

AGREEMENT

**LEGAL REPRESENTATION OF INDIGENT ADULTS AND CHILDREN IN CASES
PENDING IN THE JUDICIAL DISTRICT (JD), GEOGRAPHICAL AREA (GA),
JUVENILE COURT (JUV), APPELLATE COURT AND/OR SUPREME COURT (APP),
IN A WRIT OF HABEAS CORPUS (HAB) INNOCENCE CLAIMS (CIP), FAMILY
COURT (FAM), PSYCHIATRIC DEFENSE (CVH), FAMILY CONTEMPT AND
PATERNITY COURT (MAG) OR HARTFORD COMMUNITY COURT (HCC).**

NAME OF CONTRACTOR: _____

JURIS NUMBER: _____

| CASE TYPE | COURT LOCATION | APPROVED ATTORNEY(S) |
|-----------|----------------|----------------------|
| | | |

SECTION 1 - SCOPE OF SERVICES

The undersigned Assigned Counsel (hereinafter, the "Contractor") agrees to provide legal representation in cases where an ethical conflict exists with the Office of Chief Public Defender (hereinafter, "OCPD") or where it is necessary to maintain appropriate caseloads, or in Child Protection or Family Court matters as needed. The Contractor will represent indigent adults and/or juveniles charged with a crime or crimes in the Judicial District (JD), Geographical Area (GA), Juvenile Court (JUV), or pending civil Family Court (FAM) matters, or indigent contemnors in family Support Magistrate Court, or defendants or inmates with a pending Appeal or Writ of Habeas Corpus. Such representation will be pursuant to C.G.S. § 51- 289 et seq. and the specific scope of this Agreement. The period of the Agreement is July 1, 2013 through June 30, 2014. **This agreement must be signed electronically and returned to the Office of Chief Public Defender (OCPD) by June 14, 2013. Failure to comply with this deadline shall result in forfeiture of the agreement. The page 1 and a signed page18 (signature packet) of the agreement must be sent to:**

Via email to: ocpd.ac.applications@jud.ct.gov

You must use an electronic signature to accept the agreement; this signature must also be on file with OCPD. A blank electronic signature election form is included in the email containing the contract. If you are choosing an electronic signature for the first time, then this form must accompany your signature packet and will be maintained on file at OCPD.

If you need to obtain an additional copy of the electronic signature election form, then please email karma.daigle@jud.ct.gov. **Signature packets or signed agreements received via fax or US mail will be rejected.**

SECTION 2 – DUTIES OF CONTRACTOR:

- A. Legal representation shall include, but not be limited to, preparation, investigation, pretrial activities and court appearances through all stages of the proceedings, including final judgment at the trial court, appellate court or supreme court, a habeas corpus proceeding or permanency plan hearing (juvenile matters).
- B. By applying for and accepting this agreement the Contractor is certifying pursuant to Rule 1.1 of the Rules of Professional Conduct that the Contractor has a working knowledge of the Connecticut General Statutes applicable to criminal matters, family court matters and juvenile court matters including but not limited to C.G.S. §§ 46b-120 et. seq., §§ 53a – 1 et. seq., §§ 14 – 1 et. seq., §§ 54 - 1 et. seq., Connecticut Practice Book Rules of Professional Conduct and Superior Court – Procedure in Criminal Matters, Juvenile Matters, Family Court Matters, Appellate Procedure and Habeas Corpus procedure where applicable to case assignments.
- C. New Contractors
 - 1. Any New Contractor (an attorney agreeing to provide representation in any case pursuant to this agreement for the first time commencing July 1, 2013) certifies that he or she will participate in the Mentor Program offered by the OCPD. The program includes being matched with an experienced Assigned Counsel attorney and attending a Mentor/Mentee meeting within the first month of the period of this Agreement. The New Contractor will accept supervision from the assigned mentor, which includes shadowing the mentor for at least one court appearance and perhaps more if recommended by the assigned mentor.
 - 2. In addition, the New Contractor certifies that he/she will attend the one-time, mandatory Basic Orientation Course offered by the OCPD early in the contract period. This training will be counted toward the 6 hour training requirement (see section D below).
 - 3. Failure to satisfy these requirements may be grounds for rescission or non-renewal of the contract.
- D. Any Contractor who herein signs this Agreement certifies that he or she will attend, during this Agreement period, a minimum of 6 hours of professional education or training relevant to the practice area covered by this agreement, including public defender, bar and professional association, regional or national training events and seminars, and taped or multi-media programs. Failure to satisfy this requirement may be grounds for non-renewal or termination of this agreement. Any New contractor agreeing to provide representation in Child Protection matters for the first time commencing July 1, 2013 must participate in 4 days of new lawyer training offered by OCPD in conjunction with the Center for Children's Advocacy.

- E. Any Contractor that is renewing as an approved Assigned Counsel hereby certifies that he or she has attended 6 hours of professional training during the period of July 1, 2012 – June 1, 2013 as described in section 2D above.
- F. The Contractor shall maintain records of all work performed in relation to this Agreement and make any hard copy records kept available to OCPD for inspection, audit, and evaluation in such form and manner as OCPD may require for a period of three years, subject to the attorney/client privilege.
- G. The duties required to complete legal representation in each case assigned during this contract period shall survive the expiration of the Agreement until such time as the case ends or is reassigned.
- H. The Contractor is responsible for all expenses related to representation, unless otherwise agreed to by OCPD, as set forth in Section 3C of this Agreement.
- I. The Contractor agrees to accept case assignments as stated in this Agreement. The Contractor may decline to accept an assignment. If an assignment is declined, the case will be assigned to another available Assigned Counsel on the approved list for that particular location.
- J. The Contractor shall file a written appearance in each case related to each appointment pursuant to Conn. Prac. Bk. §§ 3-5 and 3-7.
- K. In the event that a firm intends to allow a new attorney to handle cases under the firm's contract, the firm will notify the Director of Assigned Counsel in advance and forward a completed Assigned Counsel Application which must be approved by OCPD prior to that attorney taking case assignments. The firm is responsible for ensuring that the attorneys providing representation pursuant to its contract are properly supervised consistent with the requirements of the Assigned Counsel Mentoring Program and the required Basic Orientation Training prior to representing clients.
- L. If the Contractor is appointed in a habeas (HAB) matter or an appellate (APP) matter, the Contractor hereby agrees to comply with the billing standards located at the following link:

<http://www.ct.gov/ocpd/cwp/view.asp?a=4087&q=479242>

If the Contractor believes that a case will require work that exceeds the limitations in the billing standards, the Contractor must notify the Director of Assigned Counsel in writing and obtain approval to exceed the aforementioned limitations. Failure to comply with these guidelines may result in reduced payment and/or termination of this agreement.

- M. The Contractor agrees not to be retained privately by any client in any criminal matter, child protection matter, or family court matter if the Contractor is currently representing that client as an Assigned Counsel.

- N. OCPD may immediately terminate or cancel this Agreement in the event that the Contractor becomes financially unstable to the point of threatening its ability to conduct the services required under this Agreement, ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or its assets.

O. **Trial Counsel Responsibility Re: The Appeal Process**

The commencement of the appellate process provides for very short time requirements that must be strictly adhered to. As trial counsel it is **your responsibility** to properly communicate to your client their right to an appeal and to ensure that the necessary documents are filed in a timely manner. Additionally, you are required to **immediately** notify the Appellate Unit of a new appeal by providing a copy of the following documents either by fax (203) 230-3361 or by email to gaile.colaresi@jud.ct.gov.

Criminal Appeals:

- Copy of Application for Waiver of Fees, Costs and Expenses and Appointment of Counsel on Appeal (JD-CR-73).
- Copy of the Order on application immediately upon receipt by trial counsel.

Habeas Appeals:

- Copy of Application for Waiver of Fees, Costs and Expenses and Appointment of Counsel on Appeal (JD-CR-73).
- Copy of Notice of Appeal Procedures (Habeas Counsel) (JD-CR-84 & JD-CR-84A).
- Copy of the Order on Petition for Certification (JD-CR-84A) immediately upon receipt by trial counsel

Trial counsel is required to complete an Appellate worksheet and to submit it to the Office of the Chief Public Defender, Appellate Unit, 2911 Dixwell Avenue, 4th Floor, Hamden, CT 06518, with a copy of your trial file, including any criminal and/or habeas trial transcript you may have. If these materials are electronically stored, it is preferable to receive a CD copy of the file rather than a paper copy. These documents must be submitted in an expeditious manner so that the appeal can be timely filed.

Appellate Worksheets are available on our website. There is one specific to criminal cases and one specific to habeas cases. Go to: <http://www.ct.gov/ocpd/site> - select "forms" - "administrative".

***** IMPORTANT *****

When you file your client's application for waiver of fees please be sure to inform the court that the fee waiver and appointment of counsel is **NOT** to be acted on until the appellate worksheet and copies of all pertinent documents have been forwarded to and received by this office. Under Connecticut Practice Book §63-7, third paragraph, the court may waive the appellate fees, appoint this office as appellate counsel, and permit the withdrawal of the trial attorney's appearance "provided the judicial authority is satisfied that [the trial] attorney has

cooperated fully with appellate counsel in the preparation of defendant's appeal as set forth in Section §43-33." Under Practice Book §43-33(c) "Trial counsel shall be deemed to have 'cooperated fully' if counsel has delivered to the chief of legal services a complete appellate worksheet, which shall be provided by the chief of legal services, and trial counsel's file or a copy thereof."

The Appellate Office cannot proceed on the appeal until the appellate worksheet and a copy of your file has been received by the Appellate Office.

- O. Child Protection Appeals:
Email notice to OCPDCP@jud.ct.gov requesting appellate review.

SECTION 3 – DUTIES OF THE OFFICE OF CHIEF PUBLIC DEFENDER:

A. COMPENSATION RATES:

1. Flat Rate Assignments

The OCPD shall compensate the Contractor in cases assigned at a flat rate as follows:

Cases assigned in any GA pursuant to a flat rate contract agreement will be compensated at the rate of \$350 per case.

Cases assigned in any JD pursuant to a flat rate contract agreement will be compensated at the rate of \$1000 per case.

Delinquency cases assigned in any JUV pursuant to a flat rate contract agreement will be assigned at the rate of \$350 per case.

Child Protection (CP) assignments in adult and child cases shall be compensated at the rate of \$500. There is no reduction in compensation for sibling groups. Termination of Parental Rights cases and adoption cases will count as separate cases for payment purposes.

Flat rate criminal appellate matters shall be compensated at the flat rate of \$6,000 per case. These assignments are made at the discretion of the Chief of Legal Services and separate from hourly rate appellate assignments. This amount is inclusive of all representation including client visits. OCPD will not provide any additional compensation unless pre-approved by the Director of Assigned Counsel. Where a judge has granted the request of a Contractor to withdraw from a case, except a withdrawal by Anders, or the local public defender office has determined that the case must be re-assigned to another special public defender prior to that case being completed, the Contractor must provide to the Director of Special Public Defenders an accounting of his or her hours completed on the case. If the Contractor has not completed at least 100 hours of work in the case, the Contractor must reimburse the Commission at the rate of \$60 per hour for the difference.

between 100 hours and the work completed. For example: if the attorney has completed 70 hours of work on the case, the attorney must reimburse the Commission \$60 per hour for the 30 hours not completed or \$1800.

AMC/GAL assignments in Family Court shall be compensated at the rate of \$500. There is no reduction in compensation for sibling groups.

Family contempt and paternity court cases shall be compensated a quarterly flat rate. \$ 0.00

(Amount will be determined by days of coverage provided by the attorney; If attorney not accepting MAG cases, then dollar amount will be omitted and language will be the single sentence above.)

2. Hourly Rate Assignments

The Contractor may be assigned cases for which their legal services will be compensated for by the hour. Habeas, Appellate, Serious Juvenile Offense (SJO) and Psychiatric Defense Unit assignments are hourly assignments unless specifically assigned at a flat rate. All other hourly assignments must be approved as an hourly assignment by the Director of Assigned Counsel and/or the Deputy Chief Public Defender. Either the Contractor or the supervisor of the office making an assignment can request that any case be assigned hourly due to its complexity. This request should occur at the time the assignment is made. If the request is made after the Contractor has been compensated at the appropriate flat rate, the Contractor must certify that he or she has completed at least 10 hours of work on the case.

Compensation for cases assigned at an hourly rate will be as follows for the most serious crime charged:

Misdemeanor cases assigned pursuant to the hourly billing agreement will be compensated at the rate of \$50 per hour for in court and out of court legal services rendered.

Child Protection cases shall be compensated at the rate of \$50 per hour for approved billable activities.

AMC/GAL and approved Family Support cases shall be compensated at the rate of \$50 per hour for approved billable activities.

Felony cases and serious juvenile offense cases assigned pursuant to the hourly billing agreement will be compensated at the rate of \$75 per hour for in court and out of court legal services rendered.

Post Conviction Capital Felony cases where the client is facing the death penalty will be compensated at the rate of \$100 per hour for in court and out of court legal services rendered.

Post Conviction Capital Felony cases where the client is not facing the death penalty will be compensated at the rate of \$75 per hour for in court and out of court legal services rendered.

Juvenile Post Conviction cases will be compensated at a rate of \$75 per hour.

Criminal and Child Protection Appellate cases shall be compensated at a rate of \$75 per hour.

Habeas plea cases, trial cases, and time calculation cases will be compensated at a rate of \$75 per hour.

CIP cases will be compensated at the rate of \$75 per hour.

Psychiatric Defense Unit cases are compensated at the rate of \$75 per hour.

Hartford Community Court cases are compensated at the rate corresponding to the highest criminal charge for the case.

Emergency coverage of family contempt and paternity cases will be compensated at the rate of \$50 per hour.

B. PAYMENT:

1. Hourly Billing Payment

The Contractor shall bill for legal services in one tenth of an hour segments in accordance with the applicable rates in section 3A(2) above.

OCPD will render payment under the terms of the Agreement based upon the submission of an accurate and timely submitted Assigned Counsel Bill for Services Rendered and CO-17 invoice. All bills shall be submitted electronically using the forms provided on the Assigned Counsel Forms link of Office of Chief Public Defender web site (<http://www.ct.gov/ocpd/cwp/view.asp?a=4087&q=479196#SPD>) and shall submit them to the designated email address as follows:

Criminal bills must be submitted to OCPD.Bills.Criminal@jud.ct.gov

Child Protection, Family Court magistrate and AMC/GAL bills must be submitted to OCPD.Bills.CP@jud.ct.gov

The Contractor agrees to use the current billing system in place at the time bills are submitted. This includes any new or updated billing system that OCPD implements. Inability or unwillingness to use billing protocol in place shall result in termination of this Agreement.

The Contractor must submit his or her complete and accurate Bill for Services Rendered to OCPD no later than 30 days following the close of the month in which the work was performed. Submissions beyond the deadline will result in delayed processing subsequent to the processing of all timely submitted billing. Bills submitted more than six months from the oldest date on which the work claimed was performed, except for good cause as determined by the OCPD, shall not be accepted.

Bills submitted that are inaccurate, incomplete or do not comply with the requirements of this Agreement shall be returned to the Contractor for correction and re-submission. OCPD will not make any corrections and/or adjustments to bills.

Examples of Compensable Legal Services:

- Any scheduled court hearing or conference;
- Time spent at the courthouse interviewing clients;
- Travel time round trip to the courthouse in post conviction capital felony cases;
- Travel time round trip to the courthouse in extraordinary trial court cases where the contractor has been asked to take an assignment outside the scope of this agreement;
- Administrative hearings, client visits, client and witness interviews;
- Jail visits;
- Preparation of case or court documents, including legal research;
- Investigation;
- File review;
- Filing of court pleadings.

Examples of Non- Compensable Charges:

- Office or administrative overhead;
- Clerical assistance or for time clerical assistants spend on any matters concerning an appointment;
- Mileage;
- Delivery services;
- Routine copying costs;
- Routine postage;
- Faxing;
- Billing.

2. Flat Rate Payment

If approved, Contractor will be assigned cases in accordance with Section 4A and accept flat rate payment in accordance with Section 3A(1) of this Agreement. Cases will be assigned based upon the needs of the particular court location for which the

Contractor is on the approved list. The total number of annual assignments to the Contractor will be based upon the Contractor's availability, their willingness to accept assignments, the number of assigned counsel on the list for the particular location, and the number of cases in which an Assigned Counsel is needed for the particular location.

The Contractor agrees to conduct a thorough evaluation at the time a case is assigned to ensure the Contractor does not have a conflict that would prevent representation of the client. The Payment will be made to the Contractor based upon the timely submission of invoices as pursuant to section 3B above.

Where a judge has granted the request of a Contractor to withdraw from a case, or it has been determined that the case must be re-assigned to another assigned counsel prior to that case being completed, the Contractor must provide an accounting to the Director of Assigned Counsel of the time he or she has spent on the case. If the Contractor has not completed at least 10 hours of representation in a case or consolidated cases, the Contractor must reimburse the OCPD for the full amount paid for the particular case or cases from which the Contractor has withdrawn.

a. Trial and Trial Preparation Billing

In flat rate cases where the Contractor has commenced a trial, the Contractor may submit hourly billings for services rendered in connection therewith. Billing rates shall be in accordance with section 3B(1) of this agreement.

The OCPD will pay for the time a Contractor spends preparing for trial in criminal flat rate assignments once the case has been docketed for trial or a Violation of Probation hearing.

b. Client Visitation

With the exception of appellate flat rate cases, the Contractor will be compensated at the appropriate hourly rate for client/jail visits.

3. Payment Delays/ Payment Research

- a. The Contractor hereby agrees to use the Vendor Self Service (VSS) program of CORE CT to research all questions regarding payment and/or delays in payment. The Contractor agrees to register for this program by contacting the VSS help desk at osc.apd@po.state.ct.us (type VSS in the subject line).
- b. If the Contractor has used the VSS program and has not been able to resolve questions regarding payment status **AND** payment has been outstanding for **more than 45** days from the date the accurate and error free bill was submitted the Contractor may contact the Assigned Counsel Unit of OCPD to inquire about the status of the outstanding payment. ALL inquiries regarding payments **MUST** be

submitted using the billing inquiry form and must be submitted via email to the appropriate billing email in section 3B(1) above. Telephone calls requesting information on the status of payment will not be accepted or returned. The billing inquiry form can be downloaded here:

<http://www.ct.gov/ocpd/cwp/view.asp?a=4087&q=479196#SPD>

- c. All payments to the Contractor encompassed by this Agreement are subject to adequate funding and the timely receipt of those funds from the State of Connecticut. The lack of receipt of these funds may result in the delay of payment beyond the 45 day period discussed above.

4. Judicial District Statewide List/Travel

Judicial District assignments will be made from a statewide list of approved Assigned Counsel. All approved JD attorneys will be on this list and eligible to accept cases in any court location, though under no obligation to accept such assignments. Travel time to and from court will be compensated for travel in excess of 10 miles from the attorney's office.

C. OTHER EXPENSES OF REPRESENTATION:

Payment for other expenses including but not limited to the following: expert witness fees, case investigation expenses, interpreter services, out-of-state travel, and transcripts may be granted. Prior authorization to incur such expenses in criminal cases must be obtained from the Chief Public Defender, Deputy Chief Public Defender or the Director of Assigned Counsel. For child protection matters, prior authorization for case related expenses must be obtained from the Director of Delinquency Defense and Child Protection. The authorization to incur expenses form may be found at this website:

<http://www.ct.gov/ocpd/cwp/view.asp?a=4087&q=479196#SPD> . All authorization forms should be emailed to Lynn D'Amora at lynn.damora@jud.ct.gov .

D. TRAINING

The OCPD will conduct trainings offered free of charge for Contractors throughout the State and will notify Contractors via email in advance the dates, time and locations of the trainings for registration. Contractors will have training opportunities from which to choose consistent with their court schedule in order to assist Contractors in meeting the requirements set forth in Section 2C and/or 2D of this Agreement.

SECTION 4 – SCOPE OF REPRESENTATION:

A. CASE ASSIGNMENTS

The Contractor agrees to provide legal representation, in accordance with section 2A of this agreement, to the specific client for whom the Contractor has been appointed and has filed an appearance.

1. Flat Rate Assignments

Each criminal docket number, including violations of probation, to which the Contractor is appointed pursuant to this Agreement shall constitute a "single" case and shall be compensated in accordance with section 3A(1) of this Agreement. For child protection matters each adult or child shall represent a "single" case and shall be compensated as such.

For AMC/GAL matters in Family Court, each child shall represent a single case and be compensated as such.

The Contractor may request that a particular flat rate case be converted to an hourly rate assignment based upon the complexity of that particular case. Such request must be done in writing to the Director of Assigned Counsel and must be accompanied by an accounting demonstrating that the Contractor has completed at least 10 hours of work in the case. The request must also include a brief summary of the reason the case should be converted to hourly billing.

2. Hourly Rate Assignments

Where the Contractor is appointed as an hourly billing case, the Contractor may only bill the OCPD a single hourly rate in accordance with the rates established in Section 3A(2) of this Agreement. The Contractor may submit bills for work performed on only one client at any given time. Bills submitted with overlapping times shall be returned.

B. RE-ARREST CASES

In cases where a Contractor's client fails to appear for a court appearance and a re-arrest warrant is issued, the Contractor agrees to continue to represent the client under the original appointment for one calendar year from the date the re-arrest was issued. If the client is re-arrested after such calendar year has passed the Contractor may take the assignment as a new case if the Contractor remains an approved assigned counsel. If the Contractor is no longer an approved assigned counsel on the date the client is re-arrested, the case shall be assigned to a different assigned counsel.

C. MULTIPLE DEFENDANT CASES

In cases involving more than two co-defendants, the attorney will represent only one of the co-defendants, and another assigned counsel will be appointed to represent any other co-defendant(s) for whom separate representation is necessary.

D. MULTIPLE CASES ASSIGNED FOR A SINGLE DEFENDANT ON THE SAME DAY

Where a Contractor is assigned to represent a client on multiple cases on the same date of appointment and the client is charged with 4 or more separate cases, in a single location, the Contractor shall accept the cases as a single hourly billing assignment and bill in accordance with Section 4A.

E. CASES ON THE TRIAL LIST AT THE TIME OF ASSIGNMENT

When a case or cases is on the trial list at the time of the assignment, such case shall be an hourly rate assignment.

F. PROBATION REVIEW HEARINGS

The Contractor may represent a former client for a probation review hearing. Such representation shall be billable at the rate of \$75 per hour and shall not be applied as a "case" against the Contractor's flat rate contract case load.

G. SENTENCE REVIEW/SENTENCE MODIFICATION PROCEEDINGS

In a flat rate case assignment pursuant to this agreement the Contractor may also submit hourly billings for representation before the Sentence Review Division of the Superior Court in connection with a Motion for Sentence Modification. If the case is being assigned for the first time to the Contractor for the purpose of Sentence Review/Modification, such assignment must be made as an hourly rate case.

H. JUVENILE CASES

Where a Contractor is appointed to represent a juvenile and that client's final disposition in that case results in the client being committed to the care and custody of the Department of Children and Families as a delinquent, the Contractor shall discuss the transfer with the client then notify the Juvenile Post Conviction and Re-entry Unit (PCU) of OCPD within 2 weeks of such commitment to ensure continued representation of the client pursuant to Practice Book Section 3-9(e). The contractor shall either refer the matter to the PCU for continued representation or inform the unit in writing of the Contractor's intent to continue with the post conviction representation.

Failure to comply with the PCU referral process may result in the termination of this agreement.

When referring the case to PCU, the Contractor shall have the client execute the "Comprehensive Authorization," which allows the Contractor to share client information with the PCU, and a completed referral form as well as any evaluations or pre-dispositional studies. Release of any documents considered to be part of the court file will require approval by the court prior to dissemination to the PCU. If the client is referred to the PCU for representation, the PCU will provide periodic updates to the Contractor during the commitment period. However, the Contractor will be required to appear on behalf of the client at the Permanency

Plan Hearing. Referral and release of information forms as well as PCU protocols are available on the Office of Chief Public Defender web site at the following link:

http://www.ct.gov/ocpd/lib/ocpd/SPD_Juvenile_Forms/POST_CONVICTION_UNIT_PROTOCOLS.pdf

All correspondence regarding post conviction clients shall be in writing to the following contact:

James J. Connolly, Esq.
Office of Chief Public Defender
30 Trinity Street, 4th floor
Hartford, CT 06106

james.connolly@jud.ct.gov
or
jennifer.markoja@jud.ct.gov

SECTION 5 - RECORDKEEPING AND REPORTING

The Contractor must maintain detailed records of services performed including the case names and docket numbers related to each appointment, the dates and times services were provided in each case related to each appointment, the type of service provided, and the amount of time worked providing such services. Case specific records should be based on the individual Contractor's time records maintained contemporaneously with the activities recorded.

In addition, the Contractor must maintain documentation of billings and receipts for payment of any necessary expenses approved by the OCPD and related to representation.

Failure to accurately maintain records will be considered a breach of this Agreement. Such breach will bar the Contractor from recovering payment for services that are not properly documented and the OCPD may also elect to pursue any of the remedies set forth in Section 6 - Standard Terms and Conditions, Paragraph R - Contractor Breach. If payment for services not properly documented has already been made, the OCPD has the right to demand return of payment and may also elect to pursue any of the remedies set forth in Section 6 - Standard Terms and Conditions, Paragraph R - Contractor Breach.

SECTION 6 - STANDARD TERMS AND CONDITIONS

- A. **Evaluations** – Except for information protected by attorney /client privilege, the OCPD reserves the right to inspect, monitor, or otherwise evaluate the work being performed under this Agreement. The Contractor agrees to cooperate with the OCPD in the monitoring and evaluation of services, which shall include, but not be limited to, providing reasonable access to and use of the Contractor's office for such purposes.
- B. **Delay** - If legal services are not provided consistent with the Rules of Professional Conduct, the Guidelines on Indigent Defense adopted by the Public Defender Services OCPD,

Connecticut General Statutes, Connecticut Practice Book, this Agreement, or within a reasonable time, the OCPD may exercise its options as outlined in Paragraphs S and T herein.

- C. **Contingencies** - Neither party hereto shall be liable to the other for breach or delay in delivering or accepting services hereunder if such breach or delay is caused by fire, strike, riot, war, Acts of God, delay of carriers, governmental order or regulation or other contingency beyond the reasonable control of the respective parties. The Contractor shall give notice to the OCPD of any such unavoidable delays or breach.
- D. **Non-Waiver** - Failure of the OCPD to insist upon strict performance of any terms and conditions herein shall not be deemed a waiver of any rights or remedies the OCPD may have, nor deemed a waiver of any rights or remedies the OCPD may have for any subsequent breach or non-compliance.
- E. **Equal Opportunity** - The Connecticut Division of Public Defender Services is an Equal Opportunity employer and purchaser. No employee or applicant for employment or vendor will be discriminated against because of race, color, religious creed, marital status, national origin, ancestry, sex, sexual orientation, age, or veteran's status. This clause applies equally to present or past history of mental disorder, mental retardation or physical disability including but not limited to blindness, unless it is shown by the OCPD that such disability prevents performance of the work involved.
- F. **Civil Rights Agreement** - (1) The Contractor agrees and warrants that in the performance of the Agreement such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, sexual orientation, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the OCPD on Human Rights and Opportunities (CHRO).
- G. **Americans With Disabilities Act of 1990** - This clause applies to those Contractors which are or will come to be responsible for compliance with the terms of the Americans with Disabilities Act of 1990 (43 USCS Section 12101-12189 and Sections 12201-12213) (Supp. 1993); 47 USCS Sections 225.611 (Supp. 1993). During the term of the Agreement, the Contractor represents that it is familiar with the terms of this Act and that it is in compliance with the law. The Contractor warrants that it will hold the state harmless from any liability

which may be imposed upon the State as a result of any failure of the Contractor to be in compliance with this Act.

Where applicable, the Contractor agrees to abide by the provisions of section 504 of the federal Rehabilitation Act of 1973, as amended, 29 USC Section 794 (Supp. 1993), regarding access to programs and facilities by people with disabilities.

- H. **Subcontractors** - The Contractor shall not subcontract any of the legal services required under this Agreement.
- I. **Notice of Litigation or Grievance** - The Contractor agrees to notify in writing Legal Counsel of the OCPD, and the Director of Assigned Counsel if the Contractor is, or has a reasonable cause to expect to be, subject to litigation or a grievance or arising from an assigned counsel assignment, or any other disciplinary action. This includes any pending discipline matters, contempt of court citations, and breaches of ethics or other allegations of misconduct. This notice must be provided to:

Deborah DelPrete Sullivan
Legal Counsel
Office of the Chief Public Defender
30 Trinity Street 4th Floor
Hartford CT
860-509-6405

John R. Day
Director of Assigned Counsel
30 Trinity Street 4th Floor
Hartford CT 06106

- J. **Prohibition Against Assignment** - The Contractor shall not transfer, pledge or otherwise assign this Agreement or any rights or responsibilities hereunder to any third party.
- K. **Agreement Amendments** - Any changes to the Agreement will be made in the form of a written amendment signed by both parties.
- L. **No Joint Venture** - Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship among the parties hereto, nor shall any party have the right, power or authority to create any obligation or duty, express or implied, on behalf of any other party.
- M. **Choice of Law** - This Agreement is governed by the laws of the State of Connecticut. It is agreed that any questions of interpretation of this Agreement or actions brought pursuant to this Agreement shall be according to Connecticut law.

- N. **Applicable Law** - The Contractor shall comply with Federal, State and local laws, standards and regulations applicable to the Contractor's practice and the services being provided under this Agreement. Unless otherwise provided by law, the Contractor is not relieved of compliance while formally contesting the authority to require such standards, regulations, statutes, ordinance or criteria.
- O. **Copyrights** - The Contractor shall not distribute any materials under this Agreement containing the copyrighted works of others, including training materials, without the written consent of the copyright holder. The Contractor shall obtain any necessary authorization(s) for usage of any such third-party materials.

Unless otherwise indicated, the OCPD retains exclusive rights to ownership in its copyrighted protected works. All rights are reserved and any reproduction, adaptation, distribution, dissemination or making available of such copyrighted works is strictly prohibited unless acknowledgment the OCPD's copyright is acknowledged thereon

- P. **Approval Notification** - The OCPD assumes no liability for payment under the terms of this Agreement until the Contractor is notified that this Agreement has been approved by the OCPD, a fully executed Agreement has been issued and documentation of work performed has been provided pursuant to Section 3B of the Agreement.
- Q. **Termination of This Agreement** - Either party may terminate the Agreement to provide legal representation for any reason by providing thirty (30) days prior written notice to the other party.

The Contractor shall be subject to immediate removal from his or her cases and termination of this Agreement for failure to adhere to the terms of this Agreement, Standing Orders of Juvenile Matters or the Standards of Practice assumed by OCPD or for other good cause as determined by the OCPD. The decision by the OCPD is final.

In the event the legal rights or the best interest of the Contractor's clients are endangered, the OCPD may terminate the Agreement and take any immediate action, without notice, it deems appropriate to protect the legal rights and interests of the clients.

Upon termination of the Agreement by either party, OCPD will determine whether the reassignment of the Contractor's cases is in the best interest of Contractor's clients. If so, the court shall be notified and the Contractor shall file the appropriate Motions to Withdraw from its pending cases. The Contractor shall assist in the orderly and timely transfer of appointments as directed by the OCPD including forwarding client files upon request of the OCPD or newly assigned attorney. In addition, the Contractor shall forward via first class postage prepaid mail a written notice to each client informing the client that the Contractor will no longer be representing them and that a new attorney will be assigned by the OCPD. Said notice shall be copied to the court and the OCPD. The Contractor may seek reimbursement for the costs of postage from the OCPD.

Despite OCPD's determination that it is not in the client's best interest for the Contractor to withdraw and such motions are filed, OCPD shall have standing to object to these motions. If Motions to Withdraw are granted by the court the Contractor shall assist OCPD in the transfer of case files and any necessary materials to new counsel assigned to represent the former client consistent with the above paragraph.

So long as the attorney remains on any cases assigned pursuant to this Agreement, all provisions of this Agreement survive any termination or non-renewal. Section 6 - Standard Terms and Conditions, Paragraph T, Contractor Breach and Paragraph W, Contractor Records and Access survive this Agreement whether or not the Contractor continues as counsel on any cases assigned pursuant to this Agreement.

- R. **Contractor Breach** - If the Contractor becomes physically or mentally incapable, breaches or otherwise fails to comply with any of the terms, provisions or conditions of this Agreement or any Amendments which become a part of this Agreement, the OCPD may elect to pursue any one or more of the following remedies in any combination or sequence:
- Seek damages;
 - Withhold or reduce payment(s) until the breach is resolved to the satisfaction of the OCPD;
 - Require the Contractor to correct or cure the breach to the satisfaction of the OCPD;
 - Either temporarily or permanently discontinue the execution of all or part of the services;
 - Require the unexpended or improperly expended funds be returned to the OCPD;
 - Recommend to the court that the Contractor's case or cases be re-assigned to another assigned counsel or the OCPD staff attorney as recommended by the OCPD;
 - Terminate this Agreement,
 - Take such other action appropriate and in the best interests the OCPD, along with any other remedies provided by law; and/or,
 - Any combination of the above actions.
- S. **Recoup of Payments Following Termination or Breach** - The OCPD reserves the right to recoup any deposits, prior payment, advance payment or down payment made if the Agreement is terminated by either party or breach occurs. Allowable costs incurred to date of termination or breach for operation or transition of representation under this Agreement shall not be subject to recoupment. The Contractor agrees to return to the OCPD any funds not earned in accordance with the terms and conditions of the Agreement and, if the Contractor fails to do so upon demand, the OCPD may recoup said funds from any future payments owing under this Agreement or any other Agreement between the OCPD and the Contractor.
- T. **Contractor Records and Access** - To the maximum extent permitted by law, the OCPD shall have access to all financial records and accounts for each Agreement year. The Contractor shall maintain books, records, documents, program and individual service records, and other evidence of its accounting and billing procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature incurred in the

performance of this Agreement. These financial records shall be subject at all reasonable times to monitoring, inspection, review or audit the OCPD or its agents.

The Contractor will retain all such books, records and other financial documents concerning this Agreement for a period of three (3) years after the close of the Agreement term and three additional years if an audit is performed. If any litigation, claim or audit is started before the expiration date of this three (3) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved or the expiration of the three year period, whichever is later.

To the maximum extent permitted by law, the Contractor shall maintain client files and make them available for inspection by any agent of the OCPD. The Contractor must immediately notify the OCPD of any change in his or her contact information, including address, phone and fax numbers, or email address.

- U. **Safeguarding Client Information** - The Contractor agrees to safeguard the use and disclosure of information concerning all applicants for and all clients who receive service under this Agreement in accordance with all applicable Federal and State laws and court rule concerning attorney /client privilege. Any Contractor considered a "covered entity" under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), agrees to follow HIPAA's privacy regulations governing the use of protected health information. Notwithstanding any other provision to the contrary, the Contractor is solely responsible for any disclosure of information in violation of Federal, or State law by it, its employees and agents.
- V. **Service Performance Standards** - The Contractor agrees that all services shall be performed with skill and professional competence in accordance with the Rules of Professional Conduct, any applicable Standing Court Orders, Connecticut General Statutes, Connecticut Practice Book and the Guidelines on Indigent Defense adopted by the Connecticut Public Defender Services OCPD.
- W. **Entire Agreement** - The terms and conditions of this Agreement constitute the entire agreement between the parties hereto and supersede all previous agreements, promises or representations whether written or oral. This Agreement may not be changed, altered or modified except by an instrument in writing signed by a duly authorized representative of both parties.

X. **Acceptance** - The Contractor agrees to and accepts the terms and conditions stated herein.

CHIEF PUBLIC DEFENDER

Signature of Contractor/Firm Representative

BY: _____

Susan Storey

Susan O. Storey

5/17/13

DATE: _____