STATE OF NORTH CAROLINA
JUDICIAL BRANCH, OFFICE OF INDIGENT DEFENSE SERVICES

REQUEST FOR PROPOSALS FOR LEGAL SERVICES CONTRACTS

RFP #13-0001

Title: Indigent Non-Capital Criminal Cases and Treatment Courts: Trial Level Services in Judicial Districts 3A, 8A, 8B, 11A, and 11B (Qualifying and Cost/Price Offers)

Issue Date: November 4, 2013

Issuing Agency: North Carolina Office of Indigent Defense Services (IDS)
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123 West Main Street, Suite 400
Durham, NC 27701
www.ncids.org

Coverage: This RFP contains information related to all categories of legal services for which IDS may seek contract offers in various counties and districts throughout the state, including some contract categories for which offers are not being sought at this time in response to this RFP. ***Please refer to Sections 1.1 and 3.8 through 3.11 of this RFP for the specific categories of legal services for which contract offers are being sought at this time in response to this RFP.***

Questions: All questions about this RFP must be directed in writing to Emily E. Portner, IDS Contracts Administrator, by email to Emily.E.Portner@nccourts.org. Verbal communications shall not be binding on IDS or considered part of the RFP process.

Deadline for Offers: Sealed qualifying offers for furnishing any of the services described herein must be submitted on the Offer Forms for Districts 3A, 8, and 11, which are available at www.ncids.org, and received by IDS or postmarked no later than **December 13, 2013**. ***Offers for treatment court cases, and other per session court cases (as specified herein) must be accompanied by one original and separately sealed cost/price offer with a proposed per session price.*** Telephone, facsimile, and electronically transmitted offers will not be accepted. Offerors should indicate the name of the attorney, law firm, or non-profit and the RFP number(s) on the front of the sealed offer envelope(s) or package(s).

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PART I: GENERAL INFORMATION

1.1 Request for Proposals (RFP) Description

The North Carolina Office of Indigent Defense Services (IDS) is seeking contract offers/proposals to provide effective and efficient legal services to persons who are determined by the state courts to be entitled to appointed counsel at state expense. Offers must demonstrate that the legal services will meet constitutional, statutory, and other legally mandated standards. The awarded contracts will be for two-year terms beginning on June 1, 2014 or another start date determined by IDS and the successful offeror(s).

This RFP seeks offers for adult non-capital criminal cases and some treatment court cases in Districts 3A (Pitt County), 8A (Greene and Lenoir Counties), 8B (Wayne County), 11A (Harnett and Lee Counties), and 11B (Johnston County). This RFP does not seek offers for the following: 1) Non-conflict cases handled by the public defender and special counsel offices; 2) juvenile delinquency cases, special proceedings, abuse/neglect/dependency and termination of parental rights cases, and child support contempt cases, which will be covered by a subsequent RFP; 3) Truancy Court in Lee County or the newly formed Veterans Court in Harnett County; or 4) potentially capital cases at the trial level, direct appeals, or post-conviction cases, which are being excluded from the initial RFPs.

This RFP contains the applicable procedures, requirements, and instructions for offers. It is organized into four parts:

Part I	General Information
Part II	Offer Requirements and Qualifications
Part III	Offer Instructions and Terms
Part IV	Standard Contract Terms and Conditions

It shall be the responsibility of all offerors to read this entire document, including any attachments and documents incorporated by reference, and to comply with all requirements specified herein. By submitting an offer, all offerors certify that they have read, understand, and agree to all of the conditions set forth in this RFP.

1.2 Authority and Funding Source

Section 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391, as well as § 18A.4 of Session Law 2013-360, directs IDS to issue RFPs for the provision of all classes of legal cases for indigent clients in all judicial districts. If the proposed contract can provide representation more efficiently than current costs and ensure that the quality of representation is sufficient to meet applicable constitutional and statutory standards, the special provision directs IDS to use private assigned counsel funds to enter into contracts. In selecting contractors, the special provision further directs IDS to consider both the cost-effectiveness of the proposed contract and the ability of the potential contractor to provide effective representation for the clients served by the contract.

1.3 Overview of RFPs and Contracts[1]

Interested offerors are encouraged to view an on-line virtual training program about the RFP and contracts process, titled "The ABCs of RFPs and Contracts," before reading this RFP and preparing offers. That program is available on the "RFPs & Contracts" page on the IDS website. (Go to www.ncids.org and click on "Information for Counsel" and then "RFPs & Contracts.") The program can be viewed for free or for continuing legal education ("CLE") credit and a modest charge.

IDS may enter into contracts with individual attorneys, private law firms, and not-for-profit legal representation organizations to provide the covered services. IDS originally considered seeking offers from consortia of attorneys, but has decided not to do so at this time. While there may be some modest benefits to consortia, such as access to shared resources and an ability to provide supervision for less experienced consortia members, allowing offers from consortia would also have downsides and present complications. Thus, IDS will not be seeking contract offers from consortia, at least not at this time pursuant to this RFP. *Depending on the caseload in each county, as well as the number and quality of offers that IDS receives, contractors will essentially serve on a roster with other contractors. As a practical matter, contractors covering a given contract category in a given area will be permitted to treat themselves as consortia and, with advance IDS approval, to specialize within contract categories.* (See Section 2.2 of this RFP and Section 2 of the attached standard contract terms and conditions for definitions of the various contract categories.)

If an offeror is a law firm or non-profit, every participating attorney will be required to demonstrate his or her qualifications, and material responsibilities required by the contracts cannot be assigned to substitute service providers. All contracts will be personal service contracts with independent contractors.

Contractors will be required to report complete and timely data about all contract cases, including actual time spent on each contract case or, if applicable, each substantive hearing or session. IDS has developed a web-based Contractor Case Reporting System for that purpose, and the required data fields will be similar to the fields that are currently required on the fee application forms. Contractors will also be required to print recoupment applications from the web-based system and to submit them to the presiding judge for entry of a civil judgment for attorney fees in all recoupment-eligible cases. (See Section 2.6 of this RFP and Section 6 of the attached standard contract terms and conditions for details.)

For most case types, upon receipt of all required data reporting, IDS will pay contractors a set monthly payment that is based on an expected range of annual dispositions or substantive hearings. (For example, a misdemeanor contractor with one caseload unit will be required to dispose of a minimum of 102 cases and a maximum of 124 cases annually.) Because the monthly payments throughout the contract term represent up-front compensation for those dispositions or hearings, contractors generally will be

[1] Contractors who spend 30 or more hours per week on indigent cases may qualify for federal loan forgiveness of their law student loans. For more information, contact FedLoan Servicing at (855) 265-4038.

obligated to continue the representation of pending contract clients without additional compensation after the contract expires or is terminated. (See Sections 3.9 and 3.11 of this RFP and Section 5.3 of the attached standard contract terms and conditions for details.)

The amount of the monthly payment will vary by the contract category(ies) and the number of caseload units that are covered by a specific contract. Based on IDS' case and cost data for the past three fiscal years, the set monthly payment is intended to cover attorney time and all routine out-of-pocket expenses (including most in-state travel). However, with the exception of the per session case types identified below, contractors will be able to seek additional compensation or a reduction in their contractual caseload for extraordinary cases. Contractors will also be able to seek reimbursement of extraordinary expenses. The costs of preapproved investigators, experts, and interpreters will not be included in the contractual payment amount, and IDS will continue directly paying those necessary expenses of representation. (See Sections 3.9 and 3.11 of this RFP and Sections 7 and 13 of the attached standard contract terms and conditions for details.)

In limited case types—*i.e.*, child support contempt and treatment courts, as well as other per session courts, such as per session probation violations in Greene County District Court—IDS will seek per session cost/price offers in addition to qualifying offers. Upon receipt of all required data reporting, payment for all sessions handled by a contractor during the prior month will issue on a monthly basis.

1.4 Applicable Contracting Procedure

Contracts for legal services with the Judicial Branch are not subject to the competitive procurement requirements in Chapter 143 of the General Statutes. Despite being exempt, IDS intends to follow the principles in Article 3 of Chapter 143 when appropriate. The IDS Commission has adopted a governing document, titled "Policy for the Issuance of Requests for Proposals and Establishment of Legal Services Contracts," which is available on the IDS website (www.ncids.org) and is incorporated into this RFP by reference.

IDS reserves the right to reject any or all offers received or to negotiate in any manner necessary to serve the best interests of the clients. IDS reserves the right to seek clarifications of offers and to award contracts without further clarification. IDS reserves the right to amend or cancel this RFP without liability if it would be in the best interest of the state and public to do so. IDS reserves the right to award contracts by category of case and by section of this RFP, and to make partial, progressive, or multiple awards.

1.5 Schedule of Events

IDS intends to adhere to the following time schedule as closely as possible. However, by publishing this schedule, IDS does not represent, agree, or promise that any particular contract will be awarded or executed on a specified date.

Release of RFP:	November 4, 2013
Deadline for Offers to be Received or Postmarked:	December 13, 2013
Public Opening of Qualifying Offers:	December 18, 2013
Public Opening of Cost/Price Offers:	February 17, 2014
Notification of Award of Contracts:	March 4, 2014
Execution of Contracts:	April 25, 2014[2]
Effective Date for Start of Contract Services:	June 1, 2014

All offers shall be deemed valid for 90 days after the date of opening and prior to notification of award. When in the public interest, IDS may ask offerors to extend the time offered for acceptance of offers by IDS. IDS will provide notice of contract awards to all offerors by mail or electronically.

1.6 General Offer Review Procedures

The instructions and information necessary to prepare and submit offers are found in Part III of this RFP. Sealed qualifying offers must be submitted on the Offer Forms for Districts 3A, 8, and 11 that are available at www.ncids.org. ***Offers for treatment court cases, and other per session court cases (as specified herein) must be accompanied by one original and separately sealed cost/price offer with a proposed per session price.*** Sealed offers must be received by IDS or postmarked by the submission deadline date. The following events will then occur:

A. Public Opening of Qualifying Offers

IDS will publicly open all qualifying offers at 10:00 a.m. on the date specified in Section 1.5 ("Schedule of Events") at 123 West Main Street, Suite 400, Durham, North Carolina 27701. At the time of opening, the names of the offerors, the county or counties covered by the offers, and the number of caseload units or sessions for each contract category covered by the offers will be tabulated.

B. Inadequate Offers

IDS will reject unexecuted offers and offers that do not substantially comply with the requirements, qualifications, and instructions set forth in this RFP, unless they are cured by the offeror or waived by IDS in accordance with Section 3.5.B. of this RFP. IDS may investigate and seek clarification of apparent errors or ambiguities, but shall not conduct such investigation or clarification if it will give an offeror an unfair advantage.

[2] IDS and successful offerors may be able to execute contracts and start contract services earlier than indicated above if IDS does not receive protests from unsuccessful offerors. *See* "Policy for the Issuance of Requests for Proposals and Establishment of Legal Services Contracts," Section .0800, *available at* www.ncids.org.

C. Facially Adequate Offers

An evaluation committee appointed by the IDS Director will evaluate offers that substantially comply with the requirements, qualifications, and instructions set forth in this RFP, including offers that are cured by the offeror and offers that contain errors that are waived by IDS in accordance with Section 3.5.B. of this RFP. The evaluation committee shall evaluate each offer based on its total characteristics and any other information available to IDS and the committee. During the evaluation period, IDS or the evaluation committee may:

1. Request additional information from offerors to clarify information or material in an offer;
2. Conduct negotiations with offerors, during which IDS may discuss adjustments to proposed caseloads, coverage, and level of services, including when the qualified offers received by IDS are insufficient to cover the full caseload in the county or counties covered by the RFP; and
3. Seek references from and consult with judges and other local court system actors who have knowledge of offerors, as well as local caseloads and practices, to aid in the review of the offers' merits.

D. Public Opening of Cost/Price Offers

For case types where cost/price offers are sought, IDS will publicly open all cost/price offers submitted by qualified offerors at 10:00 a.m. on the date specified in Section 1.5 ("Schedule of Events") at 123 West Main Street, Suite 400, Durham, North Carolina 27701. At the time of opening, the names of the offerors whose cost/price offers are opened, and the prices they have proposed, will be tabulated.

E. Contract Awards

Contracts shall be awarded based on the best overall value as determined by IDS and the evaluation committee. Best overall value evaluation factors may include, but are not limited to, quality factors, prior record of performance, expertise with similar services, and cost (if cost/price offers are solicited and opened). Award shall be made to the responsive and responsible offeror(s) whose offer(s) is(are) determined in writing to be the most advantageous to IDS and its clients, using all of the evaluation factors set forth in Part II of this RFP. Award of any contract shall be final only when IDS and the successful offeror have properly completed and executed the contract.

F. Standard Contract Terms and Conditions

IDS will offer all successful offerors the same standard contract terms and conditions, and all contracts will be substantively similar to the standard contract terms and conditions in Part IV of this RFP, unless otherwise specifically agreed by IDS. An offeror may request in Section II.C. of the 3A, 8, and 11 Offer Forms to modify one or more of the standard contract terms and conditions, but IDS must approve any requested modification(s).

PART II: OFFER REQUIREMENTS AND QUALIFICATIONS

2.1 Offer Evaluation Criteria

The evaluation committee shall evaluate offers based on the criteria listed below, and contracts shall be awarded based on the best overall value as determined by IDS and the committee. IDS and the committee shall be the sole determiners of the relative weight given to any criterion.

1. The offeror has demonstrated the required qualifications and experience, a commitment to indigent defense, and a strong legal practice:
   a. The offeror meets the minimum offeror qualifications for the categories of cases covered by the offer, which are set forth in Sections 2.2 and 2.3 of this RFP.
   b. The offeror is able to adhere to any applicable performance guidelines, including but not limited to timely client contact and the filing of necessary and appropriate motions.
   c. The offeror has demonstrated experience with mental health, substance abuse, domestic violence, and forensic issues, as well as non-English speaking clients.
   d. The offeror has a plan for handling immediate appointments and an ability to identify conflicts of interest as of the contract's effective date.
   e. The offeror is able to cover court schedules for the contract categories included in the offer.
   f. The offeror has adequate and appropriate staffing levels and supervision, including attorneys, support staff, and any outside resources such as law student interns; if an offeror is a solo practitioner or staffing levels are minimal, the offeror has a plan for providing necessary support services in appropriate cases.
   g. If the offer is not for full-time indigent work, the offeror is able to prioritize the contract work vis-à-vis retained work and other federal and state appointed work.
   h. The offeror is able and willing to track and report case data in a format and timeframe mandated by IDS.
   i. The offeror is able to adhere to any caseload and workload standards that may be issued by IDS.
   j. The offeror has a strong ethical track record and reputation.
   k. The offeror has or will obtain malpractice insurance coverage.

2. The offeror has adequate office facilities and legal research capabilities:
   a. The offeror has adequate and proximate office facilities or can demonstrate some other ability to be available to the court, to meet with contract clients in the county where the case is pending, including incarcerated clients, and to provide adequate phone coverage for calls from contract clients.
   b. The offeror has adequate access to legal research tools, including a law library or online legal research tools.

3. The offer is consistent with the needs and best interests of the indigent clients, the local court system, and IDS.

In addition to the criteria listed above, IDS will evaluate the available caseload, the local court schedules, the current number of local contractors or private assigned counsel, and the relative cost of administering contracts. IDS has the sole discretion to apportion or not apportion caseloads between offerors, and to award or not award contracts.

2.2 Definitions of Contract Categories

The following definitions apply to all of the contract categories for which IDS may seek offers in various counties and districts throughout the state, including some contract categories for which offers are not being sought at this time in response to this RFP. ***Please refer to Sections 1.1 and 3.8 through 3.11 of this RFP for the specific categories of legal services for which contract offers are being sought at this time in response to this RFP***.

A. Adult Misdemeanor Cases

"Adult misdemeanor cases" include all cases at the trial level where the client is an indigent adult, a juvenile who was 16 or 17 years of age at the time of the offense, or a juvenile who was previously transferred to Superior Court for trial as an adult and the most serious original charge is a misdemeanor non-traffic, misdemeanor traffic, driving while impaired ("DWI") or habitual DWI, habitual assault, extradition, probation violation in District Court, or non-child support contempt case in District Court (including criminal and civil contempt cases and contempt of a parent in a juvenile delinquency case) or before the Post-Release Supervision and Parole Commission (in counties where such hearings are held in person or by videoconference, including Burke, Craven, Granville, Rowan, Wake, and Wayne). "Adult misdemeanor cases" do not include the per session case types covered by Section 2.2.J. of this RFP. Representation in a misdemeanor case may be in District or Superior Court.

B. Adult Low-Level Felony Cases

"Adult low-level felony cases" include all cases at the trial level where the client is an indigent adult, a juvenile who was 16 or 17 years of age at the time of the offense, or a juvenile who was previously transferred to Superior Court for trial as an adult and the most serious original charge is a Class E through Class I felony, as well as probation violations in Superior Court, non-child support contempt cases in Superior Court (including criminal and civil contempt cases), post-release supervision and parole preliminary revocation hearings where the hearing officer has found an entitlement to counsel, post-release supervision and parole revocation hearings where the Post-Release Supervision and Parole Commission has found an entitlement to counsel (in counties where such hearings are held in person or by videoconference, including Burke, Craven, Granville, Rowan, Wake, and Wayne), and any other adult low-level felony or misdemeanor charges that are brought against a previously assigned contract client while the original low-

level felony is still pending. "Adult low-level felony cases" also include habitual felon cases where the most serious possible conviction would be a low-level felony, and may (as specified in Section 4.10(d) of the attached standard contract terms and conditions) include habitual felon cases where the most serious possible conviction would be a high-level felony. Other than contempt cases, representation in a low-level felony case may be in District or Superior Court.

C. Adult High-Level Felony Cases

"Adult high-level felony cases" include all cases at the trial level where the client is an indigent adult, a juvenile who was 16 or 17 years of age at the time of the offense, or a juvenile who was previously transferred to Superior Court for trial as an adult and the most serious original charge is a Class A felony that is not a "capital offense" (as defined by IDS Rule 2A.1(a)) through a Class D felony, as well as satellite-based monitoring "bring back" hearings and any other adult criminal charges that are brought against a previously assigned contract client while the original high-level felony is still pending. "Adult high-level felony cases" also include habitual felon cases where the most serious possible conviction would be a high-level felony. Representation in a high-level felony case may be in District or Superior Court.

D. Juvenile Delinquency Felony, Misdemeanor, and Chapter 5A Contempt Cases

"Juvenile delinquency felony, misdemeanor, and Chapter 5A contempt cases" include all cases at the trial level where the client is a juvenile who was under the age of 16 at the time of the offense and the most serious original charge is a felony, misdemeanor, or Chapter 5A contempt case, as well as motions for review (for probation violations, extended commitment, post-release supervision violations, and modifications/extensions/terminations of probation) and detention and status review hearings where new counsel needs to be assigned. In juvenile delinquency cases, the juvenile is conclusively presumed to be indigent. Representation in a juvenile delinquency felony, misdemeanor, or Chapter 5A contempt case includes time in District Court, and may (as specified in Section 4.10(e) of the attached standard contract terms and conditions) include time in Superior Court when a case is transferred for trial as an adult. Because there is no statutory entitlement to appointed counsel in a hearing to review the progress of a juvenile on protective supervision, this contract category does not include representation at such hearings.

E. Special Proceedings

"Special proceedings" include all cases at the trial level involving Chapter 35A competency/guardianship proceedings (incompetency proceedings, restoration of competency proceedings, sterilization proceedings, and proceedings involving the modification of a guardianship order, removal of a guardian, resignation of a guardian, or appointment of a successor guardian when Chapter 35A assigns payment responsibility to IDS), Chapter 122C civil commitments involving an indigent respondent, Chapter 108A protective services for indigent disabled adults, and minors requesting judicial waiver of parental consent to obtain an

abortion or petitioning to marry, where the contractor will be the attorney or guardian ad litem ("GAL")-attorney advocate for the respondent, disabled adult, or minor.

F. Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Attorney)

"Abuse/neglect/dependency cases" include all cases at the trial level where the client is an indigent parent, the Department of Social Services has filed a petition alleging that a juvenile is abused, neglected, or dependent, and the contractor will be the client's attorney (not the client's GAL). "Abuse/neglect/dependency cases" may include representation of an indigent non-parent who is named as a respondent in the petition or motion, such as a guardian, custodian, or caretaker, if the presiding judge determines that due process requires appointment of counsel for a particular non-parent respondent. "Termination of parental rights cases" include all cases at the trial level where the client is an indigent parent, the Department of Social Services or a private party has filed a petition or motion to terminate the client's parental rights, and the contractor will be the client's attorney (not the client's GAL).

G. Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Guardian ad Litem Services)

"Abuse/neglect/dependency and termination of parental rights respondent GAL services" include all best-interest GALs who are appointed to represent indigent minor or incompetent respondents in abuse/neglect/dependency and termination of parental rights cases.

H. Child Support Contempt Cases

"Child support contempt cases" include all cases at the trial level where the client is an indigent defendant and contempt is being sought as a means of enforcing a child support obligation. Representation in a child support contempt case includes time on a per session basis in District Court, including time on any intervening motions hearings, any intervening administrative settings or other regularly scheduled court appearances, any intervening interstate cases assigned to a contractor on a different date, and any *de novo* appeal to Superior Court in an individual criminal contempt case.

I. Treatment Court Cases

"Treatment court cases" include all cases at the trial level where the client is a participant in a treatment court of any type, including drug treatment court (adult, juvenile, and family), mental health treatment court, DWI treatment court, veterans treatment court, tribal court, and truancy court. Representation in a treatment court case includes time on a per session basis in District or Superior Court, including time on any intervening team meetings. Representation in a treatment court case ceases when a client is discharged from the program and does not extend to proceedings before the referring court. Contracts for treatment

courts may require coverage of one or more treatment courts and will not necessarily cover the entire contract category.

J. Other Per Session Court Cases in District Court

"Other per session court cases" include, but are not limited to, probation violations and domestic violence probation violations in Wake County District Court when those case types are handled on a per session basis.

2.3 Minimum Offeror Qualifications

If an offer is submitted by a law firm or non-profit organization, all participating attorneys must meet the minimum qualifications set forth below:

A. Adult Misdemeanor Cases

The offeror must be licensed to practice law in North Carolina; a significant portion of the offeror's practice must be or intended to be criminal law; the offeror must have read the "Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level" issued by the IDS Commission; the offeror must have observed at least one district court session and one district court bench trial in the county; the offeror must have attended at least three (3) hours of continuing legal education in the area of criminal law within the past year; and the offeror must demonstrate that he or she has the required legal knowledge and skill necessary for representation in misdemeanor cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

B. Adult Low-Level Felony Cases

The offeror must have been licensed to practice law in North Carolina for at least one (1) year; the offeror must have tried at least two (2) jury trials to verdict or have completed at least twelve (12) hours of continuing legal education in the area of criminal jury trials; the offeror must be competent to try a Superior Court case before a jury; and the offeror must demonstrate that he or she has the required legal knowledge and skill necessary for representation in low-level felony cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

C. Adult High-Level Felony Cases

The offeror must have been licensed to practice law in North Carolina for at least three (3) years; the offeror must have tried at least three (3) jury trials to verdict; the offeror must be competent to try a Superior Court case before a jury; and the offeror must demonstrate that he or she has the required legal knowledge and skill necessary for representation in high-level felony cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

D. Juvenile Delinquency Felony, Misdemeanor, and Chapter 5A Contempt Cases

The offeror must be licensed to practice law in North Carolina; the offeror must have read the "Performance Guidelines for Appointed Counsel in Juvenile

Delinquency Proceedings at the Trial Level" issued by the IDS Commission and G.S. 7B-1500 through 7B-2606, and be familiar with other relevant law; the offeror must have observed at least one juvenile delinquency court session and one contested juvenile delinquency hearing in the county; the offeror must have attended at least three (3) hours of continuing legal education in the area of juvenile delinquency law within the past year, if such training was reasonably available; the offeror must be willing to continue to represent a juvenile if the juvenile's case is transferred to Superior Court and if the offeror is determined competent to do so in consultation with IDS; and the offeror must demonstrate that he or she has the required legal knowledge and skill necessary for representation in delinquency cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

E. Special Proceedings

The offeror must be licensed to practice law in North Carolina; the offeror must be familiar with the relevant specialized areas of law, including North Carolina law governing competency/guardianship proceedings and civil commitments; the offeror must have observed at least one special proceedings court session and one contested special proceedings hearing in the county; the offeror must have attended at least three (3) hours of continuing legal education in the area of special proceedings law within the past two (2) years, if such training was reasonably available; and the offeror must demonstrate that he or she has the required legal knowledge and skill necessary for representation in the cases listed in this category and will apply that knowledge and skill with appropriate thoroughness and preparation.

F. Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Attorney)

The offeror must be licensed to practice law in North Carolina; the offeror must have read the "Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency or Termination of Parental Rights Proceedings at the Trial Level" issued by the IDS Commission and G.S. 7B-100 through 7B-1112, and be familiar with other relevant law; the offeror must have observed at least one court session in which abuse, neglect, dependency or termination of parental rights cases were heard and one contested adjudicatory or termination hearing in the county; the offeror must have attended at least three (3) hours of continuing legal education in the area of parental rights law within the past year, if such training was reasonably available; and the offeror must demonstrate that he or she has the required legal knowledge and skill necessary for representation in these cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

G. Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Guardian ad Litem Services)

The offeror must be licensed to practice law in North Carolina or have at least a bachelor's degree in social work, psychology, or other related social services

field; the offeror must have experience working with populations with mental health issues, developmental disabilities, and/or substance abuse issues; the offeror must have a working knowledge of the law and proceedings in abuse, neglect, dependency and termination of parental rights cases; the offeror must have observed at least one court session in which abuse, neglect, dependency or termination of parental rights cases were heard and one contested adjudicatory or termination hearing in the county; and the offeror must demonstrate that he or she has the required knowledge and skill necessary for providing services in these cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

H. Child Support Contempt Cases

The offeror must be licensed to practice law in North Carolina; the offeror must be familiar with Chapter 50 and Chapter 110 of the North Carolina General Statutes and other relevant law on child support enforcement; the offeror must have observed at least one child support enforcement court session and one child support contempt hearing in the county; the offeror must have attended at least three (3) hours of continuing legal education in the area of child support enforcement law within the past two (2) years, if such training was reasonably available; and the offeror must demonstrate that he or she has the required legal knowledge and skill necessary for representation in child support enforcement cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

I. Treatment Court Cases

The offeror must be licensed to practice law in North Carolina; the offeror must be familiar with the laws and procedures governing treatment courts; the offeror must have observed at least one applicable treatment court session in the county; the offeror must have attended any specialized training required by the court or, if none is required, at least three (3) hours of continuing legal education in the applicable area of treatment court law and procedure within the past two (2) years, if such training was reasonably available; and the offeror must demonstrate that he or she has the required legal knowledge and skill necessary for representation in the applicable treatment court cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

J. Other Per Session Court Cases in District Court

The offeror must meet the same minimum qualifications that are required for the contract category that would otherwise apply to the cases if they were not handled on a per session basis.

2.4 Waivers of Criteria and Qualifications

By completing Section II.B. of the Districts 3A, 8, and 11 Offer Forms, offerors may seek a waiver of specific criteria listed in Sections 2.1 or 2.3 of this RFP. However, an inability to meet all criteria will be material to the evaluation. If an offeror is a solo practitioner and has limited experience with the types of cases covered by one or more

contract categories for which he or she is submitting an offer, and a local attorney with more experience is willing to serve as a mentor for the offeror, the offeror is encouraged to submit Attachment A ("Optional Mentor Agreement"). If IDS awards a contract to an offeror who has sought and obtained a waiver of specific criteria, IDS may impose additional contractual requirements, including but not limited to attendance at specialized training and consultation with a senior attorney named by IDS before proceeding to trial in a case.

2.5 Waiver of Access to Confidential References

By signing and submitting the Offer Forms in response to this RFP, offerors acknowledge that IDS intends to seek references about all offerors, both from people identified by the offerors and others not identified by the offerors. All offerors understand that IDS intends to seek references about each offeror from judges resident in the county, regardless of whether they are identified as references by the offeror. All offerors consent to a confidential inquiry by IDS of persons familiar with their competence. All information received by IDS concerning any offeror, including reference information about any offeror, shall be confidential and available for use only by IDS, and shall not be disclosed except as required by law. All offerors explicitly waive any right to review reference information obtained by IDS.

2.6 Complete and Timely Data Reporting

By signing and submitting the Offer Forms in response to this RFP, all offerors agree that, if they are awarded contracts, they will track and report data about all contract cases, including actual time spent on each contract case (or hearing or session), in the format and timeframe directed by IDS. All offerors acknowledge that a failure to track and report such data may constitute breach of contract and that IDS may withhold contractual payments until the required reports are received and/or impose financial penalties for incomplete or late reports. (See Section 6 of the attached standard contract terms and conditions for details.) Potential offerors may review IDS' Contractor Orientation Packet and/or the User Guide for the Online Contractor Case Reporting System for additional information about contractors' data reporting obligations. Both are available on the "RFPs and Contracts" page of the IDS website.

2.7 Compliance with Quality Assurance Efforts

By signing and submitting the Offer Forms in response to this RFP, all offerors acknowledge that, if they are awarded contracts, their performance will be evaluated on an ongoing basis. All offerors understand that, if they are awarded contracts, they will be subject to courtroom observations, file reviews that ensure client confidences are protected, and other efforts to monitor the quality of representation as required by IDS. All offerors also acknowledge that, if they are awarded contracts, IDS may seek peer review from judges and other system actors, as well as input from clients. (See Section 9 of the attached standard contract terms and conditions for details.)

PART III: OFFER INSTRUCTIONS AND TERMS

This part of the RFP contains the instructions and requirements for preparing and submitting offers for legal services contracts.

3.1 Submitting Offers

The offeror is responsible for any costs incurred in preparing and delivering an offer, and for ensuring that the offer is timely received by IDS.

A. Form of Submission and Delivery

Offers must be in writing and sealed, and mailed or hand-delivered to 123 West Main Street, Suite 400, Durham, North Carolina 27701. Telephone, facsimile, and electronically transmitted offers will not be accepted.

Offerors must use the Districts 3A, 8, and 11 Offer Forms, which are available at www.ncids.org, for the submission of all qualifying offers and must answer all mandatory questions, check N/A when allowed, or state the reason why a specific question is not relevant to the offer. Offerors should only submit one original sealed qualifying offer; additional copies are not required. ***Offers for treatment court cases, and other per session court cases (as specified herein) must be accompanied by one original and separately sealed cost/price offer with a proposed per session price.*** Offerors should indicate the name of the attorney, law firm, or non-profit and the RFP number(s) on the front of the sealed offer envelope(s) or package(s). IDS may disqualify any offer that is not in the required format or is incomplete.

If an offeror is providing information that constitutes a trade secret as defined by G.S. 132-1.2 or that is otherwise exempt from the public records law, it must be marked "CONFIDENTIAL." Despite what is labeled as confidential, the determination of whether specific information is exempt from the public records law shall be governed by North Carolina law.

B. Deadline

Sealed offers must be received by IDS or postmarked no later than the date specified in Section 1.5 ("Schedule of Events"). If an offer is not received or postmarked by the deadline, IDS shall disqualify the offer, unless the delay was caused by IDS personnel and was not the fault of the offeror.

3.2 Acceptance of RFP and Standard Contract Terms and Conditions

Offerors are responsible for reviewing the terms and conditions of this RFP, including the standard contract terms and conditions in Part IV. By signing and submitting the Offer Forms, offerors acknowledge that they accept and intend to abide by the terms and conditions of the RFP and, unless an offeror proposes and IDS agrees to one or more modifications, the standard contract terms and conditions. Offerors must clearly state in the offers any proposed modifications to the standard contract terms and conditions,

including reasons to support the modifications. IDS reserves the right to accept, reject, or negotiate proposed modifications to the standard contract terms and conditions.

3.3 Multiple/Alternative Offers

An offeror may submit more than one offer, either in response to this RFP or another RFP. Each offer must be complete in and of itself, and must state whether it is in addition to or an alternative to other offers submitted by the offeror. If an offeror submits alternative offers or offers for more than five caseload units per participating attorney, the offeror should rank them in order of interest/preference. (See Section 3.9.A. of this RFP for an explanation of caseload units.)

3.4 Modification of Submitted Offers and Notification of Change of Circumstances

A. When Modification Permitted

Offerors may not modify offers after the submission deadline, unless requested to do so by IDS during negotiations or pursuant to the procedure in Section 3.5.B. of this RFP. However, until the submission deadline, an offeror may modify an offer in writing. Modifications must be prepared on the offeror's letterhead and signed by the offeror or an authorized representative.

B. When Notification of Change of Circumstances Required

If an offeror's law practice changes in a manner that would impact the offeror's offer after the submission deadline but before notification of award, the offeror should submit written notification to IDS of the change in circumstances. Notifications of changed circumstances should be prepared on the offeror's letterhead and signed by the offeror or an authorized representative.

C. Delivery

Offerors must deliver any modifications or notifications of changed circumstances in the same manner as required by Section 3.1 for original offers.

3.5 Errors in Submitted Offers and Opportunity to Waive or Cure

If an offeror discovers an error before the submission deadline, the offeror may cure the error using the procedures for offer modification in Section 3.4, above. If IDS discovers or is notified of an error after the submission deadline, but before contract awards are made, IDS shall proceed as follows:

A. Minor Errors Where Intent of Correct Proposal is Evident

In IDS' sole discretion, IDS may waive or correct minor errors when the intent of the correct proposal is evident, including matters of form rather than substance, typographical errors, and other minor technical errors including minor technical disqualifying errors, where waiver will not unfairly prejudice other offerors. Minor technical errors that may be waived by IDS include but are not limited to failure to submit a computer generated offer and failure to use the final fillable offer forms for the covered district(s).

B. Technical Disqualifying Errors

In IDS' sole discretion, IDS may provide electronic or other written notification to all offerors who submitted an offer that contained one or more technical disqualifying errors, and give those offerors a specified time period to cure the error(s) and instructions on the manner in which to cure the error(s). Failure to comply with IDS' written instructions shall constitute waiver of the opportunity to cure. Technical disqualifying errors that may be subject to this cure procedure include failure to execute an offer and failure to submit a separately sealed cost/price offer for per session case types for which a cost/price offer was sought. Failure to meet the original submission deadline shall not constitute a technical disqualifying error that is subject to cure, and offerors who failed to meet that deadline shall not be given an opportunity to cure that error.

C. Major Errors Where Intent of Correct Proposal is Not Evident

IDS will not consider an offer with major errors when the intent of the correct proposal is not evident.

3.6 Withdrawal of Offers

An offeror may withdraw an offer prior to notification of award by a written and signed request from the offeror or an authorized agent of the offeror.

3.7 Definitions of Case, Substantive Hearing, and Session

A. Case

1. Newly Assigned Case

A "newly assigned case" is defined in Section 1.6(a) of the attached standard terms and conditions of contract.

2. Disposed Case

A "disposed case" is defined in Section 1.6(b) of the attached standard terms and conditions of contract.

B. Substantive Hearing

A "substantive hearing" in abuse/neglect/dependency and termination of parental rights cases is defined in Section 1.7 of the attached standard terms and conditions of contract.

C. Session

In case types where services are provided on a per session basis, including child support contempt cases, treatment court cases, commitment cases, and other per session courts, a "session" is defined in Section 1.8 of the attached standard terms and conditions of contract, unless an alternative county-specific definition is provided in Section 14 of the attached standard terms and conditions of contract.

3.8 Available Contract Categories in This RFP

An offer in response to this RFP may include proposed coverage of some or all of the following contract categories in some or all of Pitt, Wayne, Greene, Lenoir, Johnston, Lee, and Harnett Counties. See Section 2.2 of this RFP and Section 2 of the attached standard contract terms and conditions for a definition of each category:

A. Adult Misdemeanor Cases
B. Adult Low-Level Felony Cases
C. Adult High-Level Felony Cases
D. Treatment Court Cases
   1. Family Drug Treatment Court (Lenoir and Wayne Counties)
E. Other Per Session Court Cases
   1. District Court Probation Violations (Greene and Lenoir Counties)
   2. Superior Court Probation Violations (Greene and Lenoir Counties)

3.9 Caseload Units Subject to Offers (Qualifying Offers Only) and Case Credits

A. Caseload Unit Offers (Qualifying Offers Only)

IDS is seeking offers from a sufficient number of attorneys to cover the expected caseload, including conflict cases and court schedules. This RFP solicits offers in approximate 20% units of annual billable attorney time based on an assumption that attorneys bill an average of 1,800 hours per year. Thus, based on IDS' existing case and cost data, each caseload unit represents an estimated 360 annual billable hours. The estimate of 360 annual billable hours is based on statewide averages, and the precise amount of time required by each unit will depend on the actual case assignments and the efficiency of the courts and contractor. Offerors should be aware that there could be significant variation in the amount of time required to resolve specific caseload units.

In counties or districts in which the expected caseload is insufficient to allow for full 20% units in some or all contract categories, IDS may seek offers in half units, with a corresponding reduction in the caseload and compensation. Offers for fractions of units will not be accepted, unless specifically requested in this RFP.

Based on the caseload and court schedules in Pitt, Wayne, Greene, Lenoir, Johnston, Lee, and Harnett Counties, this RFP solicits the following caseload unit offers:

Contract Category	County	# Units Available*	Expected Range of Dispositions (Annually per Unit)	Minimum # Attorneys (may include multiple attorneys from same law firm as long as sufficient conflicts coverage)
Adult Misdemeanor Cases	Pitt	6	102 to 124	4
	Greene/Lenoir	8	102 to 124	6
	Wayne	10	102 to 124	6
	Harnett	8	102 to 124	6
	Lee	7	102 to 124	5
	Johnston	11	102 to 124	6
Adult Low-Level Felony Cases	Pitt	5	56 to 68	4
	Greene/Lenoir	8	56 to 68	6
	Wayne	9	56 to 68	6
	Harnett	8	56 to 68	6
	Lee	7	56 to 68	5
	Johnston	12	56 to 68	6
Adult High-Level Felony Cases	Pitt	2, 3 half units	21 to 25	4
	Greene/Lenoir	2, 3 half units	21 to 25	5
	Wayne	2, 3 half units	21 to 25	5
	Harnett	2, 2 half units	21 to 25	4
	Lee	4 half units	21 to 25	3
	Johnston	2, 3 half units	21 to 25	5

** The number of units that are actually contracted may be slightly different than the number of units provided above due to changes in projected caseloads and dispositions based on more recent data. In addition, in anticipation of the reclassification of many Class 3 misdemeanors committed on or after December 1, 2013 as "fine only" offenses, IDS is seeking offers for fewer misdemeanor units than prior caseload data suggests would be necessary. If the indigent misdemeanor caseload does not decrease as much as IDS expects as a result of that change in the law, IDS may award additional misdemeanor units.*

NOTE: No offeror shall be awarded contracts for more than five caseload units per participating attorney, including all contracts in all counties.

B. Case and Substantive Hearing Credits

Contractors shall receive the credits specified in Section 7.2 of the attached standard contract terms and conditions for each disposition, substantive hearing, or withdrawal. For dispositional credit purposes, contractors will be expected to follow the same definition of a disposed case that has been in place since IDS was created in 2001, which is that all charges or counts that are resolved on the same day in the same court before the same judge constitute one disposition. Because

that is a long-standing definition, all of the variations in terms of the number of charges that can be associated with one disposition, as well as the number of continuances and other factors that affect the amount of time required, are already built into IDS' existing case cost data. Thus, they are also already built into the average amount of time attorneys claim by case type, the expected range of dispositions, and the amount of the per unit compensation. After IDS and the bar have worked under a contract system for some period of time, and IDS has access to contractors' case data and time claims, IDS hopes to develop a more sophisticated and nuanced case credit system.

3.10 Sessions Subject to Offers (Qualifying Offers and Cost/Price Offers)

In addition to the contract categories listed in Section 3.9, above, and also based on the caseload and court schedules in Pitt, Wayne, Greene, Lenoir, Johnston, Lee, and Harnett Counties, this RFP solicits qualifying offers and per session cost/price offers in the following case categories, which will not be limited to the caseload units described in Section 3.9. IDS will give preference to qualified offerors who are willing to cover all sessions. See Section 1.8 of the standard contract terms and conditions for definitions of a session.

Per Session Contract Category	County	# Sessions Expected (Annually)	Frequency of Sessions	# Attorneys Needed Per Session
Family Drug Treatment Court	Lenoir	24	2 per month	1
	Wayne	24	2 per month	1
District Court Probation Violations	Greene	24	2 per month	2
	Lenoir	12	1 per month	2
Superior Court Probation Violations	Greene	24	2 per month	2
	Lenoir	12	1 per month	2

NOTE: Contractors handling courts on a per session basis will not receive any case credit for withdrawals.

3.11 Payment Terms

A. Caseload Unit Payments

IDS shall pay successful offerors a set monthly payment to cover attorney time and routine out-of-pocket expenses associated with the expected range of annual dispositions or substantive hearings. For extraordinary cases, as defined by Section 7.6 of the standard contract terms and conditions, a contractor may seek additional compensation outside of the contract or a reduction in the minimum and maximum number of dispositions or hearings. For extraordinary expenses, as defined by Section 7.8 of the standard contract terms and conditions, a contractor may seek additional reimbursement outside of the contract. The monthly payment is not intended to cover the expenses of investigators and experts, which will be available outside of the contract if preapproved by a judge on form AOC-G-309.

The monthly payment shall issue upon receipt of all data required by Section 6 of the standard contract terms and conditions.

The total amount of the monthly payment to each contractor will vary by contract category and the number of caseload units that are the subject of the contract. The following payments shall apply per contract category and unit:

Contract Category	**Annual Payment Per Unit (to be issued monthly)**
Adult Misdemeanor Cases	$17,500
Adult Low-Level Felony Cases	$19,500
Adult High-Level Felony Cases	$23,500

IDS recognizes that there are different levels of court efficiency in different counties and districts in North Carolina and that there will be some variation in the actual number of annual dispositions or substantive hearings per contractor. If the actual number of annual dispositions or substantive hearings under a specific contract is above or below the expected range of annual dispositions or substantive hearings (see Section 3.9, above), the monthly payment shall be renegotiated. In the event that the actual number of annual dispositions or substantive hearings under a specific contract is below the minimum number of dispositions or hearings, IDS may also require the contractor to refund the overpayment on a pro rata basis. (See Section 7.5 of the standard contract terms and conditions for details.)

B. Per Session Payments

For child support contempt cases, treatment court cases, and other per session courts (as specified herein), IDS is seeking qualifying offers and per session cost/price offers. IDS shall pay successful offerors on a per session basis and payment shall issue monthly for all sessions actually handled during the prior month. Contractors who are paid on a per session basis pursuant to an accepted cost/price offer will not be able to seek additional compensation or a reduction in the number of sessions for an extraordinary case. The monthly payment shall issue upon receipt of all data required by Section 6 of the standard contract terms and conditions.

PART IV: STANDARD CONTRACT TERMS AND CONDITIONS

This contract is entered into this {insert day} day of {insert month year} between the North Carolina Office of Indigent Defense Services (hereinafter "IDS") and {insert name of Contractor; if Contractor is a law firm or non-profit with multiple attorneys, specify named attorneys} (hereinafter "Contractor"), for the purpose of providing the legal services described in Section 13.

Under the terms and conditions set forth in this contract, IDS and Contractor do mutually agree as follows:

GENERAL TERMS AND CONDITIONS

Section 1: General Definitions

The following definitions control the interpretation of this contract:

1.1 Office of Indigent Defense Services ("IDS")
"IDS" includes all authorized agents, employees, representatives, and designees of IDS.

1.2 IDS Director
"IDS Director" includes the Director and the Director's designee.

1.3 Contractor
"Contractor" is the individual attorney, law firm, or non-profit organization that has entered into this contract with IDS.

1.4 Client
A "client" is a person whom a state court has determined to be entitled to appointed counsel at state expense pursuant to the United States Constitution, North Carolina Constitution, and/or North Carolina General Statutes.

1.5 Assignment
An "assignment" is the appointment of Contractor to represent a specific eligible client in any matter under the terms of this contract. If Contractor is a law firm or non-profit with multiple named attorneys, an assignment to a specific case will be to an individual attorney named in this contract, not the law firm or non-profit.

1.6 Case
A "case" is any legal action in this state in which Contractor has been assigned to represent a client under the terms of this contract.

(a) A "newly assigned case" is each new unique client, including a former client with new charges but excluding an existing client with new charges, that is assigned to Contractor pursuant to this contract, except as provided herein. In juvenile delinquency cases, if a new unrelated petition is filed against an existing client and the disposition hearing has already been conducted in the existing case, the new unrelated petition shall constitute a newly assigned case.

(b) A "disposed case" is all of the charges or matters that are finally disposed at the trial level on behalf of the same contract client before the same judge at the same time in the same court. A case is not finally disposed at the trial level until all obligations to the client in that case have been met, including the obligations set forth in Section 5.2 and Appendix A.

(i) An adult misdemeanor case is not finally disposed at the trial level until the time for appealing to Superior Court for trial *de novo* has expired or any trial *de novo* has been resolved.

(ii) A juvenile delinquency case is not finally disposed at the trial level until the disposition hearing is complete and there are no status review hearings scheduled or, if this contract has expired or been terminated, Contractor's continuing duties in Section 5.3(b) have been fulfilled.

(iii) For purposes of this contract, in the event that a juvenile delinquency case is transferred to Superior Court for trial as an adult, the delinquency case is deemed finally disposed at the trial level when the transfer hearing is complete and the time for appealing the transfer decision to Superior Court has expired or any such appeal has been resolved. Thereafter, the transferred case is deemed to be a newly assigned case.

(1) If Contractor also contracts with IDS to handle adult felony cases of the same class as the transferred case, the transferred case shall be reported as a newly assigned case pursuant to that contract.

(2) If Contractor does not contract with IDS to handle adult felony cases of the same class as the transferred case, but continues to represent the juvenile in Superior Court following the consultation required by Section 4.10(e), Contractor shall be eligible to apply for and to receive additional compensation or a reduction in the annual minimum and maximum number of dispositions pursuant to Section 7.6.

1.7 Substantive Hearing

In abuse/neglect/dependency and termination of parental rights cases, a "substantive hearing" is defined as an initial adjudication hearing, an initial disposition hearing, an initial review hearing, an initial permanency planning hearing, each subsequent review and permanency planning hearing, and a termination of parental rights hearing.

1.8 Session

In case types where Contractor provides services on a per session basis, unless an alternative county-specific definition is provided in Section 14, a "session" is defined as follows:

(a) For child support contempt cases, a "session" is defined as all work done between the end of the last contempt court session and the end of the current contempt court session, including any intervening motions hearings, any intervening administrative settings or other regularly scheduled court appearances, any intervening interstate cases assigned to Contractor on a different date, and any *de novo* appeal to Superior Court in an individual criminal contempt case.

(b) For treatment court cases, a "session" is defined as all work done between the end of the last court session and the end of the current court session, including any intervening team meetings.

(c) If local practice is to provide representation in other case types on a per session basis and this contract provides for per session representation, a "session" is defined as all work done between the end of the last court session and the end of the current court session.

Section 2: Definitions of Contract Categories

2.1 Adult Misdemeanor Cases

"Adult misdemeanor cases" include all cases at the trial level where the client is an indigent adult, a juvenile who was 16 or 17 years of age at the time of the offense, or a juvenile who was previously transferred to Superior Court for trial as an adult and the most serious original charge is a misdemeanor non-traffic, misdemeanor traffic, driving while impaired ("DWI") or habitual DWI, habitual assault, extradition, probation violation in District Court, or non-child support contempt case in District Court (including criminal and civil contempt cases and contempt of a parent in a juvenile delinquency case) or before the Post-Release Supervision and Parole Commission (in counties where such hearings are held in person or by videoconference, including Burke, Craven, Granville, Rowan, Wake, and Wayne). "Adult misdemeanor cases" do not include the per session case types covered by Section 2.10. Representation in an adult misdemeanor case may be in District or Superior Court.

2.2 Adult Low-Level Felony Cases

"Adult low-level felony cases" include all cases at the trial level where the client is an indigent adult, a juvenile who was 16 or 17 years of age at the time of the offense, or a juvenile who was previously transferred to Superior Court for trial as an adult and the most serious original charge is a Class E through Class I felony, as well as probation violations in Superior Court, non-child support contempt cases in Superior Court (including criminal and civil contempt cases), post-release supervision and parole preliminary revocation hearings where the hearing officer has found an entitlement to counsel, post-release supervision and parole revocation hearings where the Post-Release Supervision and Parole Commission has found an entitlement to counsel (in counties where such hearings are held in person or by videoconference, including Burke, Craven, Granville, Rowan, Wake, and Wayne), and any other adult low-level felony or misdemeanor charges that are brought against a previously assigned contract client while the original low-level felony is still pending. "Adult low-level felony cases" also include habitual felon cases where the most serious possible conviction would be a low-level felony, and may (as specified in Section 4.10(d)) include habitual felon cases where the most serious possible conviction would be a high-level felony. Other than contempt cases, representation in an adult low-level felony case may be in District or Superior Court.

2.3 Adult High-Level Felony Cases

"Adult high-level felony cases" include all cases at the trial level where the client is an indigent adult, a juvenile who was 16 or 17 years of age at the time of the offense, or a juvenile who was previously transferred to Superior Court for trial as an adult and the most serious original charge is a Class A felony that is not a "capital offense" (as defined by IDS Rule 2A.1(a)) through a Class D felony, as well as satellite-based monitoring "bring back" hearings and any other adult criminal charges that are brought against a previously assigned contract client while the original high-level felony is still pending. "Adult high-level felony cases" also include habitual felon cases where the most serious possible conviction would be a high-level felony. Representation in an adult high-level felony case may be in District or Superior Court.

2.4 Juvenile Delinquency Felony, Misdemeanor, and Chapter 5A Contempt Cases

"Juvenile delinquency felony, misdemeanor, and Chapter 5A contempt cases" include all cases at the trial level where the client is a juvenile who was under the age of 16 at the time of the offense and the most serious original charge is a felony, misdemeanor, or Chapter 5A contempt case, as well as motions for review (for probation violations, extended commitment, post-release supervision violations, and modifications/extensions/terminations of probation) and detention and status review hearings where new counsel needs to be assigned. In juvenile delinquency cases, the juvenile is conclusively presumed to be indigent. Representation in a juvenile delinquency felony, misdemeanor, or Chapter 5A contempt case includes time in District Court, and may (as specified in Section 4.10(e)) include time in Superior Court when a case is transferred for trial as an adult. Because there is no statutory entitlement to appointed counsel in a hearing to review the progress of a juvenile on protective supervision, this contract category does not include representation at such hearings.

2.5 Special Proceedings

"Special proceedings" include all cases at the trial level involving Chapter 35A competency/guardianship proceedings (incompetency proceedings, restoration of competency proceedings, sterilization proceedings, and proceedings involving the modification of a guardianship order, removal of a guardian, resignation of a guardian, or appointment of a successor guardian when Chapter 35A assigns payment responsibility to IDS), Chapter 122C civil commitments involving an indigent respondent, Chapter 108A protective services for indigent disabled adults, and minors requesting judicial waiver of parental consent to obtain an abortion or petitioning to marry, where Contractor will be the attorney or guardian ad litem ("GAL")-attorney advocate for the respondent, disabled adult, or minor.

2.6 Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Attorney)

"Abuse/neglect/dependency cases" include all cases at the trial level where the client is an indigent parent, the Department of Social Services has filed a petition alleging that a juvenile is abused, neglected, or dependent, and Contractor will be the client's attorney (not the client's GAL). "Abuse/neglect/dependency cases" may include representation of an indigent non-parent who is named as a respondent in the petition or motion, such as a guardian, custodian, or caretaker, if the presiding judge determines that due process requires appointment of counsel for a particular non-parent respondent. "Termination of parental rights cases" include all cases at the trial level where the client is an indigent parent, the Department of Social Services or a private party has filed a petition or motion to terminate the client's parental rights, and Contractor will be the client's attorney (not the client's GAL).

2.7 Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Guardian ad Litem Services)

"Abuse/neglect/dependency and termination of parental rights respondent GAL services" include all best-interest GALs who are appointed to represent indigent minor or incompetent respondents in abuse/neglect/dependency and termination of parental rights cases.

2.8 Child Support Contempt Cases

"Child support contempt cases" include all cases at the trial level where the client is an indigent defendant and contempt is being sought as a means of enforcing a child support obligation. Representation in a child support contempt case includes time on a per session basis in District Court, including time on any intervening motions hearings, any intervening administrative settings or other regularly scheduled court appearances, any intervening interstate cases assigned to Contractor on a different date, and any *de novo* appeal to Superior Court in an individual criminal contempt case. To the extent possible, assignments in child support contempt cases shall be made in a manner that ensures continuity of representation.

2.9 Treatment Court Cases

"Treatment court cases" include all cases at the trial level where the client is a participant in a treatment court of any type, including drug treatment court (adult, juvenile, and family), mental health treatment court, DWI treatment court, veterans treatment court, tribal court, and truancy court. Representation in a treatment court case includes time on a per session basis in District or Superior Court, including time on intervening team meetings. Representation in a treatment court case ceases when a client is discharged from the program and does not extend to proceedings before the referring court. Contracts for treatment courts may require coverage of one or more treatment courts and will not necessarily cover the entire contract category.

2.10 Other Per Session Court Cases in District Court

"Other per session court cases" include, but are not limited to, probation violations and domestic violence probation violations in Wake County District Court when those case types are handled on a per session basis.

Section 3: Independent Contractor and Key Personnel

3.1 Independent Contractor

(a) Under no circumstances shall this contract be construed, deemed, or considered to be an employment agreement between IDS and Contractor. Contractor shall have no claim under this contract or otherwise against IDS for vacation pay, sick leave, retirement benefits, Social Security, worker's compensation, disability, employment insurance benefits, professional malpractice insurance benefits, or employee benefits of any kind. Contractor is not an agent or employee of IDS and shall not represent itself as an agent or employee of IDS.

(b) Contractor is an independent contractor providing professional legal services as provided herein, and IDS shall neither direct the manner nor the method by which Contractor provides such services. Nothing in this contract shall be construed as derogating from the attorney-client relationship or as giving IDS authority to control or influence Contractor in the exercise of professional judgment, except that IDS may impose general performance standards or guidelines to ensure quality representation. Additionally, Contractor shall be subject to periodic performance evaluations and record reviews as provided in Section 9.

3.2 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of North Carolina as those terms are used in Article 31 of Chapter 143 of the North Carolina

General Statutes. Contractor accepts responsibility for all actions of Contractor's members, officers, employees, parties, and agents.

3.3 Key Personnel

(a) Except as provided in Sections 3.3(c) and 4.8(b), Contractor shall not utilize substitute service providers who are not named in this contract and shall not subcontract or assign any material responsibilities required by this contract, including representation at critical stages of any contract case as provided in Rule 1.5(d) of the Rules of the IDS Commission, without the advance written approval of the IDS Director.

(b) If Contractor is an individual attorney and Contractor changes law firms, the obligations in this contract, both for pending and for newly assigned cases, shall continue within the framework of the new law firm, with the understanding that contracts with the State shall not be assigned, unless Contractor terminates this contract in accordance with Section 10.1.

(c) If Contractor is a law firm or non-profit and one named attorney changes law firms, the obligations in this contract for pending cases shall remain with the law firm or non-profit if the Court allows the original assigned attorney to withdraw pursuant to Section 4.10. If Contractor is a law firm or non-profit and one named attorney changes law firms, the obligations in this contract for newly assigned cases shall remain with the law firm or non-profit. In that event, the law firm or non-profit shall have an obligation to hire a qualified substitute attorney and to obtain advance written approval for the substitution from the IDS Director in accordance with IDS policies. To the extent possible, Contractors that are entities shall ensure that contract clients receive continuity of representation.

Section 4: General Contractor Obligations

4.1 Compliance with Laws

Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of Contractor's business, including those of federal, state, and local agencies having jurisdiction and/or authority.

4.2 Malpractice Insurance

During the term of this contract, Contractor at Contractor's sole cost and expense shall maintain malpractice insurance of such type and with such terms and limits as may be reasonably associated with this contract. At a minimum, Contractor shall maintain malpractice insurance with liability limits of $100,000 per claim and $300,000 annual aggregate.

4.3 Computer and Internet Access

Contractor shall have a working computer and adequate access to the Internet to comply with the data reporting requirements in Section 6.

4.4 Email and Listservs

Contractor shall maintain a business email address and shall subscribe to IDS' Contractor listserv and any applicable specialized listserv(s) as required by IDS.

4.5 Federal Tax Identification Number

Contractor shall maintain a federal tax identification number for payment purposes. To protect all Contractors from identity theft, IDS shall not pay Contractors pursuant to a Social Security number.

4.6 Change in Contact Information or Payee's Name or Tax Identification Number

(a) In the event of any change in any contact information for Contractor or an attorney named in this contract, including business mailing address, phone number, facsimile number, or email address, Contractor shall immediately submit written notification to IDS, the Clerk of Court's Office(s) in the county or counties covered by this contract, and, if applicable, the Public Defender Office(s) in the county or counties covered by this contract.

(b) In the event of any change in the name of Contractor's law firm or the tax identification number of the payee of this contract, Contractor shall immediately submit written notification to IDS.

4.7 Additional Required Notifications

Contractor shall submit written notification to IDS within ten (10) calendar days of when Contractor learns that any of the following has occurred, and shall provide any reasonable documentation requested by IDS:

(a) The Court, Clerk, or Public Defender Office is not assigning Contractor or an attorney named in this contract to the expected number of cases available for assignment;

(b) Contractor or an attorney named in this contract is no longer able to meet all contractual obligations for whatever cause, including but not limited to organizational change or significant problems with court personnel that are impeding Contractor's ability to meet contract obligations;

(c) Contractor or an attorney named in this contract has been charged with a crime punishable by a term of incarceration of one or more years or involving moral turpitude;

(d) Contractor or an attorney named in this contract has been convicted of a crime punishable by a term of incarceration of one or more years or involving moral turpitude;

(e) A formal accusation of misconduct has been filed with the North Carolina State Bar against Contractor or an attorney named in this contract;

(f) Disciplinary action has been taken by the North Carolina State Bar or a Court against Contractor or an attorney named in this contract;

(g) Litigation has been filed against Contractor or an attorney named in this contract alleging improper conduct of Contractor with any client;

(h) A motion for appropriate relief ("MAR") has been filed alleging that Contractor provided ineffective assistance of counsel in any case; or

(i) A Court has entered an Order finding that Contractor provided ineffective assistance of counsel in any case.

4.8 Unavailability of Contractor

(a) *Caseload Unit Contracts:*

(i) If Contractor or an attorney named in this contract will be unavailable for new case assignments for a time period that will exceed four (4) business days, whether due to vacation, secured leave, a trial, or any other reason, Contractor shall submit written notification as soon as

practicable to the Clerk of Court's Office(s) and, if applicable, the Public Defender Office(s) not to assign new contract cases to Contractor or the named attorney during the specified time period of unavailability.

(ii) If Contractor or an attorney named in this contract will be unavailable for new case assignments for a time period that is likely to impair Contractor's ability to meet the minimum number of annual dispositions or hearings or the expected annual number of sessions in Section 13.1, Contractor shall immediately notify IDS in writing.

(b) *Per Session Contracts:*

(i) If Contractor or an attorney named in this contract will be unable to cover a session that is required by this contract, Contractor shall have an obligation to arrange for a suitable replacement attorney to cover the session. In that event, Contractor shall still report the session data pursuant to Section 6.4 to receive compensation from IDS and shall directly compensate the replacement attorney.

(ii) If Contractor or an attorney named in this contract will be unable to cover more than one consecutive session that is required by this contract, Contractor shall immediately notify IDS to make arrangements for alternative coverage.

4.9 Financially Ineligible Clients

Contractor shall comply with the requirements of N.C. Gen. Stat. § 7A-450(d) if Contractor learns that a contract client is not indigent and is ineligible for state-funded legal services under this contract.

4.10 Withdrawal From Contract Cases and Required Consultations

(a) Contractor or an attorney named in this contract may withdraw from an assigned contract case only with the Court's approval. Contractor shall promptly file a motion to withdraw due to a conflict of interest or any other reason requiring withdrawal from a case assigned pursuant to this contract. If the Court grants the motion to withdraw, the case shall be reassigned to another Contractor, if another Contractor is available and able to accept the case assignment. If Contractor is an entity, an attorney named in this contract moves to withdraw for a reason other than a conflict of interest, and the Court grants the motion to withdraw, the case shall be reassigned to another attorney named in this contract whenever possible.

(b) If Contractor is assigned to an adult misdemeanor client pursuant to this contract, the client is subsequently charged with a low-level felony (excluding indictment for habitual DWI or habitual assault) or a high-level felony, and Contractor does not handle adult low- or high-level felony cases pursuant to this contract, there shall be a presumption that Contractor will move to withdraw and that all pending charges against the client shall be reassigned to an appropriate Contractor. However, if both Contractors agree after consultation with the client that dual representation would be in the client's best interest, dual representation shall be permitted.

(c) If Contractor is assigned to an adult low-level felony client pursuant to this contract, the client is subsequently charged with a high-level felony (excluding indictment as a habitual felon), and Contractor does not handle adult high-level felony cases pursuant to this contract, there shall be a presumption that Contractor will move to withdraw and that all pending charges against the client shall be reassigned to an appropriate Contractor. However, if both Contractors

agree after consultation with the client that dual representation would be in the client's best interest, dual representation shall be permitted.

(d) If Contractor is assigned to an adult low-level felony client pursuant to this contract, the client is subsequently indicted as a habitual felon and the most serious possible conviction would be of a Class C or D felony, and Contractor does not handle high-level felony cases pursuant to this contract, Contractor shall consult with IDS to determine whether Contractor should move to withdraw or continue the representation.

(e) If Contractor is assigned to a juvenile delinquency client pursuant to this contract and:

(i) the client is charged with first-degree murder or undesignated degree of murder, and Contractor does not handle adult Class A felonies pursuant to this contract, Contractor shall immediately contact IDS to arrange for an appropriate consultation.

(ii) the client's case is transferred to Superior Court for trial as an adult, and Contractor does not handle adult felony cases of the same class as the transferred case pursuant to this contract, Contractor shall consult with IDS to determine whether Contractor should move to withdraw or continue the representation.

Section 5: Scope of Representation and Continuing Duties

5.1 Effective and Ethical Representation

Contractor agrees to provide contract clients with competent and effective legal representation that meets all applicable constitutional and statutory standards. Contractor shall adhere to the Revised Rules of Professional Conduct promulgated by the North Carolina State Bar, any professional standards and canons of ethics of the Supreme Court of North Carolina, and any applicable case law and court rules that define the duties of counsel to their clients.

5.2 Extent and Scope of Representation

(a) Contractor shall provide representation at all trial-level stages of a case assigned pursuant to this contract, unless otherwise limited by this contract. Representation at the trial level shall include consultation with the client about the client's right to appeal and, if the client has a right to appeal and elects to appeal, entry of an appropriate and timely notice of appeal.

(b) *Adult Criminal Contracts*:

(i) If venue is changed in a case assigned pursuant to this contract, Contractor shall continue the representation at the trial level even if Contractor does not have a contract to represent clients in the county to which the proceeding is transferred. In an extraordinary case, Contractor may seek additional compensation outside the contract or a reduction in the minimum and maximum number of annual dispositions pursuant to Section 7.6.

(ii) If Contractor determines that there is a potentially meritorious claim to raise in a 10-day MAR pursuant to N.C. Gen. Stat. § 15A-1414, representation at the trial level shall include filing and litigating such a MAR. For an extraordinarily complex 10-day MAR, Contractor may seek additional compensation outside the contract or a reduction in the minimum and maximum number of annual dispositions pursuant to Section 7.6.

(c) *Juvenile Delinquency Contracts*: If Contractor determines that there is a potentially meritorious claim to raise pursuant to N.C. Gen. Stat. § 7B-2600, representation at the trial level shall include filing and litigating such a claim. For an extraordinarily complex claim, Contractor may seek additional compensation outside the contract or a reduction in the minimum and maximum number of annual dispositions pursuant to Section 7.6.

(d) *Abuse/Neglect/Dependency and Termination of Parental Rights Contracts (Respondent Attorney)*: If Contractor determines that there is a potentially meritorious claim to raise in a Rule 59 or Rule 60 motion challenging the original adjudication, disposition, or termination of parental rights, representation at the trial level shall include filing and litigating such a motion. For an extraordinarily complex motion, Contractor may seek additional compensation outside the contract or a reduction in the minimum and maximum number of annual substantive hearings pursuant to Section 7.6.

(e) Contractor agrees to comply with IDS' policy on the scope of representation in indigent cases, which is attached to this contract as Appendix A and incorporated herein by reference.

5.3 Continuing Duties After Contract Expiration or Termination

(a) *Adult Criminal and Special Proceedings Contracts:* Contractor understands that the amount of the monthly compensation in Section 13.2 is intended to cover the range of annual dispositions in Section 13.1. Therefore, expiration or termination of this contract does not affect existing obligations to clients already assigned pursuant to this contract, except as provided herein. After contract expiration or termination, Contractor has a continuing obligation to represent clients assigned during the course of and pursuant to this contract until the client's case(s) is(are) finally disposed at the trial level, unless this contract is terminated by IDS for cause pursuant to Section 10.2 and the Court allows Contractor to withdraw pursuant to Sections 4.10 and 10.2(c). Contractor's continued representation of such clients shall not be compensated by IDS through additional fees for services rendered, unless IDS otherwise agrees in writing.

(b) *Juvenile Delinquency Contracts:* Contractor understands that the amount of the monthly compensation in Section 13.2 is intended to cover the range of annual dispositions in Section 13.1 (weighted in accordance with Section 7.2(d)). Therefore, expiration or termination of this contract does not affect existing obligations to clients already assigned pursuant to this contract, except as provided herein. After contract expiration or termination, Contractor has a continuing obligation to represent clients assigned during the course of and pursuant to this contract through the disposition hearing and all status review hearings that are held within six (6) months of the disposition hearing or two (2) status review hearings (including reclaiming futures status reviews), whichever is greater, unless this contract is terminated by IDS for cause pursuant to Section 10.2 and the Court allows Contractor to withdraw pursuant to Sections 4.10 and 10.2(c). Contractor's continued representation of such clients shall not be compensated by IDS through additional fees for services rendered, unless IDS otherwise agrees in writing. If Contractor continues to represent a contract client in status review hearings that are held more than six (6) months after expiration or termination of this contract, or in more than two (2) status review hearings after expiration or termination of this contract, whichever is greater, Contractor may submit a fee application to the Court for hourly compensation for services rendered after six (6) months have elapsed or for more than two (2) status review hearings.

(c) *Abuse/Neglect/Dependency and Termination of Parental Rights Contracts (Respondent Attorney and Respondent GAL Services):* Contractor understands that the amount of the monthly compensation in Section 13.2 is intended to cover the range of annual substantive hearings in Section 13.1. Therefore, expiration or termination of this contract does not affect existing obligations to clients already assigned pursuant to this contract, except as provided herein. After contract expiration or termination, Contractor has a continuing obligation to represent clients assigned during the course of and pursuant to this contract until the current stage of the case is completed (adjudication and disposition, termination of parental rights, or conclusion of all review or permanency planning hearings), for a period not to exceed six (6) months, unless this contract is terminated by IDS for cause pursuant to Section 10.2 and the Court allows Contractor to withdraw pursuant to Sections 4.10 and 10.2(c). Contractor's continued representation of such clients shall not be compensated by IDS through additional fees for services rendered, unless IDS otherwise agrees in writing. If Contractor continues to represent a contract client after the current stage of the case is completed or for a period in excess of six (6) months after expiration or termination of this contract, Contractor may submit a fee application to the Court for hourly compensation for services rendered after the current stage of the case is completed or after six (6) months have elapsed.

Section 6: Data Reporting Requirements and Submission of Recoupment Applications

6.1 Required Per Case Data Reporting: Adult Criminal and Juvenile Delinquency Cases

(a) *Newly Assigned Contract Cases:* Except as provided in Section 6.4(a), Contractor shall report complete and timely data about each newly assigned contract case in a format and manner required by IDS. Within seven (7) calendar days of the end of each month, Contractor shall complete all required newly assigned case data fields in IDS' web-based Contractor Case Reporting System for each new case assigned during the prior month. After entering those data fields for all newly assigned cases and entering the disposed or withdrawn data required by Section 6.1(b), Contractor shall certify that all required data has been entered into the system and submit for monthly payment.

(b) *Disposed Contract Cases and Withdrawals*: Except as provided in Section 6.4(a), Contractor shall report complete and timely data about each disposed contract case and any contract cases from which Contractor has withdrawn, including Contractor's actual time spent on each case, in a format and manner required by IDS. Within seven (7) calendar days of the end of each month, Contractor shall complete all additional data entry fields that are required by IDS' web-based Contractor Case Reporting System for each contract case that was disposed and for each contract case from which Contractor withdrew during the month preceding the prior month. After entering those data fields for all disposed and withdrawn cases and entering the newly assigned case data required by Section 6.1(a), Contractor shall certify that all required data has been entered into the system and submit for monthly payment.

(c) *Penalties for Incomplete or Late Reporting*: If Contractor fails to submit complete and timely data about all newly assigned, disposed, and withdrawn contract cases, IDS shall withhold the next monthly payment until IDS receives the required data. If Contractor fails a second time

during the duration of this contract to submit complete and timely data about all newly assigned, disposed, and withdrawn contract cases, IDS shall withhold the next monthly payment until IDS receives the required data and may reduce Contractor's next monthly payment by up to 10%. If Contractor fails three (3) or more times during the duration of this contract to submit complete and timely data about all newly assigned, disposed, and withdrawn contract cases, IDS shall withhold the next monthly payment until IDS receives the required data and may reduce Contractor's next monthly payment by up to 20% and/or terminate this contract for cause.

6.2 Required Per Case Data Reporting: Special Proceedings

(a) *Disposed Contract Cases and Withdrawals*: Except as provided in Section 6.4(a), Contractor shall report complete and timely data about each disposed contract case and any contract cases from which Contractor has withdrawn, including Contractor's actual time spent on each case, in a format and manner required by IDS. For competency/guardianship cases, Contractor shall not report to IDS or count toward the expected number of annual dispositions cases in which Chapter 35A assigns payment responsibility to the petitioner or respondent. Within seven (7) calendar days of the end of each month, Contractor shall complete all data entry fields that are required by IDS' web-based Contractor Case Reporting System for each contract case that was disposed and for each contract case from which Contractor withdrew during the prior month. After entering those data fields for all disposed and withdrawn cases, Contractor shall certify that all required data has been entered into the system and submit for monthly payment.

(b) *Penalties for Incomplete or Late Reporting*: If Contractor fails to submit complete and timely data about all disposed and withdrawn contract cases, IDS shall withhold the next monthly payment until IDS receives the required data. If Contractor fails a second time during the duration of this contract to submit complete and timely data about all disposed and withdrawn contract cases, IDS shall withhold the next monthly payment until IDS receives the required data and may reduce Contractor's next monthly payment by up to 10%. If Contractor fails three (3) or more times during the duration of this contract to submit complete and timely data about all disposed and withdrawn contract cases, IDS shall withhold the next monthly payment until IDS receives the required data and may reduce Contractor's next monthly payment by up to 20% and/or terminate this contract for cause.

6.3 Required Per Hearing Data Reporting: Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Attorney and Respondent GAL Services)

(a) *Newly Assigned Contract Cases*: Contractor shall report complete and timely data about each newly assigned contract case in a format and manner required by IDS. Within seven (7) calendar days of the end of each month, Contractor shall complete all required newly assigned case data fields in IDS' web-based Contractor Case Reporting System for each new case assigned during the prior month. After entering those data fields for all newly assigned cases and entering the substantive hearing and withdrawn case data required by Section 6.3(b), Contractor shall certify that all required data has been entered into the system and submit for monthly payment.

(b) *Substantive Hearings and Withdrawals*: Contractor shall report complete and timely data about each substantive hearing and any contract cases from which Contractor has withdrawn,

including Contractor's actual time spent on each hearing, in a format and manner required by IDS. Within seven (7) calendar days of the end of each month, Contractor shall complete all additional data entry fields that are required by IDS' web-based Contractor Case Reporting System for each substantive hearing that was held and for each contract case from which Contractor withdrew during the month preceding the prior month. After entering those data fields for all substantive hearings and withdrawn cases and entering the newly assigned case data required by Section 6.3(a), Contractor shall certify that all required data has been entered into the system and submit for monthly payment.

(c) *Penalties for Incomplete or Late Reporting*: If Contractor fails to submit complete and timely data about all newly assigned contract cases, substantive hearings, and withdrawals, IDS shall withhold the next monthly payment until IDS receives the required data. If Contractor fails a second time during the duration of this contract to submit complete and timely data about all newly assigned contract cases, substantive hearings, and withdrawals, IDS shall withhold the next monthly payment until IDS receives the required data and may reduce Contractor's next monthly payment by up to 10%. If Contractor fails three (3) or more times during the duration of this contract to submit complete and timely data about all newly assigned contract cases, substantive hearings, and withdrawals, IDS shall withhold the next monthly payment until IDS receives the required data and may reduce Contractor's next monthly payment by up to 20% and/or terminate this contract for cause.

6.4 Required Per Session Data Reporting: Child Support Contempt Cases, Treatment Courts Cases, and Other Per Session Court Cases

(a) *Sessions*: For case categories where Contractor is compensated on a per-session basis—*i.e.*, child support contempt cases and treatment courts—Contractor shall report complete and timely data about each session in a format and manner required by IDS. In addition, if local practice is to provide representation in other cases on a per session basis—*e.g.*, civil commitments or probation violations in District Court—and this contract provides for per session representation and compensation, Contractor shall report complete and timely data about each session in a format and manner required by IDS. If this contract does not provide for per session representation and compensation, Contractor shall report the case-specific data required by Section 6.1 or 6.2. Within seven (7) calendar days of the end of each month, Contractor shall enter all required data fields into IDS' web-based Contractor Case Reporting System for all sessions handled during the prior month.

(b) *Penalties for Incomplete or Late Reporting*: If Contractor fails to submit complete and timely data about all sessions, IDS shall withhold the next monthly payment until IDS receives the required data. If Contractor fails a second time during the duration of this contract to submit complete and timely data about all sessions, IDS shall withhold the next monthly payment until IDS receives the required data and may reduce Contractor's next monthly payment by up to 10%. If Contractor fails three (3) or more times during the duration of this contract to submit complete and timely data about all sessions, IDS shall withhold the next monthly payment until IDS receives the required data and may reduce Contractor's next monthly payment by up to 20% and/or terminate this contract for cause.

6.5 Submission of Recoupment Applications in Recoupment-Eligible Cases

(a) *Adult Criminal Cases*: In all adult criminal contract cases that result in a conviction or a plea of guilty or no contest, or a finding of probation violation, and all non-child support contempt cases that result in a finding of criminal contempt, Contractor shall print a completed recoupment application form from IDS' web-based Contractor Case Reporting System and submit that form to the presiding judge for entry of a civil judgment for attorney fees and the attorney appointment fee pursuant to N.C. Gen. Stat. §§ 7A-455 and 7A-455.1.

(b) *Juvenile Delinquency and Chapter 5A Contempt Cases*: In any juvenile case in which the juvenile has been adjudicated delinquent or held in contempt, and the presiding judge indicates that a judgment will be entered against a responsible person, Contractor shall print a completed recoupment application form from IDS' web-based Contractor Case Reporting System and submit that form to the judge for entry of a civil judgment for attorney fees pursuant to N.C. Gen. Stat. §§ 7A-450.2 and 7A-450.3.

(c) *Abuse/Neglect/Dependency and Termination of Parental Rights Cases:* In any abuse/neglect/dependency case in which the juvenile has been adjudicated abused, neglected, or dependent and any termination of parental rights case in which the parental rights of the respondent client have been terminated, and the presiding judge indicates that a judgment will be entered against the respondent, Contractor shall print a completed recoupment application form from IDS' web-based Contractor Case Reporting System and submit that form to the judge for entry of a civil judgment for attorney fees pursuant to N.C. Gen. Stat. § 7B-603.

(d) *Child Support Contempt Cases:* In any child support contempt case in which the defendant has been held in criminal contempt, and the presiding judge indicates that a judgment will be entered against the defendant, Contractor shall prepare an AOC-G-200 fee application form and submit that form to the judge for entry of a civil judgment for attorney fees pursuant to N.C. Gen. Stat. § 7A-455.

(e) On all applications that are submitted for recoupment purposes, Contractor shall identify the applicant as "IDS contract counsel," not "assigned counsel."

6.6 Reasonable Changes in Contractor Data Reporting

At any time and by written instructions, IDS may make reasonable changes to the terms and conditions of this contract regarding the timing, format, and nature of any data that is required to be reported by Contractor, including requiring Contractor to report additional case-specific data.

6.7 Enforceability After Contract Expiration or Termination

The reporting requirements set forth in this Section are enforceable after expiration or termination of this contract.

6.8 Public Records

Unless otherwise provided by law, all data reported by Contractor shall be subject to public access if required under the state public records laws.

Section 7: Caseload, Case Credits, and Extraordinary Cases and Expenses

7.1 Range of Dispositions or Hearings/Number of Sessions

(a) *Range of Dispositions—Adult Criminal, Juvenile Delinquency, and Special Proceedings*: The parties agree that Contractor's estimated workload by contract category and number of caseload units, which is specified in Section 13.1 of this contract, is the parties' expectation as to the range of contract cases to be disposed annually during the contract period. If, during the term of this contract, Contractor reaches the minimum number of annual dispositions, Contractor shall continue to accept new case assignments pursuant to this contract. If, during the term of this contract, Contractor reaches the maximum number of annual cases (including disposed cases and pending assigned cases), Contractor may continue to accept new case assignments pursuant to this contract and renegotiate the monthly compensation owed to Contractor pursuant to Section 13.2 or, after advance IDS notification, decline to accept new case assignments pursuant to this contract.

(b) *Range of Substantive Hearings—Abuse, Neglect, Dependency, and Termination of Parental Rights (Respondent Attorney and Respondent GAL Services)*: The parties agree that Contractor's estimated workload by contract category and number of caseload units, which is specified in Section 13.1 of this contract, is the parties' expectation as to the range of substantive hearings to be resolved annually during the contract period. If, during the term of this contract, Contractor reaches the minimum number of annual substantive hearings, Contractor shall continue to accept new case assignments pursuant to this contract. If, during the term of this contract, Contractor reaches the maximum number of annual substantive hearings, Contractor may continue to accept new case assignments pursuant to this contract and renegotiate the monthly compensation owed to Contractor pursuant to Section 13.2 or, after advance IDS notification, decline to accept new case assignments pursuant to this contract.

(c) *Number of Sessions—Child Support Contempt, Treatment Courts, and Other Per Session Courts*: The parties agree that Contractor's workload by contract category and session, which is specified in Section 13.1 of this contract, is the parties' expectation as to the number of sessions to be handled annually during the contract period. If Contractor reaches the expected number of annual sessions and the courts need additional per session coverage, Contractor shall continue to accept new session assignments pursuant to this contract to the extent possible, and the monthly compensation owed to Contractor shall include payment for each session handled during the prior month and reported pursuant to Section 6.4. If Contractor is unable to accept additional session assignments, after advance IDS notification, Contractor may decline to accept additional session assignments pursuant to this contract.

7.2 Case and Substantive Hearing Credits (Caseload Unit Contracts Only)

(a) *Adult Misdemeanor Contracts*:

(i) Disposed Cases: Contractor will receive 1.0 credit toward the expected range of annual dispositions for each misdemeanor contract case that is disposed.

(ii) Withdrawals: Contractor will receive 0.5 credit toward the expected range of annual dispositions for withdrawals after substantive work (excluding withdrawals following a failure to appear), unless Contractor withdraws because of a conflict that should have been immediately apparent.

(b) *Adult Low-Level Felony Contracts*:

(i) Disposed Cases:

(1) Contractor will receive 1.0 credit toward the expected range of annual dispositions for each low-level felony contract case that is disposed.

(2) If a low-level felony Contractor is assigned to and disposes of a misdemeanor charge that was brought against a previously assigned contract client while the original low-level felony was pending, but the misdemeanor charge is not disposed before the same judge at the same time in the same court, Contractor will receive 0.5 credit toward the expected range of annual dispositions for the misdemeanor disposition.

(ii) Withdrawals: Contractor will receive 0.5 credit toward the expected range of annual dispositions for withdrawals after substantive work (excluding withdrawals following a failure to appear), unless Contractor withdraws because of a conflict that should have been immediately apparent.

(c) *Adult High-Level Felony Contracts*:

(i) Disposed Cases:

(1) Contractor will receive 1.0 credit toward the expected range of annual dispositions for each high-level felony contract case that is disposed.

(2) If a high-level felony Contractor is assigned to and disposes of a low-level felony charge that was brought against a previously assigned contract client while the original high-level felony was pending, but the low-level felony charge is not disposed before the same judge at the same time in the same court, Contractor will receive 0.5 credit toward the expected range of annual dispositions for the low-level felony disposition.

(3) If a high-level felony Contractor is assigned to and disposes of a misdemeanor charge that was brought against a previously assigned contract client while the original high-level felony was pending, but the misdemeanor charge is not disposed before the same judge at the same time in the same court, Contractor will receive 0.25 credit toward the expected range of annual dispositions for the misdemeanor disposition.

(ii) Withdrawals: Contractor will receive 0.5 credit toward the expected range of annual dispositions for withdrawals after substantive work (excluding withdrawals following a failure to appear), unless Contractor withdraws because of a conflict that should have been immediately apparent.

(d) *Juvenile Delinquency Felony, Misdemeanor, and Chapter 5A Contempt Contracts*:

(i) Cases Disposed in Juvenile Court:

(1) Contractor will receive 1.0 credit toward the expected range of annual dispositions for each contract case that is disposed where the highest original charge was a misdemeanor or a Class F through I felony.

(2) Contractor will receive 2.0 credits toward the expected range of annual dispositions for each contract case that is disposed where the highest original charge was a Class A through E felony.

(3) Contractor will receive 1.0 credit toward the expected range of annual dispositions for each motion for review (for probation violations, extended commitment, post-release supervision violations, and modifications, extensions, and terminations of probation) that is disposed.

(4) Contractor will receive 1.0 credit toward the expected range of annual dispositions for each Chapter 5A contempt case that is disposed.

(5) If Contractor was previously assigned to represent a juvenile in a delinquency case, Contractor will not receive any credit toward the expected range of annual dispositions for detention hearings or status review hearings (including reclaiming futures status reviews) in the same delinquency case. If Contractor was not previously assigned to represent a juvenile in a delinquency case and was appointed solely for the purpose of handling a detention hearing or future status review hearings, Contractor will receive 0.5 credit toward the expected range of annual dispositions for the detention hearing or for all status review hearings combined.

(ii) Cases Transferred to Superior Court: In lieu of the case credits in Section 7.2(d)(i), if Contractor waives transfer but does not continue the representation in the transferred case in Superior Court for trial as an adult, Contractor will receive 1.0 credit toward the expected range of annual dispositions for each case that is transferred. Also in lieu of the case credits in Section 7.2(d)(i), if Contractor handles a contested transfer hearing but does not continue the representation in the transferred case in Superior Court for trial as an adult, Contractor will receive 2.0 credits toward the expected range of annual dispositions for each case that is transferred, including any appeal to Superior Court of the District Court's transfer decision.

(iii) Withdrawals: Contractor will receive 0.5 credit toward the expected range of annual dispositions for withdrawals after substantive work (excluding withdrawals following a failure to appear, withdrawals when Contractor was appointed solely for the purpose of handling detention or status review hearings, and withdrawals due to transfer of a case to Superior Court), unless Contractor withdraws because of a conflict that should have been immediately apparent.

(e) *Special Proceedings Contracts*:

(i) Disposed Cases: Contractor will receive 1.0 credit toward the expected range of annual dispositions for each contract case that is disposed.

(ii) Withdrawals: Contractor will receive 0.5 credit toward the expected range of annual dispositions for withdrawals after substantive work, unless Contractor withdraws because of a conflict that should have been immediately apparent.

(f) *Abuse/Neglect/Dependency and Termination of Parental Rights Contracts (Respondent Attorney and Respondent GAL Services)*:

(i) Substantive Hearings: Contractor will receive 1.0 credit toward the expected range of annual substantive hearings for each substantive hearing that Contractor handles.

(ii) Withdrawals: Contractor will receive 0.5 credit toward the expected range of annual substantive hearings for withdrawals after substantive work on a hearing, unless Contractor withdraws because of a conflict that should have been immediately apparent.

7.3 Review of Case Assignments to Contractor

In counties where more than one Contractor provides legal services in a contract category, IDS and Contractors shall periodically review the number and nature of cases assigned to each Contractor. If the review shows that there is a substantial disparity between the actual assignment rates and the rates contemplated under the contracts, IDS shall notify the Court, the Public Defender Office (if applicable), and Contractors that assignment rates need to be adjusted and corrected, to the extent that total cases are available.

7.4 Significant Changes in Caseload

IDS shall renegotiate with all Contractors affected by significant increases or decreases in the long-term average number of cases available for assignment, including if there are amendments to or new court interpretations of federal or state statutes that make some or all contract services ineligible for state funding, and shall seek to apportion increases or decreases in an equitable manner. Such renegotiations may include modifying the range of annual dispositions or hearings and adjusting the monthly payment to Contractors accordingly or, in the event of a decrease, requiring Contractors to refund or otherwise repay IDS on a pro rata basis pursuant to Section 7.5(b).

7.5 Renegotiations and Refund for Shortage: Adult Criminal, Juvenile Delinquency, Special Proceedings, and Abuse, Neglect, Dependency and Termination of Parental Rights (Respondent Attorney and Respondent GAL Services)

(a) IDS and Contractor agree that the actual number of annual dispositions or substantive hearings under this contract may vary between the minimum number of annual dispositions or substantive hearings and the maximum number of annual dispositions or substantive hearings set forth in Section 13.1. If Contractor's actual number of annual dispositions or substantive hearings is within that range, there shall be no renegotiation of this contract or modification of the monthly payment owed to Contractor.

(b) In the event that the actual number of Contractor's annual dispositions or substantive hearings is below the minimum number of annual dispositions or substantive hearings or above the maximum number of annual dispositions or substantive hearings set forth in Section 13.1, IDS and Contractor shall renegotiate the monthly compensation owed to Contractor pursuant to Section 13.2. If the actual number of Contractor's annual dispositions or substantive hearings is below the minimum number of annual dispositions or substantive hearings, IDS may also require Contractor to refund to IDS the overpayment on a pro rata basis. During renegotiations and in determining whether to seek a pro rata refund, IDS shall consider both the number and nature of the actual cases disposed or substantive hearings handled.

7.6 Extraordinary Cases

(a) Except as provided in Section 7.6(b), in the event that Contractor is assigned to an extraordinary case, where the issues presented require extraordinary time and effort for proper representation of the client, Contractor may apply to IDS in the manner directed by IDS for additional compensation in that case or for a reduction in the annual minimum and maximum number of dispositions or hearings under this contract. A jury trial or a contested adjudication and disposition hearing in and of itself shall not be deemed extraordinary. However, at IDS' sole discretion, extensive pretrial litigation or an extended jury trial or extended contested adjudication and disposition hearing may be deemed extraordinary. In determining whether to approve a request for additional compensation in an extraordinary case or for a reduction in the annual minimum and maximum number of dispositions or hearings, IDS shall consider the complexity of the case and other equitable factors, including but not limited to the degree to which Contractor has spent extended time on pretrial litigation, trials, and/or contested adjudication and disposition hearings in other contract cases. The amount and timing of any additional compensation that is approved by IDS pursuant to this section is at IDS' sole discretion.

(b) In case types that are compensated on a per session basis based on Contractor's cost/price offer, Contractor shall not be eligible to apply to IDS for additional compensation or a reduction in the expected number of sessions for an extraordinary case.

7.7 Contractor's Routine Costs and Expenses

Contractor shall maintain sufficient staff and resources to provide for the competent representation of contract clients. Except as provided in Sections 7.8 and 7.9, Contractor agrees to pay all expenses incidental to the performance of Contractor's duties under this contract, including salaries, overhead, malpractice insurance, and all routine, reasonable, and necessary costs and expenses incurred in providing contract services, including routine travel expenses.

7.8 Extraordinary Expenses

(a) Contractor understands that routine case-related expenses are included in the monthly compensation listed in Section 13.2. However, Contractor may apply to IDS in the manner directed by IDS for reimbursement of extraordinary expenses. While the following expenses may be deemed extraordinary, the amount and timing of any reimbursement that is approved by IDS pursuant to this section is at IDS' sole discretion:

(1) Expenses associated with necessary case-related out-of-state travel;

(2) Expenditures for out-of-county lodging necessitated by case-related travel, whether in state or out of state; and

(3) Other necessary case-related expenses (such as medical records, copies of voluminous discovery or photographs, or extensive case-related mileage outside of the county where the case originated) that cumulatively exceed one hundred dollars ($100) in one contract case.

(b) Extraordinary expenses shall be claimed in compliance with the applicable IDS billing policies, which are incorporated into this contract by reference, and shall be supported by any required receipts or documentation.

7.9 Outside Costs and Expenses: Lay and Expert Witnesses and Interpreters

(a) IDS shall be responsible for paying the following expenses directly and said expenses are not included in the monthly caseload unit compensation in Section 13.2 or the per session compensation in Section 13.3:

(i) IDS shall pay the statutory fees and expenses of a necessary defense lay witness directly to the lay witness in accordance with IDS policy and upon receipt of the appropriate paperwork or, in the case of travel expenses, through direct bill to a travel agency that is under contract with IDS;

(ii) IDS shall pay the preapproved fees and expenses of a necessary defense investigator or expert directly to the investigator or expert in accordance with IDS policy and upon receipt of the appropriate paperwork or, in the case of travel expenses, through direct bill to a travel agency that is under contract with IDS; and

(iii) IDS shall pay the preapproved fees and expenses of a necessary out-of-court defense interpreter or translator directly to the interpreter or translator in accordance with IDS policy and upon receipt of the appropriate paperwork. Contractor must use an interpreter or translator that has been approved by the Administrative Office of the Courts ("AOC") and must obtain the services of the interpreter or translator in accordance with IDS policy.

(b) AOC shall be responsible for paying the preapproved fees and expenses of a necessary in-court defense interpreter directly to the interpreter in accordance with AOC policy and upon receipt of the appropriate paperwork.

7.10 Improper Duplicate Payment for Contract Work

If Contractor receives a case-specific payment for a case that was assigned and paid through this contract, whether due to Contractor's error or an error by IDS personnel, Contractor shall immediately notify IDS and refund the improper case-specific duplicate payment.

Section 8: Outside Practice of Law

8.1 When Permitted

Except as provided in Section 8.2, Contractor is permitted to continue representation in all indigent cases appointed prior to the effective date of this contract, as well as all indigent cases that fall outside the scope of this contract or another contract with the same Contractor, and compensation shall be awarded by the Court or Clerk on a case-by-case basis at the applicable standard hourly rate set by IDS. Except as provided in Section 8.2, Contractor is also permitted to provide representation in retained cases and in federal appointed cases.

8.2 Limitations

(a) Contractor shall not allow non-contract work to interfere with the adequate representation of clients assigned under this contract. Contractor shall not accept a retainer in a case that would create a conflict of interest with a case already assigned pursuant to this contract.

(b) In the event that this contract requires representation in five caseload units per named attorney, Contractor shall not engage in the practice of law outside of this contract without the advance written approval of the IDS Director.

Section 9: Performance Guidelines, Evaluation, and Review of Records

9.1 Performance Guidelines and Client Contact

Contractor agrees to adhere to any applicable performance guidelines that have been or will be adopted by the IDS Commission. Absent exceptional circumstances, if a contract client is in custody and Contractor did not meet with the client at the time of assignment to the case, Contractor's initial interview with the client shall take place within three (3) business days after Contractor receives notice of assignment to the client's case. If necessary, Contractor may arrange for a designee to conduct the initial interview. Absent exceptional circumstances or unless otherwise agreed to by the client, Contractor shall make arrangements to meet with all contract clients in the county where the charges are pending.

9.2 Evaluation

To the extent ethically possible and subject to Sections 9.6 and 9.7, Contractor agrees to comply with courtroom observations, file reviews that protect client confidences, peer review, and other efforts to monitor the quality of representation being provided, as reasonably required by IDS.

9.3 Case Records and Retention

(a) Contractor shall maintain current files on individual contract cases. To the extent ethically possible, records shall be kept in a manner that enables them to be made available on request for inspection by IDS.

(b) Contractor agrees to retain all appointment and case records for contract clients for the time period required by Rule of Professional Conduct ("RPC") 209 and RPC 234, to maintain a record of all destroyed contract client files pursuant to RPC 16, and to maintain a record of all files returned to contract clients. In a serious felony case where the client is incarcerated for a time period that exceeds the minimum time period for retention of case records pursuant to RPC 209 and RPC 234, Contractor is encouraged to retain case records throughout the period of the client's incarceration.

9.4 Access to Persons and Records by IDS

(a) Subject to Sections 9.6 and 9.7, IDS may review or verify Contractor's records that relate to the performance of this contract after giving Contractor reasonable written notice. Such review may occur as often as IDS reasonably deems necessary during the contract term.

(b) Upon IDS' proper written notice and subject to Sections 9.6 and 9.7, Contractor shall provide access to its facilities and shall make records available to IDS at all reasonable times. IDS shall not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval.

9.5 Access to Persons and Records by State Auditor

Subject to Sections 9.6 and 9.7 and any other exceptions provided by law, Contractor shall allow the State Auditor access to records as a result of all contracts entered into by state agencies in accordance with N.C. Gen. Stat. § 147-64.7.

9.6 Confidential Client Records

Contractor grants no right to IDS to observe attorney/client consultations or to review information in case files that is privileged because of the attorney/client relationship or work product identifiable to a particular case or client, unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow IDS reasonable access to other information for review purposes. Notwithstanding any provisions of this contract, Contractor does not waive any client's constitutional, statutory, or common law rights or privileges.

9.7 Personnel Records

Contractor grants no right to IDS to review information in any personnel file, unless Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow IDS reasonable access to other information for review purposes. Notwithstanding any provisions of this contract, Contractor does not waive any employee's constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

Section 10: Contract Termination and Funding Modifications

10.1 Termination by Contractor

(a) Contractor may terminate this contract, or one or more contract categories contained in Section 13.1 of this contract, for cause if IDS materially breaches any duty or obligation under this contract, by giving thirty (30) calendar days advance written notice to IDS. If IDS does not remedy the breach before the thirty-first (31st) calendar day after notice was given, the contractual relationship will end on the thirty-first (31st) day. Notice of termination for cause, including the reasons therefor, shall be transmitted via U.S. Mail, certified, return receipt requested. The notice period shall begin on the day the return receipt is signed and dated.

(b) In the event that Contractor is unable to continue performing the contractual obligations or otherwise desires to terminate this contract, or one or more contract categories contained in Section 13.1 of this contract, Contractor may terminate the contract or contract category(ies) by giving thirty (30) calendar days advance written notice to IDS. When such notice is given, the contractual relationship will end on the thirty-first (31st) calendar day after notice was given. Notice of termination, including the reasons therefor, shall be transmitted via U.S. Mail, certified, return receipt requested. The notice period shall begin on the day the return receipt is signed and dated. If applicable, IDS shall be entitled to a refund of a pro rata portion of any funds advanced but not yet expended on contractual obligations. In the event that IDS cannot identify an alternative service provider within thirty (30) days, IDS may require Contractor to extend the notice period required by this subsection for no more than thirty (30) additional calendar days.

(c) Except as provided in Section 5.3, neither termination by Contractor nor the end of the contractual relationship affects Contractor's continuing obligations in pending cases pursuant to Section 5.3. If this contract is terminated by Contractor pursuant to Section 10.1(a), Contractor shall be entitled to receive any and all past due monthly payments.

10.2 Termination by IDS for Cause

(a) IDS may terminate this contract, or one or more contract categories contained in Section 13.1 of this contract, for cause by giving thirty (30) calendar days advance written notice to Contractor, for the following reasons:

(1) Contractor's or a named attorney's material breach of this contract or any contract category(ies);

(2) Contractor's or a named attorney's willful or habitual disregard of the procedures required by the courts in which Contractor provides services;

(3) Contractor's or a named attorney's demonstrated inability to provide proper and competent representation to contract clients, including but not limited to recurring problems with court appearances due to scheduling conflicts;

(4) Contractor's or a named attorney's willful or habitual failure to abide by minimum standards of performance and rules of professional ethics;

(5) Contractor's or a named attorney's willful or habitual failure to report case data in a format and timeframe mandated by IDS; or

(6) Some other cause that has substantially impaired Contractor's or a named attorney's ability to provide adequate legal services under this contract or to fulfill the obligations of this contract.

(b) Notice of termination for cause, including the reasons therefor, shall be transmitted via U.S. Mail, certified, return receipt requested. The notice period shall begin on the day the return receipt is signed and dated. If Contractor does not remedy the breach before the thirty-first (31st) calendar day after notice was given, as of the thirty-first (31st) day, Contractor shall not accept any further case assignments under this contract or the applicable contract category(ies), unless IDS otherwise agrees in writing. Contractor shall be entitled to retain payment for services satisfactorily rendered, but IDS may charge Contractor any additional costs for services not rendered for which Contractor has already been paid.

(c) Except as provided in Section 5.3 and herein, neither termination by IDS nor the end of the contractual relationship affects Contractor's continuing obligations with respect to pending cases pursuant to Section 5.3. However, if this contract is terminated by IDS pursuant to this section, IDS in its sole discretion may require Contractor to file motions to withdraw pursuant to Section 4.10 and to submit written notification of the Court's rulings to IDS within three (3) business days.

10.3 Emergency Suspension

In the event of an emergency, including but not limited to a life-threatening illness of or serious allegations of misconduct against Contractor or an attorney named in this contract, IDS may take steps to immediately suspend new case assignments pursuant to this contract pending resolution of the emergency.

10.4 Availability of Funds/Funding Modification, Suspension, or Termination

(a) At the time this contract is executed, sufficient funds either are available within IDS' current appropriation or are expected to become available to finance the costs of this contract. However, any and all payments to Contractor are dependent upon and subject to the availability of funds to IDS for the purposes set forth in this contract.

(b) If the General Assembly does not appropriate sufficient funds, or if IDS otherwise reasonably believes that funds will not be sufficient to pay the anticipated costs of all contracts, IDS shall seek to apportion any necessary expenditure reductions equally and fairly among all Contractors and private assigned counsel. IDS shall seek first to modify contracts through negotiation with Contractors. IDS may suspend or terminate contracts if the parties cannot agree to a modification.

(c) In the event that sufficient funds will not be available, IDS shall give all affected Contractors a minimum of ninety (90) days advance written notice, unless such notice would be impossible due to circumstances beyond IDS' control.

Section 11: Miscellaneous

11.1 Governing Law

This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.

11.2 Situs

The place of this contract, its situs and forum, shall be Durham County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation, and enforcement shall be determined.

11.3 Rules of the IDS Commission

The Rules of the IDS Commission, including any amendments that are adopted by the Commission after the effective date of this contract, are incorporated into this contract by reference and shall apply to Contractor's representation pursuant to this contract, unless superseded by the terms of this contract.

11.4 Entire Agreement

This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. The Request for Proposals, any addendum thereto, and Contractor's offer are incorporated herein by reference. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitation.

11.5 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law, the remaining terms and provisions shall remain valid and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held or agreed to be invalid.

11.6 Amendments

This contract may be amended only by written amendments duly executed by the IDS Director and Contractor.

11.7 Waiver

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

11.8 Other Contractors and Vendors

IDS may award other contracts for additional or related work. Contractor shall cooperate with IDS and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for indigent defense services. Contractor shall provide reasonable assistance to non-attorney vendors in billing for services provided at Contractor's request.

11.9 Indemnity of IDS by Contractor

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

11.10 Impossibility of Performance

Neither party shall be held responsible for consequential damages for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by following the procedures in Section 10.

SPECIFIC TERMS AND CONDITIONS

Section 12: Term and Renewal

12.1 Contract Term

The term of this contract shall be for {insert total term}, from {insert date} through {insert date}.

12.2 Contract Renewal

If the IDS Director determines that market conditions have not significantly changed and both parties agree to a renewal, this contract may be renewed for one additional two-year term without soliciting competition or public advertising. No less than 90 days prior to the expiration of this contract, Contractor shall notify IDS in writing about Contractor's desire to renew or not renew. The renewal process may include renegotiations concerning the monthly or per session compensation, the number of caseload units or sessions, and the range of annual dispositions or substantive hearings.

Section 13: Contract Coverage and Compensation

13.1 Coverage

(a) *Caseload Unit Coverage:* During the term of this contract, Contractor shall provide competent legal representation to clients who have a constitutional or statutory right to counsel for the following proceedings:

County/Counties	Contract Category	# Caseload Units (over full term)	Named Attorney (if Law Firm)	Expected Range of Dispositions{/Substantive Hearings} (over full term)
{insert}	{insert}	{insert}		{insert}

(b) *Per Session Coverage*: During the term of this contract, Contractor shall provide competent legal representation to clients who have a constitutional and/or statutory right to counsel for the following proceedings:

County/Counties	**Contract Category**	**Named Attorney** (if Law Firm)	**Expected # of Sessions** (over full term)
{insert}	{insert}		{insert}

13.2 Caseload Unit Monthly Compensation

(a) If Contractor has fully complied with the applicable data reporting requirements in Section 6, by the fifteenth (15th) calendar day of each month or as soon as reasonably practicable thereafter, IDS shall pay Contractor the set total amount(s) shown below, to be paid in monthly installments, for all contract categories and caseload units covered by this contract by direct deposit into an account designated by Contractor. The total compensation will be comprised of:

Contract ID #	**Contract Category**	**# Caseload Units** (over full term)	**Total Compensation** (over full term)
{insert}	{insert}	{insert}	${insert}

(b) To the extent possible, IDS shall set aside sufficient funds to continue to issue timely monthly compensation to Contractor even if appropriated funds for case-by-case payments to private assigned counsel have been depleted for the fiscal year.

13.3 Per Session Compensation

(a) If Contractor has fully complied with the applicable data reporting requirements in Section 6, by the fifteenth (15th) calendar day of each month or as soon as reasonably practicable thereafter, IDS shall pay Contractor a monthly amount that covers all sessions handled during the prior month for all per session contract categories covered by this contract by direct deposit into an account designated by Contractor. The total monthly compensation will be comprised of the per session compensation listed below times the number of sessions handled during the prior month:

Contract ID #	**Contract Category**	**Per Session Compensation** (issued monthly)
{insert}	{insert}	${insert}

(b) To the extent possible, IDS shall set aside sufficient funds to continue to issue timely monthly compensation to Contractor even if appropriated funds for case-by-case payments to private assigned counsel have been depleted for the fiscal year.

Section 14: Additional Conditions and Alternative County-Specific Definitions

14.1 Additional Conditions of Contract

(a) Prior to the execution of a contract, IDS may impose additional conditions on Contractor or an attorney named in this contract, including but not limited to requiring Contractor or the named

attorney to attend specialized training and/or continuing legal education and to consult with a senior attorney designated by IDS.

(b) Pursuant to that authority, IDS hereby requires Contractor {or insert named attorney} to: {insert any additional conditions; if blank, intentionally left blank}.

14.2 Alternative County-Specific Definitions
{insert any county-specific definition(s) of a session; if blank, intentionally left blank}

Office of Indigent Defense Services	*Contractor*
_____	_____
Thomas K. Maher Executive Director	{Name and Title of Contractor or Law Firm/ Non-Profit and Authorized Representative}
_____	_____
Date	Date

APPENDIX A

SCOPE OF REPRESENTATION

IDS Policy:
This policy is intended to clarify some common questions about the scope of representation of indigent clients, and is not intended to be a comprehensive or exhaustive list of contractors' or public defenders' duties to their clients. In all situations described in this policy, the assigned contractor or public defender shall first determine whether there is a potentially meritorious claim to raise, or a valid and ethical action to take on behalf of a client, and the following obligations apply only if the contractor or public defender has so determined. The following obligations do not apply after the assigned case is finally disposed at the trial level and do not extend to representation on direct appeal in the Appellate Division.

(1) *Adult Criminal Cases:*

(a) If a contractor or public defender is assigned to a case that ends in a deferral or diversion (including a G.S. 90-96 deferral), the contractor or public defender has an obligation to ensure that the case is dismissed if the deferral or diversion is successful or to defend the client against the charge if the deferral or diversion fails.

(b) If a client fails to appear, the assigned contractor or public defender shall continue to represent the client on the original charge(s) and any related failure to appear charge, regardless of whether the client is rearrested, until:

(i) the prosecutor voluntarily dismisses the charge(s) with leave; or

(ii) for a period of six (6) months after the date of the failure to appear, at which point the contractor or public defender may file a motion to withdraw.

(c) At or prior to the time of final disposition at the trial level of a client's Driving While Impaired ("DWI") case, the assigned contractor or public defender has an obligation to seek to obtain a limited driver's privilege for the client.

(d) If a client's property has been seized as part of a criminal case or pursuant to a criminal forfeiture, at or prior to the time of final disposition at the trial level of a client's criminal case, and upon request of the client, the assigned contractor or public defender has an obligation to file a petition for the return of the client's property or to contest the forfeiture.

(e) At or prior to the time of final disposition at the trial level of a client's Driving While License Revoked ("DWLR") case, and upon request of the client, the assigned contractor or public defender shall take reasonable and appropriate steps to address any issues underlying the DWLR, if those issues are in the same county as the pending DWLR case. For underlying issues in other counties, the contractor or public defender shall give the client limited advice and guidance on how the client can address the matters.

(f) If a contractor or public defender is assigned to represent a client who has one or more prior convictions that are subject to challenge (*e.g.*, a guilty plea without counsel), one or more of the prior convictions would impact the trial or sentencing in the currently assigned case, and:

(i) The prior conviction(s) is(are) in the same county as the pending case: The contractor or public defender shall take reasonable and appropriate steps to challenge the prior conviction(s), including filing and litigating a motion for appropriate relief ("MAR"); for an

extraordinarily complex MAR, a contractor may seek additional compensation outside of the contract or a reduction in the contract's annual minimum and maximum number of disposed cases; or

(ii) The prior conviction(s) is(are) in another county: The contractor or public defender shall write to the Chief District Court Judge or the Senior Resident Superior Court Judge in the county of the prior conviction(s) and ask the Court to appoint local counsel to investigate and potentially file a MAR; or the contractor may seek prior approval from IDS to investigate, file, and litigate a MAR in the other county for additional compensation outside of the contract or for or a reduction in the contract's annual minimum and maximum number of disposed cases.

(2) *Juvenile Delinquency Cases*:

(a) If a contractor or public defender is assigned to a case that ends in a deferral or diversion, the contractor or public defender has an obligation to ensure that the case is dismissed if the deferral or diversion is successful or to defend the juvenile client against the petition if the deferral or diversion fails.

(b) If a juvenile client fails to appear, the assigned contractor or public defender shall continue to represent the juvenile on the original petition(s) and any related failure to appear/secured custody order, regardless of whether the juvenile is rearrested, until:

(i) the prosecutor voluntarily dismisses the petition(s) with leave; or

(ii) for a period of six (6) months after the date of the failure to appear, at which point the contractor or public defender may file a motion to withdraw.

(c) At or prior to the time of final disposition at the trial level of a juvenile's case, and upon request of the juvenile, the assigned contractor or public defender has an obligation to file a petition for the return of the juvenile's property.

(3) *Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Attorney and Respondent GAL Services):*

(a) A contractor's or public defender's representation includes attendance at and participation in mediations, child planning conferences, and pretrial conferences, as well as child and family team meetings to the extent possible.

(b) Prior to October 1, 2013, if a contractor or public defender is assigned to a case in which the abuse/neglect/dependency petition alleges that the client is a responsible individual pursuant to N.C. Gen. Stat. § 7B-807(a1) or the client completes a petition for judicial review and the case is consolidated with the abuse/neglect/dependency case pursuant to N.C. Gen. Stat. § 7B-324(b), the contractor or public defender has an obligation to represent the client at the responsible individuals hearing. If neither of those preconditions are met, the contractor or public defender shall have no obligation to represent the client at the responsible individuals hearing. Effective October 1, 2013, placement on the responsible individual list can no longer be consolidated with an abuse/neglect/dependency case.

(4) *Child Support Contempt Cases:*

If a contractor or public defender is assigned to a pending child support contempt case, including cases assigned on a per session basis, and the contractor or public defender believes that it would be reasonable and appropriate to file a motion to challenge paternity, motion to

adjust child support arrears, or motion to modify the child support obligation, the contractor or public defender has an obligation to file such motion(s) because the State has introduced "the potential curtailment of the indigent's personal liberty." *McBride v. McBride*, 334 N.C. 124, 126, 431 S.E.2d 14, 16 (1993).

Adoption:
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