

**CONTRACT FOR CRIMINAL DEFENSE SERVICES
ON BEHALF OF INDIGENTS ON APPEAL OF
CAPITAL CONVICTIONS**

THIS CONTRACT FOR CRIMINAL DEFENSE SERVICES ON BEHALF OF INDIGENTS ACCUSED OF CAPITAL CRIMES (the “Contract”) is entered into by and between the **LOUISIANA PUBLIC DEFENDER BOARD** (hereinafter sometimes referred to as the “LPDB”), a Louisiana state agency created and established within the Office of Governor, whose address is 500 Laurel Street, Suite 300, Baton Rouge, Louisiana 70801, represented herein by James T. Dixon, Jr., State Public Defender; and **CAPITAL APPEALS PROJECT**, a Louisiana non-profit corporation, (hereinafter sometimes referred to as “CAP” or “Contractor”), whose address is 636 Baronne Street, New Orleans, Louisiana 70113, appearing herein through its duly authorized representative, Sarah Ottinger, Director.

PREAMBLE

WHEREAS, Article I, Section 13 of the Louisiana Constitution of 1974 mandates the Louisiana Legislature to “provide for a uniform system for securing and compensating qualified counsel for indigents;”

WHEREAS, in an effort to carry out its constitutional mandate, the Louisiana Legislature enacted Act No. 307 of the 2007 Regular Session of the Louisiana Legislature (hereinafter sometimes referred to as the “Louisiana Public Defender Act”), which is codified at La. R.S. 15:141, et seq., and created the LPDB;

WHEREAS, pursuant to La. R.S. 15:146(A)(1), the LPDB is responsible for providing the supervision, administration, and delivery of a statewide public defender system;

WHEREAS, to help the LPDB discharge its responsibility, the Louisiana Legislature, in La. R.S. 15:147(A), vested the LPDB with “all regulatory authority, control, supervision, and jurisdiction, including auditing and enforcement, and all power incidental or necessary to such regulatory authority, control, supervision, and jurisdiction over all aspects of the delivery of public defender services throughout the courts of the state of Louisiana;”

WHEREAS, in accordance with La. R.S. 15:147(C)(1), the LPDB is authorized and desires to enter into contracts with independent public defender organizations qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section 501(c) of the Internal Revenue Code to provide counsel for indigent defendants; and

WHEREAS, CAP is an independent public defender organization qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section

501(c) of the Internal Revenue Code to provide counsel for indigent defendants and, further, desires to provide attorneys who are qualified and certified to provide the services contemplated by this Contract.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, it is agreed by and between the parties as follows:

This Contract supersedes and terminates all prior agreements for attorney services between the parties.

I. Scope of Work:

- A. CAP shall contract for or otherwise provide the services described herein for the representation of:
 - 1. Indigents in pursuit of an appeal as of right to challenge the validity of a conviction of a capital crime in the Louisiana Supreme Court. This representation shall include the filing of a writ of certiorari to the United State Supreme Court as deemed appropriate by CAP;
 - 2. A codefendant on direct appeal in post-conviction proceedings, provided that there is no conflict created by having represented the same person on direct appeal and such representation is approved by the LPDB's Capital Case Coordinator;
 - 3. Additional indigent defendants sentenced to death in post-conviction proceedings if approved by the Capital Case Coordinator and CAP; and
 - 4. A small number of non-death-sentenced indigent defendants in order to provide an opportunity for staff providing services under this Contract to receive or maintain appropriate casework experience and achieve certification requirements, where provision of those services has been approved by the Capital Case Coordinator and CAP.
 - 5. Indigents in pursuit of a Motion for New Trial, immediately following a jury returning with a death sentence verdict, when approved by the Capital Case Coordinator and CAP.

- B. CAP will provide consultation services, when requested by counsel and approved by the Capital Case Coordinator and CAP, to attorneys representing defendants being prosecuted for crimes which would subject the accused to the death penalty if convicted as well as attorneys representing death-sentenced inmates at all stages of their case. This will include pretrial consultations, and trial monitoring and assistance.

- C. CAP shall take such steps as may be reasonable and necessary to assure that all services are provided in a manner that is constitutionally, ethically, and legally appropriate and proper, within the guidelines provided as Attachment A to this agreement, to provide effective assistance of counsel to indigents charged with or convicted of capital crimes. However, CAP shall not be responsible for the actions of any attorneys or other persons beyond its means of control.
- D. CAP will take all actions necessary, pursuant to the Rules of Professional Conduct and Guidelines and Standards promulgated by the Louisiana Public Defender Board, to protect the interests of prospective, current, and former clients.

II. Quality of Legal Services: CAP shall contract or otherwise deliver the services described in Paragraph I for the defense of the accused persons in capital cases and shall maintain and make available to the LPDB upon request all contracts executed by and between CAP and third parties for the delivery of criminal defense services on appeal in capital cases, provided the request is made within three years of the termination of this Contract. The goal, objectives and performance indicators, and monitoring plan as provided in Attachment #1 are incorporated by reference as though fully set forth herein.

The legal representation provided under this Contract by CAP or its subcontractors shall be of such high quality as will meet all constitutional, statutory, court rule and case law requirements. Each subcontractor's services shall be rendered pursuant to written agreement with CAP consistent with the provisions and requirements of this Contract. CAP shall submit to the LPDB the name, qualifications and proof of capital certification for each attorney who is assigned a capital case under this Contract. Except as provided in this Contract, CAP agrees to complete all cases received under this Contract, even though the completion of the case may occur beyond the term of this Contract, provided CAP is compensated at a rate equivalent to that agreed upon herein.

Attorney workloads should be monitored and managed so that workloads, by reason of their excessive size, do not interfere with the rendering of quality representation or lead to the breach of professional obligations.

III. Monthly Reports: CAP shall provide the LPDB with Status Reports for each indigent defendant represented under this Contract. On or before the 5th of each month, the Status Reports completed on forms provided by the LPDB shall be forwarded to the LPDB. The Status Reports shall reflect the current status for the month of submittal. On or before the 10th of each month CAP shall submit to the LPDB a monthly financial report for the

second month immediately preceding the report due date. The report shall contain a listing of all expenditures made with funds received under this Contract. The financial reports must include the Profit and Loss Statement (or Income Statement) and the Balance Sheet in a format approved by the State Public Defender or Capital Case Coordinator. Absent extenuating circumstances, failure to submit timely and complete monthly reports may result in delayed monthly payments.

- IV. Timesheets:** Upon written notice from the State Public Defender or Capital Case Coordinator, CAP shall require all CAP personnel (independent contractors and employees) to keep timesheets, in a format approved by the State Public Defender or Capital Case Coordinator, showing the work activities performed on CAP's behalf and the actual amount of time expended on a daily basis. CAP shall maintain CAP personnel timesheets at CAP's office for inspection by the LPDB and/or its staff.
- V. Duties of CAP:** The following conditions shall be met and maintained by CAP:
- A.** CAP shall provide the services described herein.
 - B.** On or before the effective date of this Contract, CAP shall provide to LPDB's Capital Case Coordinator, a Staff Report which shall contain a list of all employees and/or staff members who are expected to perform or have performed any services pursuant to this Contract. Staff shall be identified by name, position, work hours and salary, whether employed fulltime, part-time or temporarily. Contractors for professional services are not considered employees or staff members. At anytime during the terms of this Contract the employee/staff list changes, the Capital Case Coordinator shall be provided with an updated list.
 - C.** CAP shall maintain and account for all funds delivered by the LPDB to CAP pursuant to this Contract separately from any other revenue in a segregated fund account. CAP will provide the LPDB with required monthly reports as provided in Paragraph III of this Contract.
 - D.** CAP shall maintain and make available to the LPDB upon request all invoices and payments made and any other record, document or information LPDB may request that might relate to the distribution of LPDB funds, provided the request is made within three years of the termination of this Contract.
 - E.** CAP must provide the LPDB with any and all corporate and financial records upon request of the State Public Defender or Capital Case Coordinator.

- F.** CAP shall maintain and make available to the LPDB upon request all contracts executed by and between CAP and third parties for the delivery of criminal defense services pursuant to this Contract, provided the request is made within three years of the termination of this Contract.
- G.** CAP shall not use any portion of funds received from the LPDB pursuant to this Contract to defray the expenses of counsel presently under contract with the LPDB for the provision of professional services in the defense of indigent clients in a specific case.
- H.** CAP shall comply with all federal, state, and local laws, ordinances and regulations, in carrying out the provisions of this Contract, including, without limitation, Louisiana's nonprofit corporation law (La. R.S. 12:201, et seq.).
- I.** CAP, through its Director, shall be responsible for providing to CAP Board of Directors all non-confidential information, including, but not limited to, caseloads and case disposition rates, as may be appropriate or necessary for the performance of its duties and obligations as an advisory board.
- J.** CAP shall be responsible for funding continuing legal education for all attorneys providing capital appellate representation pursuant to this agreement in the field of appellate practice. The continuing legal education shall be in conformity with the educational requirements promulgated by the LPDB for capital appellate certification.
- K.** CAP shall not assign any interest in this Contract and shall not transfer any interest in same (whether by assignment or novation) without prior written consent of the LPDB, provided however, that claims for money due or to become due to CAP from the LPDB under this contract may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the LPDB and the Director of the Office of State Procurement, Professional Contracts.
- L.** The attorneys employed by CAP for purposes of providing the professional services covered by this agreement should be full-time employees. Except for professional services provided *pro bono*, full-time CAP attorneys shall be prohibited from representing individuals in a professional capacity and receiving compensation of any kind for such services. Contractors for professional services are not considered employees or staff members. No provision herein, however, prohibits the acceptance and use of funds from private grants as well as fees and

expenses resulting from staff or contract attorneys' representation of indigents under other programs or agreements.

- M.** CAP shall complete a conflicts check of all new clients/cases during intake. Should a conflict be identified, CAP shall notify the District Defender and the State Public Defender or Capital Case Coordinator (or their designees) immediately of said conflict. Said notification must occur prior to withdrawing representation.
- N.** CAP shall provide the following information to the State Public Defender or Capital Case Coordinator within forty-eight (48) hours of opening or closing a case:

 - 1. The case name;
 - 2. Appropriate identifying information regarding the client; and
 - 3. The status of the case.
- O.** Upon request of the State Public Defender or Capital Case Coordinator, CAP will engage the services of a management consultant to analyze and evaluate CAP's management and operating procedures; the management consultant will then make recommendations based on his or her findings to the Director of CAP and the State Public Defender or Capital Case Coordinator. The Director of CAP and the State Public Defender or Capital Case Coordinator must agree on the selection of the management consultant and the terms and conditions of such engagement. It is agreed that LPDB staff will have unfettered access to the management consultant and can discuss CAP matters openly with the management consultant. CAP further agrees that LPDB, through its own staff and/or contractors, is authorized to analyze and evaluate CAP's management and operating procedures at LPDB's cost.
- P.** Failure of CAP to comply with the above mentioned provisions constitutes cause for termination of this Contract as provided for in Paragraph XVII. Termination of this Contract for default under the above-mentioned provisions is effective upon receipt of written notice.
- Q.** To facilitate the performance of the aforementioned obligations, CAP is hereby authorized to contract, with a recognized LPDB program, for consulting oversight services and the following: appellate training recognized by the Louisiana Bar Association as fulfilling an attorney's obligation for continuing legal education credits, case consultation, and research expenses.

VI. Mandatory Leadership Training: Pursuant to the legislative intent behind the Public Defender Act of 2007, including fulfillment of the Louisiana Legislature's mandate under Article I, Section 13 of the Louisiana Constitution to provide "a uniform system for securing and compensating qualified counsel for indigents," the Director (or his or her designee with the prior approval of the State Public Defender or Capital Case Coordinator) agrees to attend the Board-sponsored Leadership Training program offered annually.

VII. Amount of Payment: In consideration of the services described above, the LPDB agrees to pay CAP and CAP agrees to submit invoices in accordance with the following:

- A. CAP will be paid a total of ONE MILLION, NINETY-TWO THOUSAND, EIGHT HUNDRED FIFTY-TWO AND NO/100 DOLLARS (\$1,092,852.00). This amount includes both fees for all services and expenses typically considered in calculating overhead. CAP is not responsible for expert witness fees and costs for specialized testing. Funding for expert witness fees and specialized testing costs will be paid from other sources in accordance with established law;
- B. The total of all sums payable under this Contract to CAP for appellate services shall not exceed ONE MILLION, NINETY-TWO THOUSAND, EIGHT HUNDRED FIFTY-TWO AND NO/100 DOLLARS (\$1,092,852.00). Payment will be made monthly for one-twelfth of the contract amount, paid upon presentation to the LPDB from CAP an invoice and the required monthly reports pursuant to Paragraph III of this Contract. Monthly payments are contingent on timely submittal of the required monthly reports;
- C. CAP hereby agrees that the responsibility for payment of taxes from the funds received under this Contract shall be CAP's obligation and identified under the Federal Taxpayer Identification Number provided by CAP; and
- D. CAP agrees not to accept payment from any source other than LPDB for the services to be performed under this Contract, including conflict work, without the consent of the State Public Defender or Capital Case Coordinator.

VXIII. Term: The terms of this Contract shall commence July 1, 2015, and shall continue in effect until June 30, 2016.

- A. The effective dates of this Contract may be extended only if an amendment to that effect is duly executed by the parties and approved by the necessary authorities prior to the termination date. Request for extensions may be initiated by either

party by the mailing of the request to the party, via Certified Mail, return receipt requested, not less than thirty days before the termination date provided for herein or thirty days before the termination of the first extension of this Contract. This Contract may only be extended by an executed and approved amendment for not more than two times. If either party informs the other than an extension of this Contract is deemed necessary, an amendment may be prepared by the LPDB and forwarded to the other party for appropriate action by the other party, and said amendment is to be returned to the LPDB with appropriate information and signatures not less than fifteen days prior to termination date. Upon receipt of the amendment it will be forwarded to the necessary authorities for their approval. Notwithstanding the foregoing, in no event shall the total term of this Contract, including extensions hereto, be for a period of more than three years.

- B. In the event the Louisiana Legislature does not provide future funding for the LPDB, this agreement shall be considered null and void and unenforceable. The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of this Contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of this Contract, or if such appropriation is reduced by the veto of the governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of this Contract, this Contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated. It is the responsibility of Contractor to advise the LPDB in advance if contract funds or contract terms may be insufficient to complete contract objectives.
- C. Further, the LPDB, may, at its sole discretion, reduce the total amount of this Contract at any time during the contract term without the concurrence of CAP.

IX. Restricted Use of Funds: The contract funds shall be used exclusively by CAP to defray the expenses of establishing and maintaining a state capital appellate office responsible for the work and duties specifically set out in Sections I, IV, and XV of this Contract. Expenses include contract amounts for entities providing capital representation, staff salaries and benefits, training and continuing legal education, office expenses, office overhead, printing, liability insurance, travel, and out-of-pocket expenses. The scope of this contract does not include representation of the state or any department and/or agency of state government in litigation or proceedings arising out of or involving tort or worker's compensation.

- X. Record Retention:** CAP shall keep contemporaneous detailed records to enable LPDB to verify all costs and expenses including the attorney time expended in all cases under this Contract. The records shall include supporting documentation necessary to adequately evaluate and substantiate payments made under this Contract. In lieu of submitting the contemporaneous detailed records, CAP agrees to retain and make available for inspection and audit at CAP's place of business, upon reasonable notice, all books statements, ledgers and other financial records relating to services under this Contract for a period of three years from the date of the payment. On each monthly case trial report submitted by CAP to the LPDB, CAP shall certify that in accordance with this Contract the case records are contemporaneous, detailed and available for inspection.
- XI. Auditor's Clause:** The Legislative Auditor of the State of Louisiana, the Division of Administration, and LPDB staff and/or agents may audit all records of CAP which relate to this Contract. CAP shall maintain said records for a period of three years after the date of final payment under this Contract. Under no circumstances, however, is information to be provided to the Legislative Auditor or the Division of Administration that is subject to the work product privilege or the attorney/client privilege that exists between CAP and the indigent accused it is representing pursuant to this Contract.
- XII. Segregation of Duties:** Contractor shall employ proper segregation of duties with regard to the functions of approval, record keeping and custody of assets, including accounting, to minimize the likelihood of undetected errors and irregularities.
- XIII. Budget:** During the term of this Contract, Contractor shall prepare a comprehensive annual budget in a format approved by the State Public Defender or Capital Case Coordinator presenting a complete financial plan for its upcoming fiscal year. CAP shall furnish a copy of its completed budget electronically to budget@lpdb.la.gov and in hard copy to the Louisiana Public Defender Board, Attention: Budget Officer, 500 Laurel Street, Suite 300, Baton Rouge, LA 70801, no later than December 31st of each year this Contract is in effect.
- XIV. Payroll Registers:** Contractor shall furnish the Board's Budget Officer and the Capital Case Coordinator with copies of its payroll registers twice annually during the Contract. Payroll registers for the 6-month period ending June 30th shall be provided to the Budget Officer no later than July 31st and payroll registers for the 6-month period ending December 31st shall be provided to the Budget Officer no later than January 31st.
- XV. Audit:** Contractor shall be audited annually in accordance with La. R.S. 24:513.

- XVI. Notification of Complaint to Office of Disciplinary Counsel:** Contractor shall require all attorneys who are employed by, or contract with, Contractor to sign waivers authorizing release and access to their Louisiana State Disciplinary Counsel records. Contractor shall notify, in writing, the LPDB Capital Case Coordinator within 15 days of filing of a complaint that has been lodged with the Louisiana Office of Disciplinary Counsel against the Director and/or any Contractor personnel or sub-contractor, and shall immediately forward the report and recommendation of the hearing officer. Contractor further agrees to comply with the complaint policy promulgated by the LPDB.
- XVII. Hold Harmless and Indemnify:** CAP and its subcontractors shall indemnify and save harmless the LPDB against any and all claims, losses, liabilities, demands, suits, damages, causes of action for damages, and judgments of sums of money to any party accruing against the LPDB growing out of, resulting from, or by reason of any act or omission of CAP, its agents, servants, persons or entities with whom it has or may have contracts now or in the future, or employees while engaged in, about, or in connection with the discharge or performance of the terms of this Contract. Such indemnification shall include the LPDB's legal fees and costs of litigation, including, but not limited to, reasonable attorney's fees. CAP shall provide and bear the expense of all insurance related to duties arising under this Contract.
- XIII. Independent Contractor:** CAP and the LPDB expressly agree that no person employed by or contracted by CAP shall be considered to be an employee or agent of the LPDB for any purpose, including, specifically, for any benefits or coverage as provided by the Worker's Compensation Law of the State of Louisiana or unemployment compensation coverage, as such term is defined in La. R.S. 23:1021(7). Furthermore, it is expressly agreed that no person employed by or contracted by CAP shall be entitled to receive any benefits customarily provided to employees of the LPDB, including, but not limited to, sick or annual leave or retirement benefits, from the LPDB. CAP and any persons or entities with whom CAP may contract shall be deemed employees or independent contractors of CAP, as the case may be, and shall not be deemed to have any relationship whatsoever to the LPDB.
- XIX. Default Termination:** The LPDB may terminate this Contract for cause based upon the failure of CAP to comply with the terms and/or conditions of the Contract; provided that the LPDB shall give CAP written notice specifying CAP's failure. If within thirty (30) days after receipt of such notice, CAP shall not have either corrected such failure or, in the case which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the LPDB may, at its option, place CAP in default and the Contract shall terminate on the date specified in such notice. CAP may exercise any rights available to it under Louisiana law

to terminate for cause upon the failure of the LPDB to comply with the terms and conditions of this Contract; provided that CAP shall give the LPDB written notice specifying the LPDB's failure and a reasonable opportunity for the LPDB to cure the defect. However, the parties specifically agree that upon delivery of the funds specified above, the LPDB shall have no further duty or obligation whatsoever to CAP under this Contract. Any claims or controversies arising out of this Contract shall be resolved by the provisions of La. R.S. 39:1524-1526.

XX. Cancellation: Either party shall have the right to cancel this Contract, with or without cause, by giving the other party thirty days written notice forwarded to their respective address by certified mail with return receipt requested. The LPDB has the right to cancel this Contract upon less than thirty (30) days due to budgetary reductions and changes in funding priorities by the LPDB. Notice shall be sent certified mail, return receipt requested, to the addresses provided above.

XXI. Insurance: Without limiting the CAP's indemnification, it is agreed that the CAP, at its expense, shall maintain in force at all times during the performance of this Contract a policy or policies of insurance covering its operation as described below.

A. General Liability Insurance. The CAP shall maintain continuously public liability insurance with limits of liability not less than: \$250,000 for each person, personal injury; \$500,000 for each occurrence, property damage, liability, or a combined single limit of \$500,000 for each occurrence, personal injury and/or property damage liability. Such insurance shall include the LPDB as an additional insured and shall not be reduced or canceled without thirty (30) days prior written notice to the LPDB. The CAP shall provide a certificate of insurance or, upon written request of the LPDB, a duplicate of the policy as evidence of insurance protection.

B. Professional Liability Insurance. The CAP shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment or contracted services with the LPDB which constitute professional services in the performance of this Contract. For purposes of this Contract, professional services shall mean any services provided by a licensed professional. It will be the professional employee's (Counsel) responsibility to maintain professional liability, ERRORS AND OMISSIONS or malpractice coverage with limits of \$1,000,000.00 combined single limit per claim/aggregate. This coverage must be maintained throughout the period of this Contract. CAP will provide coverage sheet confirming current coverage if one is not currently on file to the LPDB. CAP will

also provide copies of all renewals which occur within the contract period to the LPDB. The CAP shall provide all malpractice insurance related to its duties arising under this Contract.

- C. Employee Dishonesty Insurance. CAP shall obtain and keep in effect during the term of the Contract, insurance necessary to ensure Contractor's continued existence in the event of criminal acts by its officers and/or employees in an amount not less than \$500,000.00.

XXII. Discrimination Clause: CAP agrees as follows:

- A. To abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968, as amended, and CAP agrees to abide by the requirements of the Americans with Disabilities Act of 1990; and
- B. To render services under this Contract without regard to race, color, religion, gender, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by CAP, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this Contract.

XXIII. Acts of God, etc.: In the event that the LPDB or CAP shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of acts of God or nature, or any other reason beyond their control, including governmental action, then performance of such act shall be excused for the period of the delay, and the term of this Contract and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

XXIV. Entire Contract: This writing contains the entire agreement between the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. This Contract may be modified or amended at any time by mutual consent of the parties, provided, that before any modification or amendment shall be operative and valid, it shall be reduced to writing and signed by both parties. Notwithstanding the foregoing, in no event, shall this Contract be valid until it has been approved in writing by the Director of the Office of State Procurement, Professional

ATTACHMENT #1

LOUISIANA PUBLIC DEFENDER BOARD CONTRACT FOR CRIMINAL DEFENSE SERVICES ON BEHALF OF INDIGENTS ON APPEAL OF CAPITAL CONVICTIONS

Purposes and Performance Indicators

GOALS AND PURPOSES:

To provide professional legal representation of an indigent in the form of criminal defense appellate services by counsel certified in accordance with Louisiana Supreme Court Rule XXXI and the Louisiana Capital Defense Guidelines relative to the criminal matter specified in the attached Contract. The provision of legal representation is in performance of the duly authorized programs of the Louisiana Public Defender Board. The length of such legal representation will be determined on the individual facts and circumstances of each case which is the subject of the attached Contract.

OBJECTIVE ONE:

CAP is to provide indigent defendants with high quality criminal defense appellate services in a professional and ethical manner.

PERFORMANCE INDICATORS:

The professional aspect of appellate work can be quantified by the preparation of and timely filing of appellate briefs, and preparation for oral argument before the appellate courts of this state.

The ethical guidelines used to indicate proper performance are all applicable rules that have been promulgated by the LPDB and the *Rules of Professional Conduct* of the Louisiana State Bar Association.

MONITORING PLAN:

CAP is to provide monthly reports concerning the status of each appeal under its authority. These reports include the time of appointment, the briefing schedule, the number of pages in the appellate record, the attorney of record, and the request, if any, for an extension of time. From these reports the Louisiana Public Defender Board can monitor the timeliness, and adequacy of the defense services provided by CAP and the orderly process of appeals through the system.

From the reports, it may also be determined whether CAP is fulfilling ethical obligations in vigorously representing appellate clients by timely raising issues sufficiently indicated from the complexity of the case.

OBJECTIVE TWO:

The cost of appeals taken on behalf of indigent clients should be contained by providing sufficient number of counsel, stabilizing and controlling caseloads, and providing services on a statewide basis.

PERFORMANCE INDICATORS:

The overall cost of the program can be determined by the amount of the budget request made on behalf of CAP. This figure, based on the number of cases handled by CAP, demonstrates the cost per appeal to the State of Louisiana. Because figures are available concerning the cost to the State for appeals taken on a case-by-case basis, performance will be indicated when the cost of an appeal handled by CAP is less expensive than those cases handled through other means.

CAP also maintains time and effort sheets to monitor the number of attorney hours necessary for each appeal taken.

MONITORING PLAN:

The LPDB is able to compare cost figures on a monthly, quarterly, and yearly basis for all appeals handled by CAP.

From time and effort sheets, the LPDB is able to monitor the cost, per hour, of appellate practice.

OBJECTIVE THREE:

To improve, overall, the quality of representation on behalf of indigent clients on appeal.

PERFORMANCE INDICATORS:

The quality of the briefs being filed is a direct indicator of the work being performed on behalf of the indigent clients.

MONITORING PLAN:

The LPDB is provided, on Compact Disc--Read Only Memory, a copy of every brief filed by CAP. A sampling of the overall number of briefs is reviewed by the LPDB for form, procedural correctness, legal analysis, and substance, by the LPDB. In addition, the supervisors of CAP are responsible for reviewing every brief filed and the Executive Director is responsible for monitoring this review and reporting to the LPDB on a periodic basis.

OBJECTIVE FOUR:

The LPDB will strive to improve the quality of appellate defense services through the continuing legal education of those certified and qualified capital counsel handling appeals for CAP.

PERFORMANCE INDICATORS:

Appellate briefs must include reference to the latest law on the issues being raised and must be in conformity with the latest appellate procedures mandated by the five appellate courts of the state.

MONITORING PLAN:

Each attorney contracted through CAP is required to maintain certification in accordance with La. Supreme Court Rule XXXI and the Louisiana Capital Defense Guidelines, which require continuing legal education in the area of that attorney's caseload. The LPDB maintains and is responsible for the certification program and is able to determine whether any attorney for CAP is not attending advanced courses in appellate practice.