUSINESS DAY" – means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the State of Washington.
- B. "CASE" – means the representation of an offender for a specific community custody disciplinary proceeding as outlined in RCW 9.94A, et. seq .
- C. "CLAIM" – means any financial loss, claim, suit, action, damage or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from.
- D. "COMMUNITY CUSTODY HEARING" – means a Department community custody hearing that is held when an offender is accused of violating any condition or requirement of community custody as outlined in RCW 9.94A.737 and RCW 9.94A.662.
- E. "SERVICES" – shall mean those legal services that, from an objective standpoint, are reasonably required for an experienced, ethical, and competent attorney to provide an appropriate and effective legal defense or representation in every appointed case.

X. INTERPRETATION OF CONTRACT

- A. Order of Precedence. In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
- Applicable federal and state of Washington statutes and regulations
 - Attachment A – General Terms and Conditions
 - Attachment B – Scope of Work
 - Attachment C - Standards of Representation
 - Attachment D - Compensation

- Any other provision, term, or material incorporated herein by reference or otherwise incorporated
- B. Assurance. The Department of Corrections and the Contractor agree that all activity pursuant to this contract is conducted according to all applicable federal, state, and local laws, rules and regulations.
- C. Entire Agreement. This contract including referenced attachments and amendments represents all the terms and conditions agreed upon by the parties. No other understanding or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.
- D. Conformance. If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.
- E. Counterparts. This contract is executed in duplicate originals and each duplicate shall be deemed an original copy of the contract signed by each party, for all purposes.
- F. Approval. This contract shall be subject to the written approval of the Department's authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of four (4) pages and four (4) attachments, is executed by the persons signing below who warrant that they have the authority to execute the contract.

ATTORNEY NAME

DEPARTMENT OF CORRECTIONS

 (Signature)

 (Printed Name)

 (Title)

 (Date)

 (Signature)
 John R. Nispel

 (Printed Name)
 Contracts Administrator

 (Title)

 (Date)

Approved as to Form:
 This contract format was approved by the Office of the Attorney General.
 Approval on file.

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** As used throughout this Contract, the following terms shall have the meanings set forth below:

- 1.1 "Contractor" shall mean the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. "Contractor" shall also include any Subcontractor retained by the Contractor as permitted under the terms of this Contract.
- 1.2 "Secretary" shall mean the Secretary of the Department of Corrections and designees authorized to act on the Secretary's behalf.
- 1.3 "Department" shall mean the Department of Corrections (DOC) of the state of Washington, any division, section, office, unit or other sub-division of the Department, or any of the officers or other officials lawfully representing the Department.
- 1.4 "Subcontractor" shall mean one not in the employment of the Contractor who, under a separate contract with the Contractor, is performing all or part of the services under this Contract. Contractor shall remain responsible to the Department for any work required under the terms of this contract that is performed by a subcontractor under separate contract to Contractor.
- 1.5 "Contracts Administrator" shall mean the Administrator of Contracts and Legal Affairs or designee.
- 1.6 "Contracts and Legal Affairs" shall mean the Department of Corrections (DOC) headquarters contracting office, or successor section or office.

2. **ACCESS TO DATA.**

In compliance with RCW 39.29.080, the Contractor shall, at no additional cost, provide access to data generated under this Contract to the Department, the Washington State Joint Legislative Audit and Review Committee, and the Washington State Auditor. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

3. **AMERICANS WITH DISABILITIES ACT (ADA).**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. (See Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28CFR Part 35.)

4. **ADVANCE PAYMENTS PROHIBITED.**

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Department.

5. AMENDMENTS AND MODIFICATIONS.

- 5.1 Amendments and modifications to this contract shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
- 5.2 Changes in the rate of compensation must be signed by both parties and shall not be effective until the first day of the month following the last date of signature of the amendment or until the effective date of the amendment if later than the date of last signature.
- 5.3 The Secretary may, at any time, by written notification to the Contractor, and without notice to any guarantor or surety, unilaterally amend the scope of work to be performed under the Contract, the period of performance, or the compensation to be paid to the Contractor. These unilateral changes shall be effective as set forth in the amendment or upon signature by the Contracts Administrator, if no date has been set forth.
- 5.4 The Contractor will be deemed to have accepted any such unilateral amendment unless, within fifteen (15) calendar days after the date the amendment is signed by the Contracts Administrator, the Contractor notifies the Contract Manager, in writing, of its non-acceptance of such unilateral change. The Contractor and the Department will then use good faith efforts to negotiate an amendment acceptable to both parties.
- 5.5 Failure to reach agreement shall constitute a dispute concerning a question of fact within the meaning of the Disputes provision contained in this Contract. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as amended. Contractor must continue to provide the contracted services, including any unilaterally amended services, during any period of non-acceptance or negotiation of a unilateral amendment.

6. ASSIGNMENT.

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor without prior written consent of the Department.

7. ATTORNEYS' FEES.

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs, except as provided herein.

8. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

“Confidential Information” as used in this section includes:

- 8.1 All material provided to the Contractor by the Department that is designated as “confidential” by the Department;
- 8.2 All material produced by the Contractor that is designated as “confidential” by the Department; and
- 8.3 All personal information in the possession of the Contractor that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

8.4 The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Department or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Department with its policies and procedures on confidentiality. The Department may require changes to such policies and procedures as they apply to this Contract whenever the Department reasonably determines that changes are necessary to prevent authorized disclosures. The Contractor shall make the changes within the time period specified by the Department. Upon request, the Contractor shall immediately return to the Department any Confidential Information that the Department reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

9. CONFLICT OF INTEREST/ETHICS.

9.1 Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Department may, in its sole discretion, by written notice to the Contractor, terminate this Contract if it is found after due notice and examination by the Contracts Administrator that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of or performance under this Contract.

9.2 In the event this Contract is terminated as provided above, the Department shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of the Department provided for in this clause shall not be inclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Contracts Administrator makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

10. CONSTRUCTION.

Nothing in this Contract shall be construed to create a right enforceable by or in favor of any third party.

11. COPYRIGHT PROVISIONS.

Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Department. The Department shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Department effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor hereby grants to the Department a nonexclusive, royalty-free,

irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Department.

The Contractor shall use all reasonable effort to advise the Department, at the time of delivery of materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.

The Department shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Department shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

12. COVENANT AGAINST CONTINGENT FEES.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business.

The Department shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee. The provisions of this section shall survive any termination or the expiration of this Contract.

13. DISPUTES.

Except as otherwise provided in the Contract should a dispute arise between the parties hereto, with respect to the terms of this contract or the performance thereof, and it cannot be resolved informally, the parties shall refer the dispute to an independent arbitrator selected by mutual agreement of the Contractor and the Department. The arbitrator so chosen shall establish procedures for an arbitration hearing and shall render a decision resolving the dispute. The arbitrator's decision shall be binding on both parties. The arbitrator's fee will be shared equally by the parties, but neither party shall be financially responsible for the costs incurred by the other party in connection with the arbitration.

14. DISALLOWED CHARGES/DUPLICATE CHARGES/OVERPAYMENT REFUNDS.

The Contractor is not allowed to charge the Department for a Medicaid service. If the Department has erroneously paid for a Medicaid service charged by the Contractor, that payment is considered an overpayment and shall be deducted from the Contractor's future payments by the Department.

The Contractor warrants that the cost charged for services under the terms of this Contract are not in excess of the cost charged to other entities for the same service(s) nor are they a duplicate payment. If the charges are determined to be in excess of those costs charged to other entities or a duplicate charge, the Department is entitled to an overpayment refund for the excess or duplicate charges. The Department will not pay the Contractor if the Contractor has charged the State of Washington or any other party for the same services or expenses.

15. ENTIRE AGREEMENT.

This Contract, all attachments, and future amendments hereto, constitute the entire agreement between the Contractor and the Department and no other statements or representations, written or oral, shall be deemed a part hereof.

16. FEDERAL IMMIGRATION REFORM AND CONTROL ACT (IRCA).

During the performance of this Contract, the Contractor shall comply with all requirements of the federal Immigration Reform and Control Act (IRCA) and any regulations adopted by the Department of Justice Bureau of Immigration and Naturalization Services to implement the IRCA. The provisions of this paragraph shall be in addition to any other requirements set forth in the text of the Contract

17. GOVERNING LAW.

This contract shall be construed and interpreted according to the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

18. HEALTH and SAFETY.

18.1 Health. The Contractor shall ensure that all of its personnel assigned to DOC sites is trained in the requirements of Chapter 296-823 WAC, blood borne pathogens. Further, the Contractor shall provide all such personnel with protections from blood borne and other body fluid diseases that meet or exceed the WAC standards for such protection. If the Contractor is a health care provider whose duties include the medical or physical care of inmates or emergency or medical treatment of employees, the Contractor shall abide by the requirements of Chapter 296-823 WAC as well as standard medical practice.

18.2 Safety. For all work performed under this Contract, the Contractor agrees to comply with Department policies and procedures relative to custody of inmates and security/operation of the institution such as, but not limited to, fingerprinting, photographs for identification purposes, and searches.

19. INDEMNIFICATION.

19.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents, and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract.

19.2 Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

19.3 Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

19.4 Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless State and its agencies, officials, agents, or employees.

20. INDEPENDENT CONTRACTOR STATUS.

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor will not hold himself or herself out as, nor claim to be, an officer or employee of Washington State in the performance of this Contract. Conduct and control of the work required under this contract is solely with the Contractor.

21. INDUSTRIAL INSURANCE COVERAGE.

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. The Department will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any Sub-contractor, or employee of the Contractor, which might arise under these industrial insurance laws during performance of duties and services under this Contract.

22. LICENSING AND ACCREDITATION STANDARDS.

The Contractor shall comply with all applicable local, state and federal licensing and accrediting standards, required by law and necessary in the performance of this Contract.

23. LIMITATION OF CONTRACTING AUTHORITY.

Only the Secretary, Secretary's designee, or Contracts Administrator shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Secretary, Secretary's designee, or Contracts Administrator.

24. MAINTENANCE OF RECORDS.

24.1. During the term of this Contract and for seven (7) years following its termination or expiration, the Contractor shall maintain, and provide DOC or its designee, at no additional cost, with reasonable access to Contractors records sufficient to:

- i. Document performance of all services required by this Contract; and
- ii. Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, performance and principals; and
- iii. Demonstrate accounting procedures, practices, and records, which sufficiently and properly document the Contractor's invoices to DOC and all expenditures made by the Contractor to perform as required by this Contract.

24.2 If any litigation, claim, or audit is started before the expiration of the seven (7) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

24.3 Should an audit, conducted under the authority of this section, disclose that the Contractor has been paid by the Department in excess of the agreed upon costs (overpayment), or has been reimbursed by the Department for direct or indirect costs which are disallowed as a result of that audit, then, the Contractor shall, upon demand by the Department, repay such overpayment or reimbursement to the Department without requiring further legal action by the Department.

24.4 The provisions of this section shall survive termination or expiration of this Contract.

25. RECAPTURE OF FUNDS

In the event that the Contractor fails to perform this contract in accordance with state laws and/or the provisions of this contract, the Department reserves the right to recapture funds in an amount to compensate the Department for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Department. In the alternative, the Department may recapture such funds from payments due under this contract.

Such right of recapture shall exist for a period not to exceed six years following contract termination. In the event that the Department is required to institute legal proceedings to enforce the recapture provision, the Department shall be entitled to its costs thereof, including attorneys' fees.

26. RETIREMENT BENEFIT SUSPENSION – PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

The Contractor certifies by signing this Contract that that the Contractor is not a Public Employee Retirement System (PERS) retiree who retired early under the Public Employees Retirement System (PERS) RCW 41.40.630(3); and if it is found that the Contractor did retire early under the PERS, the Contractor's retirement benefits may be suspended for the duration of this Contract.

Further, if the Contractor was a PERS retiree, the Contractor agrees to notify the Department of Retirement Systems (DRS), regarding the execution of this Contract, failure to do so is considered a material breach and may subject the Contractor to damages. In addition, the Contractor certifies that the Contractor does not have a beneficial interest in this Contract as defined in the Executive Ethics Board's Advisory Opinion 97-07.

27. NONDISCRIMINATION.

27.1 During the performance of this contract, the Contactor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies.

27.2 In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled, or terminated, in whole or in part, and the Contractor may be declared ineligible for further contracts with the Department. The Contractor may be given a reasonable time in which to cure this noncompliance. Any dispute shall be resolved in accordance with the "Disputes" procedure set forth herein.

28. PUBLICITY.

The Contractor agrees to submit to the Department all advertising and publicity matters relating to this Contract wherein the Department's name is mentioned or language used from which the connection of the Department's name may, in the Department's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Department.

29. REGISTRATION WITH DEPARTMENT OF REVENUE.

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

30. RIGHT OF INSPECTION.

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Department, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

31. RIGHTS AND REMEDIES.

The rights and remedies of the Department provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

32. SAFEGUARDING OF OFFENDER INFORMATION.

32.1 The Contractor may use offender information gained by reason of this Contract only to perform work under the terms of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law, or with the prior written consent of the Department, offender, or offender personal representative.

32.2 The Contractor agrees to abide by all present and future federal and state laws and regulations in maintaining the confidentiality of Department files and records, including Criminal History Record Information (CHRI). In the event CHRI is provided to the Contractor, the Contractor shall also abide by all present and future Department rules and regulations governing the use of CHRI.

32.3 The provisions of this section shall survive any termination or expiration of this Contract.

33. SEVERABILITY.

The terms and conditions of this Contract are severable. If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms or conditions of this Contract.

34. SITE SECURITY.

While on Department premises, Contractor, its agents, employees, or subcontractors shall conform in all respects to site security requirements relative to custody of offenders and security operations, including but not limited to, background check, fingerprinting, photographs for identification, physical safety, fire, and security policies or regulations.

35. SUBCONTRACTING.

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining the prior written approval of the Contracts Administrator. If the Department approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Department in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

In no event shall the existence of any subcontract operate to release or reduce the liability of the Contractor to the Department for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this contract. Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

36. TAXES.

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the Contractor or the Contractor's staff shall be the sole responsibility of the Contractor.

37. TERMINATION.

37.1 BY CONTRACTOR. The Contractor may terminate this Contract by giving the Department written notice of such termination. No such termination shall be effective until sixty (60) days after the Department has received the Contractor's written notice of termination, or until such later date as established by the Contractor in the Contractor's written notice of termination. Contractor shall mail or deliver the Contractor's written notice of termination to the Contracts Administrator. If the Contractor terminates the Contract, the Department shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

37.2 BY DEPARTMENT FOR CAUSE. The Secretary may, by written notice, terminate this Contract in whole or in part, for failure of the Contractor to perform any of the Contract provisions. In such event, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, i.e., cost of the competitive bidding, mailing, advertising, and staff time. If it is determined for any reason that the Contractor was not in default or that the default was beyond Contractor's or Sub-contractor's control, fault or negligence, then the Termination for Default shall convert to Termination for Convenience.

In the alternative, the Department upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the Department may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow the Department to terminate the Contract.

37.3 BY DEPARTMENT FOR CONVENIENCE. The Secretary or designee may terminate this Contract, in whole or in part, when it is in the best interests of the Department. The Department shall give the Contractor written notice of termination at least five (5) days in advance of the effective termination date. When a contract is terminated for convenience, the Department shall only pay, in accordance with the terms of this Contract, for services rendered prior to the effective date of termination.

37.4 BY DEPARTMENT FOR NON-AVAILABILITY OF FUNDS. If the funds the Department relied upon to establish this Contract are withdrawn or reduced, or if new or modified conditions are placed on such funds, the Secretary may terminate this Contract immediately. If this Contract is so terminated, the Department shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

38. TERMINATION PROCEDURES

Upon termination of this contract the Department shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Department, and the amount agreed upon by the Contractor and the Department for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the Department, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Contracts Administrator shall determine the extent of the liability of the Department. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Department may withhold from any amounts

due the Contractor such sum as the Contracts Administrator determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this "Termination Procedures" provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. After receipt of a notice of termination, and except as otherwise directed by the Notice, the Contractor shall:

- 37.1 Stop work under the contract on the date, and to the extent specified, in the notice;
- 37.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- 37.3 Assign to the Department, in the manner, at the times, and to the extent directed by the Department, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- 37.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Department to the extent Department may require, which approval or ratification shall be final for all the purposes of this clause;
- 37.5 Transfer title to the Department and deliver in the manner, at the times, and to the extent directed by the Department any property which, if the contract had been completed, would have been required to be furnished to the Department;
- 37.6 Complete performance of such part of the work as shall not have been terminated by the Department; and
- 37.7 Take such action as may be necessary, or as the Department may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which the Department has or may acquire an interest.

39. TREATMENT OF PROPERTY.

The Department, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the Department any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. In all such cases, this "Treatment of Property" provision shall apply.

- 39.1 Title to all property furnished by the Department shall remain in the Department. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Department upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Department upon i) issuance for use of such property in the performance of this Contract, or ii) commencement of use of such property in the performance of this Contract, or iii) reimbursement of the cost thereof by the Department in whole or in part, whichever first occurs.
- 39.2 Any property of the Department furnished to the Contractor shall, unless otherwise provided herein or approved by the Department, be used only for the performance of this Contract.
- 39.3 The Contractor shall be responsible for any loss or damage to Department property that results from the negligence of the Contractor or the failure of the Contractor to maintain and administer

that property in accordance with sound management practices.

39.4 If any Department property is lost, destroyed or damaged, the Contractor shall immediately notify the Department and shall take all reasonable steps to protect the property from further damage.

39.5 The Contractor shall surrender all Department property to the Department prior to settlement upon completion, termination, or cancellation of this Contract.

39.6 All equipment purchased by the Contractor for the Contractor's use under the terms of this Contract, that as defined in this Contract provision, is actually owned by the Department, shall be shipped or delivered to the institution/location designated by the Contract Manager for tagging and entry into the DOC Capital Asset Management System (CAMS) before distribution to the Contractor for use.

40. UTILIZATION OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.

During the performance of this Contract, the Contractor shall comply with Chapter 39.19 RCW, as now existing or hereafter amended, any rule adopted under Chapter 39.19 by OMWBE and/or any policy or regulation adopted by the Department to effect agency compliance with Chapter 39.19 RCW.

If the Contractor fails to comply with any contract requirements relative to the utilization of minority and/or women-owned businesses, the Department may take any or all such actions available to the Department under Chapter 39.19 RCW.

If the Contractor prevents or interferes with any Subcontractor's compliance with Chapter 39.19 RCW, or submits false or fraudulent information to the Department regarding compliance, the Contractor shall be subject to a fine not to exceed One Thousand Dollars (\$1,000) in addition to any other penalties or sanctions prescribed by law.

41. WAIVER.

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the Department.

SCOPE OF WORK

1. Contractor Duties

- a. **Accept Cases:** Contractor agrees to represent all persons whom Contractor has accepted as a case at community custody hearings, subject to conflicts of interest and other exclusions.
 - i. Maintain confidentiality of all offender alcohol and drug abuse patient records as required by [42 CFR part 2](#).
- b. **Conflicts:** Notwithstanding any other terms or provisions contained in this Contract to the contrary, Contractor shall not be required to accept, and Contractor shall decline to accept, an appointment under this Contract if the particular appointment would create a true bona fide conflict of interest for Contractor or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys licensed under the Washington State Bar Association (WSBA) in the State of Washington. In the event a conflict of interest arises subsequent to the Contractor receiving an appointment under this Contract, Contractor shall notify the Contract Manager/designee within one (1) business day of the conflict of interest and the Contract Manager shall appoint another attorney. Contractor shall not be required to bear the cost of providing conflict counsel.
- c. **Sign Contract:** Contractor agrees to sign this Contract prior to rendering services.
- d. **Standards:** Contractor shall be in compliance with the WSBA Rules of Professional Conduct and shall provide legal services according to the Standards of Representation as set forth in Attachment C, which, by this reference is hereby incorporated.
- e. **Client Contact:** Contractor will establish and maintain client contact, keep the client informed of the progress of the case, and effectively provide legal advice to the client through representation. Client communication should include the elements set forth in Attachment C, Standards of Representation.
- f. **Reviews:** Contractor will participate in evaluation, Contract review and case review processes as required by the Department. Contractor will also cooperate with the Department in efforts to improve representation and monitor compliance with the Standards of Representation as set forth in Attachment C. The reviews are subject to attorney-client confidentiality protections.
- g. **Investigator Services and Expert Services:** Contractor will, in appropriate cases, utilize the services of investigators and/or experts. However, if the Contractor determines that investigative or expert services are necessary for a particular case, Contractor will request prior approval as detailed in Attachment D – Compensation.

- h. Client or Third Party Complaints:** Contractor shall establish a procedure for responding to complaints regarding the performance of any attorney under this Contract. A copy of this procedure must be provided to the Department prior to the performance under this Contract. If, after utilizing the Contractor's complaint procedure, the client states he or she continues to have a complaint, then the Contractor shall provide the client with contact information for the Department so the client may pursue their complaint with the Contract Manager.
- i. Rendering Legal Services:** Contractor agrees to render legal services for community custody hearings as follows:

 - i.** Prepare for the community custody hearing. Preparation includes gathering evidence and interviewing the offender and witnesses. Preparation includes travel time and travel expenses associated with travel to and from the interviews when telephone interviews are not possible.
 - ii.** Represent offenders at the community custody hearings. Representation includes travel time and travel expenses associated with travel to and from the community custody hearing. Representation includes timely arrival to hearings at the scheduled date, time, and location provided to Contractor by the Department.
 - iii.** Providing the offender with a closing letter terminating their legal representation.
 - iv.** Offender representation for appeals is not included in the Scope of Work.

2. The Department of Corrections reserves the right to:

- A. Offer the case to another contractor if Contractor does not accept the offer within 1 (one) hour of notification via email or telephone message of the offer. Acceptance is written notification to the Contract Manager or designee of the Contractor's intent to represent the offender.
- B. Require the Contractor to provide additional documentation of services provided under this Contract;
- C. Deny payment requests if they are not filed in a timely manner; and
- D. Terminate, in its sole discretion, the Contract or withhold payments claimed by the Contractor for services rendered, if the Contractor fails to satisfactorily comply with any term or condition of this contract.

STANDARDS OF REPRESENTATION

1. **General Duties – Contractor agrees to be licensed to practice law in Washington State and remain compliant with the Washington State Bar Association (WSBA) and the current Washington State Rules of Professional Conduct (RPC) as adopted by the Washington State Supreme Court including, but not limited to:**
 - a. **Duties and Responsibilities of Counsel** (See [WSBA Standards for Indigent Defense Services, Standard Two: Duties and Responsibilities of Counsel](#))

Legal services should be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the WSBA, the RPC, case law and applicable court rules defining the duties of counsel and rights of clients. Counsel’s primary and most fundamental responsibility is to promote and protect the best interests of the client.
 - b. **Education and Experience** (See RPC 1.1 Competence, [WSBA Standards for Indigent Defense Services Standard 14: Qualifications of Attorneys](#))
 - i. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and
 - ii. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to this practice area; and
 - iii. Be familiar with the RPC; and
 - iv. Be familiar with the [Performance Guidelines for Criminal Defense Representation](#) approved by the WSBA; and
 - v. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
 - vi. Be familiar with mental health issues and be able to identify the need to obtain expert services.
 - c. **Caseloads** (See RPC 1.3 Diligence, WSBA Standards for Indigent Defense Services Standard 3: Caseload Limits and Types of Cases)

The caseload should allow Counsel to give each client the time and effort necessary to ensure effective representation. Counsel should not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.
 - d. **Conflicts** (See RPC 1.8 Conflict of Interest: Current Clients specific rules, RPC 1.7 Conflict of Interest: Current Clients, RPC 6.2 Accepting Appointments)

Counsel shall decline to accept an appointment if the particular appointment would create a true and bona fide conflict of interest for Counsel or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standard common and applicable to attorneys in the State of Washington.

e. **Case Records**

Counsel shall compile and maintain appropriate case records for each person whom Counsel is appointed to represent. Counsel shall maintain such case records in their entirety for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

f. **Nondiscrimination** (See RPC 8.4 Misconduct, WSBA Standard Seventeen: Non-Discrimination)

Counsel shall not discriminate or tolerate harassment on the basis of race, color, sex, religion, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the administration of services. Counsel shall comply with all federal, state, and local non-discrimination requirements.

g. **Client Communication** (See RPC 1.4 Communication, RPC 1.6 Confidentiality of Information)

In all cases counsel must maintain sufficient contact with the client to establish and maintain an attorney-client relationship that will enable counsel to understand the client's interests and needs, as well as the client's position on issues or questions in the case. Client communication should include the following elements:

- i. Counsel shall make prompt contact with all assigned persons. Counsel shall provide the client with contact information and establish a message system that allows regular attorney-client contact.
- ii. Counsel should meet and communicate with the client as needed.
- iii. Counsel should adhere to all laws and ethical obligations concerning confidentiality.
- iv. Counsel should explain the attorney-client privilege to client. Counsel should explain the general procedural overview of the progression of the case.
- v. Counsel should provide the client with copies of relevant case documents and explain to the client the content of the documents.

h. **Hearing Preparation** (See RPC 1.1 Competence) Effective hearing preparation includes the following:

- i. Interview the client and potential witnesses.
- ii. Develop a case theory and strategy to follow at hearings.
- iii. Thoroughly prepare the client and all witnesses to testify at the community custody hearing.

i. **Hearings (See RPC 1.1 Competence)** Counsel has professional duty to diligently represent their client. This includes the following:

- i. Present and cross-examine witnesses, prepare and present evidence.
- ii. Request the opportunity to make opening and closing arguments.

- iii. Avoid continuance and work to reduce delays in hearing proceedings unless necessary to provide competent representation.
 - iv. To correct inaccurate information that is potentially detrimental to the client.
 - v. To present to the Hearing Officer all known and reasonably available mitigating favorable information.
- j. **Withdrawal and Termination of Representation Prior to Resolution of Case**
(See RPC 1.3 Diligence, RPC 1.16 –Declining or Terminating Representation)
- i. If circumstances necessitate counsel’s withdrawal prior to the hearing, counsel shall immediately notify the contract manager. Counsel must notify client of intent to withdraw. Counsel shall take reasonable steps to protect the client’s interests and arrange for the orderly transfer to the client’s file and discovery to substitution counsel.

COMPENSATION

- A. The Contractor, for satisfactory legal representation of offenders, as provided in Attachment B, Scope of Work, at community custody hearings, will receive \$60.00 per hour, up to a maximum of 10 hours or six hundred dollars (\$600.00) per case.
- B. No attorney representing offenders under this contract may solicit or receive duplicate compensation from those offenders or on behalf of those offenders, in addition to any compensation which the attorney has received or expects to receive from the Department, according to this contract.
- C. The Department is not responsible for payment of additional hours over 10 hours per case or for unusual costs without prior Contract Manager approval. The Contractor risks non-payment of those services if prior approval is not obtained. Contractor agrees to request additional compensation and receive approval before additional services are rendered.

Requests for compensation for additional hours - If the case requires the Contractor to spend more than 10 hours on a case to provide competent representation, the Contractor must submit a written request to the Contract Manager justifying why additional hours are necessary for the case and what other less time consuming measures were considered for the case. Contract Manager approval for additional hours must be obtained by Contractor for a case, before working over 10 hours. The Contractor should make his/her request for additional hours as soon as, he/she is aware of need to avoid denial of the request but no fewer than 3 business days before the scheduled hearing.

The Department considers many factors, to determine whether to grant or deny an additional compensation request for hours including, but not limited to:

- i. The number and complexity of issues in the case and the investigative needs;
- ii. Whether the Contractor needs an interpreter to communicate with the offender;
- iii. What less time consuming options were considered prior to submitting the request for additional hours?
- iv. The number of community custody conditions violated;

- v. The severity or complexity of the alleged community custody conditions violated;
- vi. Whether the violation(s) of the community custody conditions are admitted or contested; and
- vii. The number of victims and witnesses.

Requests for compensation for unusual costs - The Department does not compensate the Contractor for unusual costs, unless prior approval has been obtained by the Contract Manager, nor does the Department compensate the Contractor for time spent on the following activities:

- i. The initial discussion between the Department and the Contractor to determine whether the Contractor is available or willing to represent the offender at the community custody hearing;
- ii. Obtaining information regarding the community custody hearing process and procedures; and
- iii. Preparing the A-19 Invoice to bill the Department.

The Hearings Unit will communicate the Contract Manager's decision to grant or deny the Contractor's request for additional compensation within (2) business days from the date the request is received by the Contract Manager.

- D. The Department is not responsible for travel reimbursement other than reasonable travel time.
- E. The Department is not responsible for payment for offender representation for administrative appeals, nor for procured services, including paralegal, or legal assistant services.
- F. Contractor agrees to keep time records and prepare the A-19 Invoice outlining the hours spent and the activity performed to request payment from the Department. Contractor shall submit invoices to the Hearings Administrator/designee together with a detailed statement of the contracted services performed for which the Contractor is seeking compensation.

The A-19 invoice must be filed within eight (8) weeks after the date of the community custody hearing and include the following information:

1. The name of the Contractor /Subcontractor who provided the legal services for the offender at the community custody hearing. The Contractor may request that payment be made under the firm's lead attorney's social security number;
2. The full name of the offender and the offender's DOC number to whom the legal services were rendered under this contract;
3. Reference to this Contract K_____;
4. The date(s) legal services were provided to the offender; and
5. The time spent on the case, calculated to the nearest tenth of an hour, for the following legal services:
 1. Conducting interviews of offenders and witnesses;
 2. Conducting legal research;
 3. Representing the offender at the community custody disciplinary proceeding noting the length of time and reason for each appearance; and
 4. Closing the case, payment limited to 30 minute maximum.

If the legal services are completed in June, the end of the state fiscal year, the payment request must be received by the Department by July 20.

Department payment is considered timely, if made within thirty (30) business days after receipt of a properly completed invoice from the Contractor. Payment will be made to the Contractor at their designated address.

Mail completed A-19 invoice vouchers to the following address:

Department of Corrections
Accounts Payable- Specialty Unit
PO Box 41107
Olympia, WA 98504-1107