

**CONTRACT FOR POST-CONVICTION  
CRIMINAL DEFENSE SERVICES  
ON BEHALF OF INDIGENT DEFENDANTS**

**THIS CONTRACT FOR POST-CONVICTION CRIMINAL DEFENSE SERVICES ON BEHALF OF INDIGENT DEFENDANTS** (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 the **INNOCENCE PROJECT NEW ORLEANS**, a Louisiana nonprofit corporation (hereinafter sometimes referred to as "IPNO" or "Contractor"), whose business address is 4051 Ulloa Street, New Orleans, Louisiana 70119, appearing herein through its duly authorized representative, Emily Maw, 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;

**WHEREAS**, IPNO 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; and

**WHEREAS**, the LPDB is authorized to establish programs and provide supplemental funding to judicial district indigent defender boards for the defense of indigent persons pursuant to La. R.S. 15:141, *et seq.* This Contract furthers the purposes of the Louisiana Public Defender Board by assisting in the representation of indigent defendants sentenced to life in prison as funding permits.

**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:** IPNO hereby agrees to provide post-conviction representation to indigents statewide in innocence cases in which the prisoner has the statutory right to counsel pursuant to Code of Criminal Procedure Article 930.7 within the guidelines provided as Attachment 1 to this agreement. Hourly rates paid to attorneys and paralegals pursuant to this contract shall not exceed the maximum hourly rates set forth in the attorney general's hourly fee schedule.

Services provided by the IPNO pursuant to this grant agreement do not include litigation or proceedings arising out of or involving tort or worker's compensation or other civil proceedings outside the strict confines of the post-conviction representation for indigents sentenced to life in prison.

- II. **Quality of Services:** The legal representation provided under this contract by IPNO or its subcontractors shall be of such high quality as will meet all constitutional, statutory, court rule and case law requirements. Each sub-contractor services shall be rendered pursuant to written agreement with IPNO consistent with the provisions and requirements of this agreement. IPNO also shall comply with all federal, state, and local laws, ordinances and regulations, in carrying out the provisions of this agreement. Further, IPNO shall take all such steps as may be reasonable and necessary to assure that such services are provided in a manner that is constitutionally, ethically, and legally appropriate and proper to provide the effective assistance of counsel to said accused persons within the guidelines provided as Attachment A to this agreement.

- III. Monthly Reports:** On or before the 10<sup>th</sup> of each month IPNO 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 all expenditures made with funds received under this agreement, including all amounts paid through professional service contracts pursuant to this agreement. 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. Duties of IPNO:** The following conditions shall be met and maintained by IPNO:
- A. On or before the effective date of this Contract, IPNO shall provide to LPDB's Capital Case Coordinator, a Staff Report which should contain a list of all employees and staff members who are expected to perform or have performed any services pursuant to this agreement. Staff shall be identified by name, position, work hours and salary, whether employed fulltime, part-time or temporarily. At any time during the terms of this contract the employee/staff list changes, the Capital Case Coordinator shall be provided with an updated list. Contractors for professional services are not considered employees or staff members.
  - B. The IPNO shall maintain and account for all funds delivered by the LPDB to the IPNO separately from any other revenue, either by line item entry or a segregated fund account: IPNO will provide the LPDB with monthly financial reports listing all expenditures made with funds received under this agreement. These reports must include all amounts paid to individual attorneys representing indigents on behalf of IPNO pursuant to this agreement and a listing of all cases handled by each attorney. IPNO must provide the LPDB with any and all financial records upon request of the State Public Defender or Capital Case Coordinator of the LPDB.
  - C. The IPNO shall maintain and make available to the LPDB upon request all invoicing submitted in the above referenced cases and payments made and any other record, document or information it may request that might relate to distribution of LPDB funds, provided the request is made within three years of the termination of this agreement.
  - D. The IPNO shall maintain and make available to the LPDB upon request all contracts executed by and between the IPNO and third parties for the delivery of services pursuant to this contract, provided the request is made within three years of the termination of this agreement.

- E. The IPNO shall not use any portion of LPDB funds to defray the expenses of counsel presently under contract with a District Defender for the provision of professional services in the defense of indigent clients on appeal of a felony conviction.
  - F. The IPNO shall comply with all federal, state, and local laws, ordinances and regulations, in carrying out the provisions of this agreement.
  - G. Failure to comply with the above provisions will result in termination of this agreement. Termination of this agreement for default under the above-mentioned provisions is effective upon receipt of written notice.
  - H. The IPNO shall not assign or transfer any interest in this agreement, whether by contract, assignment or novation, without prior written consent of the LPDB, provided however, that claims for money due or to become due to the IPNO from the LPDB under this agreement may be assigned to a bank, trust company, or other financial institution without prior written consent. Notice of any such assignment shall be furnished promptly to the LPDB.
- V. **Amount of Payment:** In consideration of the services described above, the LPDB agrees to pay the IPNO the sum of FOUR HUNDRED THOUSAND AND NO/100 (\$400,000.00).
- A. The total of all funds payable under this grant agreement to the IPNO shall not exceed FOUR HUNDRED THOUSAND AND NO/100 (\$400,000.00) DOLLARS. This amount includes all fees, overhead and expenses incurred by the IPNO in fulfillment of this agreement. Payment will be made monthly for one-twelfth of the contract amount upon presentation of an invoice for payment to the LPDB from the IPNO. Monthly payments are contingent on timely submittal of the required monthly reports.
  - B. The request for payment shall be submitted by the IPNO to the State Public Defender or Capital Case Coordinator of LPDB, electronically or by United States Postal Service or similar courier service. Request for payment of grant funds by the IPNO pursuant to this agreement shall be submitted in compliance with La. R.S. 39:1521.1. The request for payment of grant funds by the IPNO shall be submitted no later than fifteen (15) days after the expiration date of the grant agreement.
  - C. The IPNO hereby agrees that the responsibility for payment of taxes from the funds received under this agreement shall be the IPNO's obligation and identified under the Federal Taxpayer Identification Number provided by the IPNO.

- 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. Term of Agreement:** The terms of this Contract shall commence July 1, 2015, and shall continue in effect until June 30, 2016.
- A. The effective date of this grant agreement may be extended only if a written amendment to that effect is duly executed by the parties prior to the termination date and upon approval pursuant to the rules of the State of Louisiana Office of Contractual Review. Requests for extensions may be initiated by either party, provided the request is in writing and received by the other party to the agreement within thirty (30) days of the date this agreement terminates. Any agreement to extend this grant agreement must be finalized not less than fifteen (15) days prior to the termination date. This agreement may not be extended more than two times.
  - B. It is the responsibility of the IPNO to advise the agency no later than sixty (60) days in advance of the date of termination if grant funds or grant terms may be insufficient to complete grant objectives.
  - C. Notwithstanding the foregoing, in no event shall the total term of this grant agreement, including extensions, be for a period of more than three years.
  - D. The continuation of this grant agreement is contingent upon the appropriation of funds by the Legislature to fulfill the requirements of the grant agreement. If the Legislature fails to appropriate sufficient monies to provide for the continuation of the grant, 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 the grant, the grant shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.
- VIII. Restricted Use of Funds:** The grant funds shall be used exclusively by the IPNO for the representation of indigent defendants in post-conviction cases as described in Section I above.

- IX. Record Retention:** IPNO shall keep contemporaneous detailed records to enable LPDB to verify all costs, expenses and including the attorney billable time charged in all cases under this Agreement. The records shall include supporting documentation necessary to adequately evaluate and substantiate payments made under this Agreement. In lieu of submitting the contemporaneous detailed records, the IPNO agrees to retain and make available for inspection and audit at IPNO's place of business upon reasonable notice, all books statements, ledgers and other financial records relating to services under this Agreement for a period of three years from the date of the payment, IPNO shall certify that in accordance with this agreement the case records are contemporaneous, detailed and available for inspection.
- X. 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 IPNO which relate to this Contract. The IPNO 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 IPNO and the indigent accused it is representing pursuant to this Contract.
- XI. Hold Harmless and Indemnification Agreement:** The IPNO 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 the IPNO, 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 agreement. Such indemnification shall include the LPDB's legal fees and costs of litigation, including, but not limited to reasonable attorney's fees. The IPNO shall provide and bear the expense of all insurance related to duties arising under this agreement.
- XII. Independent Contractor:** The IPNO and the LPDB expressly agree that no person employed by or contracted by the IPNO 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. Furthermore, it is expressly agreed that no person employed by or contracted by the IPNO 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. The IPNO and any persons or entities with whom the IPNO may contract shall be deemed employees or independent contractors of the IPNO, as the case may be, and shall not be deemed to have any relationship whatsoever to the LPDB.

**XIII. Acts of Default and Remedies:** The LPDB may terminate this Contract for cause based upon the failure of the IPNO to comply with the terms and/or conditions of the Contract: provided that the State shall give the IPNO written notice specifying the IPNO's failure. If within thirty (30) days after receipt of such notice, the IPNO 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 State may, at its option, place the IPNO in default and the Contract shall terminate on the date specified in such notice. The IPNO may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the State to comply with the terms and conditions of this contract: provided that the IPNO shall give the State written notice specifying the State's failure and a reasonable opportunity for the state 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 the IPNO under this agreement. Any claims or controversies arising out of this contract shall be resolved by the provisions of La. R.S. 39:1524-1526.

**XIV. Cancellation:** Either party shall have the right to cancel this agreement, with or without cause, by giving the other party thirty (30) days written notice. The LPDB retains the right to cancel this grant agreement upon less than thirty (30) days notice due to budgetary reductions and/or changes in funding priorities by the State of Louisiana. The notice of cancellation shall be sent Certified mail, return receipt requested, to the address of the party as provided above.

**XV. Insurance Agreement:** Without limiting the IPNO's indemnification, it is agreed that the IPNO 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 IPNO 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 Board as an additional insured and shall not be reduced or canceled without thirty (30) days prior written notice to the Board. The IPNO shall provide a certificate of insurance or, upon written request of the Board, a duplicate of the policy as evidence of insurance protection.

**B. Professional Liability Insurance:** The IPNO 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 Board 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 \$500,000.000 combined single limit per claim/aggregate. This coverage must be maintained throughout the period of this contract. IPNO will provide a coverage sheet confirming current coverage if one is not currently on file to the LPDB. IPNO will also provide copies of all renewals which occur within this contract period to the LPDB. The IPNO shall provide all malpractice insurance related to its duties arising under this agreement.

- C. Employee Dishonesty Insurance. IPNO 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.

**XVI. Discrimination Clause: IPNO 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 1913, 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 IPNO agrees to abide by the requirements of the Americans with Disabilities Act of 1990; and
- B. To render services under this agreement without regard to race, color, religion, gender, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by IPNO, or failure to comply with these statutory obligations when applicable, shall be grounds for termination of this contract.

**XVII. Acts of God, etc.:** In the event that the LPDB or the IPNO 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.



**XVIII. Entire Agreement:** 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 agreement 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**XIX. Governing Laws:** The validity, interpretation, and performance of this agreement shall be governed, interpreted, controlled, construed, and regulated in accordance with the law of the State of Louisiana.

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**ATTACHMENT A**

**LOUISIANA PUBLIC DEFENDER BOARD**

**CONTRACT FOR POST-CONVICTION  
CRIMINAL DEFENSE SERVICES  
ON BEHALF OF INDIGENT DEFENDANTS**

**Purposes and Performance Indicators**

**GOALS AND PURPOSES:**

To provide professional high quality legal representation to indigents sentenced to life in prison in post-conviction proceedings. 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:**

The Innocence Project New Orleans (the IPNO) is to provide indigent persons with representation in post-conviction proceedings in a professional and ethical manner.

**PERFORMANCE INDICATORS:**

The professional aspect of defense work can be quantified by the preparation of and timely filing of appropriate motions, petitions, briefs, and other pleadings, and preparation for and presentation of post-conviction hearings and oral argument.

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:**

The IPNO is to provide monthly reports concerning the status of the cases in which it provides post-conviction representation to indigents. From these reports the Louisiana Public Defender Board can monitor the timeliness and adequacy of the legal services provided by the IPNO and the orderly process of the case through the system.

From the reports, it may also be determined whether the IPNO counsel are fulfilling ethical obligations in vigorously representing clients by timely raising issues sufficiently indicated from the complexity of the case and adequately preparing each case.

**OBJECTIVE TWO:**

The IPNO shall not exceed the contract maximum in billing, or provide services outside the terms of the contract without prior notification to and approval by the LPDB.

**PERFORMANCE INDICATORS:**

Submission of invoices within the time and manner prescribed in the contract in accord with the maximum amount of contract.

**MONITORING PLAN:**

LPDB will review all billings submitted by the IPNO for compliance with the contract maximum and contract term.

**OBJECTIVE THREE:**

To improve, overall, the quality of representation on behalf of indigent clients seeking post-conviction relief.

**PERFORMANCE INDICATORS:**

The quality of the motions, briefs, hearings, and oral argument preparation is a direct indicator of the work being performed on behalf of the indigent clients.

**MONITORING PLAN:**

Periodic sampling of the work product presented on behalf of the indigent client is reviewed by the LPDB for form, procedural correctness, legal analysis, and substance.