

**CONTRACT FOR PAYMENTS RELATED TO ATTORNEY SERVICES  
PROVIDED TO CAPITAL COLLATERAL DEFENDANTS  
(HEREINAFTER CAPITAL COLLATERAL CONTRACT)**

This Capital Collateral Contract entered into by and between the Justice Administrative Commission, a Commission of the State of Florida (JAC), and \_\_\_\_\_ an attorney (Attorney), for the representation of the indigent person convicted of murder and sentenced to death (Client) \_\_\_\_\_ in Case Number \_\_\_\_\_. For purposes of this Capital Collateral Contract, Attorney means any individual attorney approved pursuant to ss. 27.703, 27.710 and 27.711, F.S., to provide legal services for indigent persons in postconviction capital collateral cases. For compensation and tax reporting purposes, payments pursuant to this Capital Collateral Contract shall be made payable only to the holder of the tax identification number designated at the end of this Capital Collateral Contract. Payment by JAC under this Capital Collateral Contract may only be made to Attorney or the Legal Entity designated below.  
(Legal Entity) \_\_\_\_\_.

In consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

This Capital Collateral Contract supersedes and terminates all prior Agreements or Contracts for Payments Related to Attorney Services Provided to Capital Collateral Defendants between Attorney and JAC or the Department of Financial Services for court appointments pursuant to ss. 27.703, 27.710 and 27.711, F.S.

**I. TERM**

The term of this Capital Collateral Contract shall be for a period beginning on the date of execution of the Capital Collateral Contract by JAC through Attorney's withdrawal from the case as hereinafter provided unless terminated sooner as provided herein. If it becomes necessary to replace this Capital Collateral Contract with another Capital Collateral Contract, then the new Capital Collateral Contract shall supersede and terminate this Capital Collateral Contract.

**II. SERVICES**

1. Attorney contracts with JAC to immediately undertake representation of the Client named above in collateral proceedings challenging his or her conviction and sentence of death in the case cited above. Attorney affirms that he or she is: a member in good standing of the Florida Bar; has complied with the requirements of Rule 3.112(k), Fla. R. Crim. P.; has been selected from the registry of attorneys maintained by JAC; has been appointed as counsel for Client; and that representation will commence immediately. Attorney further certifies that he or she intends to continue the representation under the terms and conditions set forth in this Capital Collateral

Contract until the sentence is reversed, reduced, or carried out, or until released by order of the trial court, at which time this Capital Collateral Contract shall terminate.

2. Attorney shall personally perform the legal services required for the case. Attorney shall at all times comply with all requirements of the Florida Statutes, the Rules of Professional Conduct, the Rules Regulating The Florida Bar, any other applicable rules and the practice and procedures of courts within the scope of representation. Attorney may not reassign or subcontract any appointed case or portion thereof to another attorney or bill for work performed by another attorney except for a single attorney designated pursuant to s. 27.711, F.S. (Designated Assistant Attorney) This limitation on subcontracting, reassigning, or billing shall include associates or partners of Attorney's law firm regardless of whether the associate or partner is on the registry. Attorney affirmatively waives the right to seek compensation for work performed by any other attorney except for a single attorney designated pursuant to s. 27.711, F.S. Attorney shall not bill for work performed by a paralegal, secretary or other similar clerical office support, legal assistant, administrative assistant, or any other employee of Attorney's law practice. Attorney shall not bill for clerical or secretarial work, or work of a similar nature, performed by Attorney. Attorney shall not bill for overhead expenses either directly or indirectly through a due process provider. Overhead expenses include but are not limited to expenses associated with postage, courier services, internal or in-house copying, telephone charges including long distance and collect calls, and computerized research services such as Westlaw and Lexis/Nexis. Attorney shall not bill for purchase of computer equipment including portable flash and hard drives, portable devices including MP3 players, office equipment, office supplies, legal materials, books, clothing, personal items, haircuts, manicures, or other such personal services for Client. Attorney may only be compensated for services reasonably necessary for defense of the case.

3. Attorney shall provide Client all professional legal services reasonably required related to pending matters from the time of appointment through conclusion. When appropriate, Attorney agrees to take such other action as may be required to protect Client's interests in accordance with Florida and Federal Rules of Procedure and any other applicable provisions of State and Federal law.

4. Attorney shall provide competent representation to Client.

5. Attorney shall forward to JAC a copy of the Court's order of appointment that clearly indicates the name of the judge, the style of the case, and the case number; and a copy of the Florida Supreme Court opinion affirming the sentence of death.

6. Attorney or Attorney's firm shall own, possess or have routine access to a computer, portable hard drive(s) capable of receiving electronic discovery, a printer, and a scanner. Attorney shall have internet access and an email account capable of receiving correspondence from JAC.

7. JAC provides a secure website, *My JAC*, through which Attorney and any authorized representative(s) may track billings, open new cases, submit billings, and execute contracts with JAC. Attorney is responsible for registering an account on the secure website. Attorney will only allow persons authorized by Attorney to have access to the Attorney's account on the secure website. Attorney is liable for the actions of any authorized persons as if Attorney had performed the action personally including but not limited to submitting or signing documents on behalf of Attorney. Attorney has the sole responsibility for taking action necessary to maintain security of Attorney's account on the secure website including but not limited to changing passwords for that account if an authorized person leaves Attorney's employ.

8. Attorney shall submit any billing for payment of attorney fees and/or reimbursement of due process costs and related expenses through the Online Billing Submission system located on *My JAC* (JAC's secure website).

### III. COMPENSATION

1. Attorney shall be paid in accordance with the provisions of subsections (4), (5), and (6) of s. 27.711, F.S. Attorney understands and agrees that in accordance with the provisions of subsection (3) of s. 27.711, F.S., these provisions constitute the exclusive means of compensation hereunder except that, when appropriate, Attorney must seek further compensation from the Federal Government, as provided in 18 U.S.C. s. 3006A or other federal law, in habeas corpus litigation in federal courts.

2. Overpayments by JAC of attorney fees, costs or expenses are subject to full recovery by JAC. The method of recovery is at the discretion of JAC and may include, but not be limited to, offsets against future payments, direct reimbursement of overpayment to JAC by Attorney, or any other remedies available to a creditor by law.

3. The State of Florida and JAC's performance and obligation to pay under this Capital Collateral Contract are contingent upon an annual appropriation by the Legislature. Further, JAC's performance under this Capital Collateral Contract is also contingent upon compliance by Attorney with JAC's Policies and Procedures for Capital Collateral Private Court-Appointed Counsel (JAC's Policies and Procedures).

4. The procedures set forth in this Capital Collateral Contract constitute the sole method by which Attorney can seek compensation. Attorney acknowledges and accepts that JAC has the right to an evidentiary hearing for any case in which Attorney seeks to exceed statutory and contractual limitations.

5. Attorney shall designate who shall receive payment from JAC under this Capital Collateral Contract. Payment by JAC under this Capital Collateral Contract may only be made to Attorney. Attorney shall hold JAC harmless from any and all liability which might arise from any dispute or litigation as a result of a payment by JAC.

6. Pursuant to the requirements of s. 27.711, F.S., and this Capital Collateral Contract, prior to filing a motion for an order approving any payment under this Capital

Collateral Contract, Attorney shall submit to JAC an intended billing which shows time expended and expenses incurred set forth in sufficient detail for a proper audit thereof.

7. The Invoice/Voucher Cover is essential for the satisfactory submission of any request for attorney's fees and costs. Attorney must appropriately complete, execute, and submit the applicable Invoice/Voucher Cover, as well as all necessary supporting documents.

8. Attorney shall itemize legal services (itemized in tenths of an hour increments) and certify the time. By executing the applicable Invoice/Voucher Cover available on the JAC website, Attorney is certifying under oath that Attorney or Designated Assistant Attorney has completed the work listed in the itemized statement. The JAC Invoice/Voucher Cover is the functional equivalent of a verified pleading and should be read and reviewed with the same degree of diligence as such a pleading.

9. If Attorney has accrued more than \$25,000 in unbilled attorney fees, Attorney should submit an interim billing to JAC unless Attorney reasonably anticipates this case will reach the conclusion of a stage under s. 27.711(4), F.S., within six months.

#### IV. INVESTIGATIVE FEES AND MISCELLANEOUS EXPENSES

1. Attorney acknowledges and agrees that investigative fees and miscellaneous expenses are the sole responsibility of Attorney. JAC is not privy to any agreement or contract between Attorney and service providers and in no way accepts responsibility or liability for quality of service, terms and conditions, or any other aspects of any agreement or contract between Attorney and service providers.

2. Pursuant to ss. 27.425 and 27.5305, F. S., the rates for services are established annually in the General Appropriations Act. The rates applicable for criminal cases shall be applicable to services rendered pursuant to this Capital Collateral Contract unless superseded by general law. To the extent that there are no rates adopted by the General Appropriations Act for a type of service in a particular judicial circuit, JAC may adopt maximum rates which will be posted on the JAC website. For purposes of this Capital Collateral Contract, the phrase "Established Rates" is defined as the rates established annually in the General Appropriations Act and the rates established by JAC where there are no rates established by the General Appropriations Act. The Established Rates are subject to change and may be amended from time to time during the course of this Capital Collateral Contract. It is Attorney's responsibility to remain informed of changes and amendments to the Established Rates. The Established Rates shall be posted on JAC's website at [www.justiceadmin.org](http://www.justiceadmin.org).

3. JAC, as a courtesy to Attorney and at the sole discretion of JAC, may make payment directly to service providers who have executed a contract with JAC. Payment by JAC directly or by reimbursement to Attorney for services shall only be made if the billing procedures and rates sought are in compliance with Florida Statutes, applicable court Administrative Orders, and JAC Policies and Procedures. If Attorney engages a

vendor at rates in excess of the Established Rates, or in excess of higher rates specifically authorized by written court order, Attorney shall be subject to absorbing the difference between the applicable Established Rates or rates authorized by court order, and the rates billed by the vendor. JAC is entitled to notice and an opportunity to be heard prior to any court authorizing rates higher than the Established Rates.

4. Attorney agrees that if a vendor or other entity providing services to the defense does not have a contract with JAC or is unwilling to bill JAC directly then Attorney shall pay the vendor or other entity and seek reimbursement from JAC as provided herein. Although a contract is generally not required for other state entities, a state entity must be willing to bill JAC directly in order for JAC to make direct payment to the vendor.

5. Attorney agrees to supply JAC with all necessary documentation required under this Capital Collateral Contract and JAC Policies and Procedures for JAC to process for payment any direct billings from service providers. Attorney agrees to respond to any Billing Audit Deficiency related to a service provider billing within thirty (30) days of receipt of the Billing Audit Deficiency. The failure to provide necessary documentation required for payment of service providers may result in JAC withdrawing the privilege of JAC making direct payment to service providers. If Attorney or a service provider fails to respond to a Billing Audit Deficiency or fails to provide necessary documentation within a reasonable period of time, then JAC may take appropriate action including, but not limited to, rejecting the bill for payment, issuing a letter of objection to payment, or paying the amount authorized under the Established Rates or applicable court order.

6. Except when prior court approval is not required pursuant to the express terms of the Florida Statutes or the General Appropriations Act or JAC Policies and Procedures, a motion for investigative fees or miscellaneous expenses must be served upon JAC prior to a court entering an order authorizing or otherwise approving expenses. Attorney agrees and acknowledges that the existence of an administrative order or local rules authorizing costs without prior court approval does not relieve an attorney from filing a motion seeking prior approval or authorization for expenses. JAC is entitled to at least five (5) business days' notice of any hearing set on a motion for expenses. JAC's failure to respond to a motion for expenses shall not be deemed a waiver of JAC's right to be heard regarding the authorization for expenses. Attorney shall not seek to obtain a court order prior to obtaining a response from JAC. If Attorney obtains an order in violation of this subparagraph, Attorney agrees not to contest any motion to vacate filed by JAC.

7. JAC shall have standing to contest the authorization for any expenses and the amount of said expenses. Attorney shall have the burden to establish that the expenses are reasonable and necessary to the defense of the case.

8. Any order authorizing expenses must list the service(s) to be provided, the compensation rates for the providers where the rates sought exceed the Established Rates, and a maximum amount authorized for each service. Any order not containing this information is not sufficient for payment purposes.

9. A motion seeking authorization or additional funds for a private investigator, mitigation specialist, or an expert shall set forth the particularized need for the requested services based on the circumstances of the case.

10. Attorney acknowledges that any private investigator retained in this matter providing services in Florida must be licensed pursuant to Florida law. JAC is not authorized to pay for any private investigator services provided in Florida by a person not properly licensed pursuant to Florida law.

11. Attorney agrees that the role of a private investigator is limited to providing investigative services such as locating and interviewing witnesses; locating and securing documents and other evidence relevant to the case; performing background checks; and researching any other factual issues relevant to the case such as credibility and character of witnesses. Where private service of process is authorized, an investigator can also serve subpoenas on ordinary non-law enforcement witnesses; however, the investigator can only bill the flat rates applicable for private service of process regardless of the amount of time spent serving the subpoena. Attorney agrees investigator is not a substitute for a paralegal or secretary and cannot be used to perform administrative tasks including, but not limited to, retrieving discovery from the state attorney; copying documents from a court file; delivering materials to the defendant; or any other tasks of a paralegal or secretarial nature. If multiple investigators are employed on a case, only one investigator should be assigned or compensated for any particular task. Also, JAC shall only compensate a single investigator for attendance at meetings with Attorney or other members of the defense team regardless of the number of investigators that attend the meeting. JAC will not pay for any time related to training investigators or investigator interns.

12. Service of process upon witnesses should be through the sheriff unless the sheriff is unable or unavailable to provide service of process. Under s. 57.081, F.S., the sheriff is available to provide service of process without prepayment in cases involving indigent persons. Attorney specifically agrees that the sheriff must be used to serve in-county law enforcement absent exceptional circumstances. In order to use a private process server to serve in-county law enforcement officers, Attorney must file with service upon JAC a motion setting forth the exceptional circumstances requiring use of a private process server.

13. Pursuant to ss. 27.7081 and 28.345, F.S., Attorney is exempt from all court-related fees and charges assessed by the clerks of the circuit courts. As delineated in s. 57.081 F.S., an indigent shall receive the services of the courts, sheriffs, and clerks, with respect to pending proceedings, despite his or her present inability to pay for these services including filing fees; service of process; certified copies of orders or final judgments; a single photocopy of any court pleading, record, or instrument filed with the clerk; examining fees; mediation services and fees; subpoena fees and services; service charges for collecting and disbursing funds; and any other cost or service arising out of pending litigation. Attorney is responsible for ensuring compliance with

the terms of ss. 28.345 57.081, F.S., including but not limited to (1) providing necessary documentation to the clerk of court or sheriff and (2) filing appropriate motions with the trial court to obtain such services pursuant to the exemption or without prepayment. JAC shall not reimburse Attorney, either directly or indirectly through a service provider, for charges paid to the court, the sheriff or the clerk of court, in relation to services for which Attorney was statutorily exempt pursuant to s. 28.345 F.S., or the indigent client was entitled to receive without prepayment pursuant to s. 57.081, F.S.

14. If Attorney intends to procure services at rates higher than the Established Rates, Attorney must file a written motion setting forth the basis for the higher rate with service upon JAC. Attorney has the burden to establish that the particular service is necessary to the defense of the case and that Attorney made a diligent effort to find the service within the Established Rates. A prior authorization for a higher rate for the same or similar services in an unrelated proceeding shall not relieve Attorney from diligent efforts in the case at issue. In order to obtain reimbursement, the order must contain a finding that the service is necessary to the defense of the case and that Attorney made a diligent effort to find the service within the Established Rates. Diligent effort includes, but is not limited to, evidence that Attorney sought the services of at least three providers willing to work on the case but none were willing to work at the Established Rates. Absent an order expressly authorizing a rate in excess of the Established Rates, JAC will only pay or reimburse for services at the Established Rates. If Attorney procures services at a higher rate, Attorney is solely responsible for paying the difference.

15. Attorney shall not seek authorization from the court for out-of-state experts or mitigation specialists, absent a showing that there are no such providers with appropriate skills or expertise available, first, in the county in which the case was filed and, second, in any other county in the State of Florida. If Attorney obtains an out-of-state provider without making such a showing, Attorney agrees not to request reimbursement for any travel expenses including compensation for travel time on behalf of the provider. An order authorizing the employment must be in writing and contain specific findings regarding the unavailability of a qualified in-state expert or mitigation specialist. The attorney shall submit a copy of the order to JAC.

16. For interpreting services, JAC is responsible for services provided outside the court such as depositions and witness interviews. JAC is not responsible for payment of interpreting services provided in court or at other judicial proceedings such as proceedings before a general magistrate.

17. JAC shall only pay for actual services provided by providers that are reasonably necessary for the defense of the case. JAC has no responsibility for and will not pay for any cancellation fees or loss of business charges.

18. JAC shall not prepay or provide a retainer for investigative or miscellaneous expenses. Attorney shall not seek to have JAC prepay or provide a retainer for any provider or service. If a provider requires prepayment or a retainer, Attorney shall pay

the amount and seek reimbursement only after the provider has completed the services for which the prepayment or retainer was paid. Attorney shall only be reimbursed the amount necessary to compensate the provider at the appropriate hourly rate irrespective of the amount of the retainer.

19. JAC will not pay for any transcript that is not authorized by court order. The court order must be attached to the bill for said transcripts. Attorney must provide the court reporter with a copy of the order of appointment and the order authorizing the transcript. Upon receipt of a completed invoice from a court reporter, Attorney shall promptly review, sign, and forward the invoice to JAC for any bill in which JAC will directly pay the court reporter. In determining the number of pages to be billed, JAC will pay for a title page; index, appearance and/or contents page(s); the transcription of the testimony of the proceeding or deposition; one errata sheet for a deponent or witness; and necessary court reporter certification page(s) at the conclusion of the transcript. JAC will not pay for any pages containing word indexes, summaries, or similar information unless specifically required by court rule. All transcripts must comply with the minimum formatting requirements set forth in Florida Rule of Judicial Administration 2.535(f).

20. JAC may pay for the cost of preparing a transcript of a deposition only if Attorney secures an order from the court finding that preparation of the transcript is necessary, in which case JAC may pay for one (1) original and one (1) copy only. The order should reflect the name of the witness and the date of the deposition to be transcribed.

21. JAC may pay for the cost of one (1) original transcript of any deposition, hearing, or other proceeding. Any other payment for a transcript of that same deposition, hearing, or other proceeding, regardless of whether the transcript is an additional original transcript or a copy, shall be at the rate paid for a copy of a transcript. This subparagraph applies regardless of which state agency pays for the first original transcript.

22. Attorney shall reimburse JAC for any costs such as an interest charge, loss of prompt payment discount, or other costs or expenses to JAC due to delay in payment of a service provider invoice attributable to Attorney's error or omission. Attorney shall attempt to resolve any dispute between Attorney and any service providers without JAC intervention.

23. Attorney shall not obtain services for Client from a provider or other business entity of which Attorney or Attorney's spouse or child is an officer, partner, director, or proprietor or in which Attorney or Attorney's spouse or child, or any combination of them, has a material interest in any form whatsoever. Attorney shall not solicit or accept anything of value to Attorney, including a gift, loan, reward, promise of future employment, favor, or service, from a provider or other business entity who provides due process services to Attorney's court-appointed clients.

24. Signing the Invoice/Voucher Cover for a due process provider is not a ministerial act. By signing the Invoice/Voucher Cover, Attorney is certifying that the services



provided by the due process provider were satisfactorily performed and were necessary. Attorney is solely responsible for verifying the services listed on the JAC Invoice/Voucher Cover are an accurate representation of the due process services received by Attorney. If Attorney knew or should have known that the information contained on an Invoice/Voucher Cover was inaccurate at the time the Attorney executed the Invoice/Voucher Cover and this results in an overpayment to the due process provider, Attorney is jointly liable with the due process provider for any recoupment of the overpayment by JAC as provided herein.

#### V. ATTORNEY QUALIFICATIONS

1. Attorney represents that he or she is a member in good standing of The Florida Bar and meets at least the minimum experience and continuing education requirements as established pursuant to ss. 27.704 and 27.710, F.S.
2. Attorney shall notify JAC of any disciplinary action against Attorney or Legal Entity where probable cause has been found. Attorney shall notify JAC of all appointed cases in which there is a judicial finding that Attorney provided ineffective assistance of counsel.

#### VI. LICENSES/FLORIDA BAR MEMBERSHIP

It shall be the sole responsibility of Attorney to comply with all applicable federal, state, county, and municipal statutes, ordinances, rules, and regulations in the performance of Attorney's obligations under this Capital Collateral Contract. Attorney shall, throughout the term of this Capital Collateral Contract, be a member in good standing with The Florida Bar.

#### VII. CERTIFICATION OF CASELOAD

By executing this Capital Collateral Contract Attorney certifies that he or she is counsel of record in not more than ten (10) capital collateral postconviction proceedings as provided in s. 27.711(9), F.S.

#### VIII. CERTIFICATION OF CONTINUING LEGAL EDUCATION

By executing this Capital Collateral Contract, Attorney certifies that he or she has attended within the last year a continuing legal education program of at least ten (10) hours' duration devoted specifically to the defense of capital cases, if available. Continuing legal education programs meeting the requirements of this rule offered by The Florida Bar or another recognized provider and approved for continuing legal education credit by The Florida Bar shall satisfy this requirement. The failure to comply with this requirement may be cause for removal from the Registry until the requirement is fulfilled, as provided in s. 27.710(1), F.S.

## IX. INDEPENDENT CONTRACTOR

The parties agree that this Capital Collateral Contract does not create the relationship of attorney and client between Attorney and JAC. This Capital Collateral Contract is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or association between JAC and Attorney. Attorney is, and shall at all times be deemed, an independent contractor and shall be wholly responsible for the manner in which Attorney performs the services required by the terms of this Capital Collateral Contract. Attorney exclusively assumes responsibility for the acts of Attorney's employees, agents, subcontractors, and all others acting at the direction of, or on behalf of, Attorney as they relate to the services to be provided under this Capital Collateral Contract. Attorney and Attorney's agents and employees shall not be entitled to any rights or privileges of employees of the State of Florida including, but not limited to, compensation insurance, malpractice insurance, and unemployment insurance, as a result of this Capital Collateral Contract.

## X. NO ASSIGNMENT

Attorney shall not delegate or assign this Capital Collateral Contract or compensation owed to Attorney under this Capital Collateral Contract. Attorney shall not assign or delegate any duties or work to another attorney unless that attorney is designated pursuant to s. 27.711, F.S., to the case. Attorney shall not bill for services rendered by another attorney and affirmatively waives the right to seek compensation for work performed by any other attorney except for a single attorney designated pursuant to s. 27.711, F.S.

## XI. NO PROHIBITION ON PRIVATE PRACTICE

Nothing in this Capital Collateral Contract shall preclude Attorney from representing privately retained clients provided that no private case shall be accepted that is likely to cause a conflict of interest with a case appointed to Attorney under this Capital Collateral Contract.

## XII. BILLING REQUIREMENTS FOR REIMBURSEMENT OF ATTORNEY'S FEES, COSTS, AND RELATED EXPENSES

1. Attorney shall submit to JAC all bills for attorney's fees or related expenses within ninety (90) days after final disposition of the case. All bills must be accompanied by the appropriate JAC Invoice/Voucher Cover.
2. For purposes of this Capital Collateral Contract, the term "disposition" means until the sentence of death is reversed, reduced, or carried out, or until Attorney is released by order of the trial court.
3. Attorney shall comply with all the requirements of this Capital Collateral Contract, Florida Statutes, JAC Policies and Procedures for Capital Collateral Private Court-

Appointed Counsel, Administrative Orders and applicable court orders, and shall submit requests for compensation on applicable JAC forms to obtain compensation for services rendered pursuant to this Capital Collateral Contract. JAC Policies and Procedures for Capital Collateral Private Court-Appointed Counsel, are incorporated into this Capital Collateral Contract by reference and can be found at JAC's website at [www.justiceadmin.org](http://www.justiceadmin.org). JAC's Policies and Procedures may be amended from time to time during the course of this Capital Collateral Contract. It is Attorney's sole responsibility to remain informed of changes and updates to JAC Policies and Procedures for Capital Collateral Private Court-Appointed Counsel.

4. Attorney shall bill for all cases under one tax identification number. Attorney shall execute a new contract if Attorney changes tax identification number or moves to a new firm. Any sharing of compensation with prior firms or future firms is the responsibility of Attorney and Legal Entity.

5. Attorney invoices for fees, costs or expenses shall be supported by documentation that includes, but is not limited to, the Order of Appointment and the disposition documents. For appeals, Attorney shall supply a paper or electronic copy of the briefs filed by Attorney in the case.

6. Attorney shall also provide an hourly statement that comports with the requirements set forth in JAC Policies and Procedures for Capital Collateral Private Court-Appointed Counsel. Attorney shall only bill in hours and tenths of hours and services shall be listed in chronological order beginning with the date of Attorney's appointment to the case. Attorney shall provide detailed description for each service or activity listed on the invoice, including but not limited to, the date of service, the increment of time associated with the service or activity, the identification of documents and materials, the number of pages, and the names of deponents and witnesses interviewed, as applicable. If the reported activity involves more than one assigned case, Attorney's time shall be divided, as appropriate, among the cases. In no event may Attorney's time exceed the total actual clock time required for the reported activity. Attorney shall also provide a copy of the Court's progress docket. Attorney shall not bill for services in a single entry across multiple dates.

7. Administrative activities do not constitute services for which Attorney may seek compensation. For purposes of this Capital Collateral Contract, administrative activities include, but are not limited to the following:

- a. Services performed by support staff, paralegals, law clerks, and secretaries.
- b. Time related to or in furtherance of billing, or time related to defending a disputed bill.
- c. Time spent reviewing invoices of service process providers.

- d. Time spent preparing motions for attorney's fees and costs, investigative and miscellaneous expenses and time spent in hearing on said motions.
- e. Time spent on activities not reasonably related to the merits of the underlying case including time spent preparing and reviewing routine pleadings and documents such as notices of hearing and depositions, notices of unavailability, subpoenas, and returns of service; calendaring hearings and setting depositions; and providing instructions to staff.
- f. Time spent on office or administrative functions including secretarial and administrative work performed by any person, including Attorney.
- g. Time spent defending against a bar complaint, 3.850 motion, or other grievance filed by the client.
- h. Time spent on any other activity not reasonably related to the defense of the case.
- i. Time spent on correspondence with JAC and conversations with JAC personnel.

Attorney agrees not to seek hourly compensation for any such services including but not limited to the services listed above.

8. If Attorney provides services related to more than one case, Attorney shall apportion the time spent among all the cases to which the services related regardless of how the cases are billed. If Attorney is in court on multiple cases, the time spent shall be apportioned among all the cases regardless of the manner in which the cases are billed.

9. Attorney shall not seek a court order for payment nor accept payment for a billing before JAC has completed review of a properly presented invoice. The JAC billing audit deficiency form is an instrument used to convey that a billing is deficient and does not serve as JAC's Letter of Objection or No Objection to any billing submitted by Attorney. Attorney shall not file a motion for compensation based upon a billing audit deficiency form. Attorney shall not file a motion for attorney's fees, costs, and/or related expenses until Attorney receives a Letter of Objection or No Objection from JAC. A copy of the Letter of Objection or No Objection must be attached to the motion. If Attorney obtains an order in violation of this subparagraph, Attorney agrees not to contest any motion to vacate filed by JAC. Attorney will not seek to enforce or otherwise compel performance by JAC of an order obtained in violation of this subparagraph.

10. Attorney shall not seek compensation or reimbursement by JAC for fees, costs or expenses associated with the defense of a bar grievance, nor shall Attorney seek a court order for payment or accept payment for such fees, costs, or expenses.

11. Except for witness fees authorized by law, Attorney shall not seek compensation or reimbursement by JAC for fees, costs, or expenses associated with being called as a witness in any proceeding related to his or her services under this Capital Collateral Contract including but not limited to motions for postconviction relief.

12. Attorney shall provide JAC with a minimum of five (5) business days' notice of any hearing on a motion relating to attorney's fees, costs, or related expenses.

13. Attorney agrees to not object or otherwise contest any request by JAC to appear telephonically at any hearing or other judicial proceeding related to attorney's fees, costs or related expenses.

14. Attorney shall maintain appropriate documentation, including a contemporaneous current and detailed hourly accounting of time spent representing Client. If the attorney fails to maintain such contemporaneous and detailed hourly records, the attorney waives the right to seek compensation. These records and documents are subject to review by JAC, subject to the attorney-client privilege and work product privilege. Attorney shall maintain the records and documents in a manner that enables the attorney to redact information subject to a privilege in order to facilitate and not impede JAC's review of the records and documents. A finding by JAC that Attorney waives the right to seek compensation for failing to maintain detailed and contemporaneous records or for failing to allow JAC to inspect those records shall be presumed to be valid, unless a court concludes that JAC's finding is not supported by competent and substantial evidence.

15. Attorney shall be familiar with the statutory and contractual requirements for submission of billings to JAC. It is Attorney's responsibility to verify that all necessary documentation required for payment of a billing is submitted to JAC prior to or with the initial submission of a billing. Attorney is also responsible for verifying that the case has reached a billable stage and to submit the billing in an amount consistent with contractual and statutory requirements. Repeated failures to submit billings that comport with statutory and contractual requirements constitute good cause for JAC to terminate this Capital Collateral Contract.

16. Any letter of objection or no objection, or audit deficiency notice shall expire one year from the date of issuance. If Attorney or due process provider fails to act on the letter or notice within one year of issuance, the billing shall be deemed abandoned without further notice.

### XIII. RECORD RETENTION/INSPECTION/PUBLIC RECORDS

1. Attorney shall keep contemporaneous detailed records to enable JAC to verify all costs, expenses, and Attorney's time expended representing Client in the case appointed under this Capital Collateral Contract. The records shall include supporting documentation necessary to adequately evaluate and substantiate payments made under this Capital Collateral Contract. The attorney shall maintain appropriate

documentation, including contemporaneous and detailed hourly accounting of time spent representing Client. If the attorney fails to maintain such contemporaneous and detailed hourly records, the attorney waives the right to seek compensation in excess of statutory limitations.

2. These records and documents are subject to review by the Justice Administrative Commission, subject to the attorney-client privilege and work-product privilege. Attorney may redact information from the records and documents only to the extent necessary to comply with the privilege.

3. Attorney shall maintain the records and documents in a manner that enables the attorney to redact information subject to a privilege in order to facilitate and not impede JAC's review of the records and documents.

4. Upon JAC's issuance of a notice of inspection of records and documents as to a particular case, Attorney shall deliver to JAC, or a designated agent, copies of any and all contemporaneous billing records related to that case within a reasonable period of time. This time period shall not exceed thirty (30) days unless an extension is granted by JAC in writing. Attorney's failure to provide the contemporaneous billing records within a reasonable period of time shall be deemed a refusal to allow JAC to inspect the contemporaneous billing records.

5. Attorney agrees to retain and make available for inspection and audit at Attorney's place of business, upon reasonable notice, all books, statements, ledgers and other financial records relating to services under this Capital Collateral Contract for a period of five (5) years from the date of each payment, or until all Federal or State audits that may relate to each payment are complete for the applicable fiscal year, whichever is later, unless ordered sealed by the Court. For purposes of this subparagraph, fourteen (14) days' notice shall be deemed reasonable notice. The failure to allow JAC to inspect such records upon reasonable notice shall be deemed a refusal to allow JAC to inspect those records as to any unpaid case that was pending as of the date of the inspection.

6. If Attorney fails, refuses, or declines to permit JAC to review documentation for a case as provided in this paragraph, Attorney waives the right to seek, and JAC shall not pay, compensation for that case until JAC has been provided access to documentation.

7. A finding by JAC that Attorney waives the right to seek compensation for failing to maintain detailed and contemporaneous records or for failing to allow JAC to inspect those records shall be presumed to be valid, unless a court concludes that JAC's finding is not supported by competent and substantial evidence.

8. To the extent that Attorney's records constitute public records under Florida law, Attorney must comply with the requirements of Ch. 119, F.S., and other provisions of Florida law relating to public records. Attorney is solely liable for any fee or costs assessed against Attorney if Attorney fails to comply with a request for public records

pursuant to Florida law. In assessing whether records possessed by Attorney constitute public records, Attorney should be familiar with Kight v. Dugger, 574 So. 2d 1066 (Fla. 1990), which concluded that files held in furtherance of representation of an indigent client are not public records.

#### XIV. ELECTRONIC COMMUNICATION AND ELECTRONIC FUNDS TRANSFER

1. Attorney shall maintain sufficient internet capability, including an email account, to communicate with JAC under this Capital Collateral Contract. Attorney agrees to accept communications including billing audit deficiency forms and Letters of Objection or No Objection via email.

2. Attorney agrees to accept legal pleadings including but not limited to responses to motions for attorney's fees, due process costs, or related expenses by email. Attorney waives the mailing of any such legal pleadings as a prerequisite to legal service of any legal pleading received by email.

3. Attorney agrees to provide JAC with an electronic copy of any legal pleading in the manner directed by JAC Policies and Procedures. Any motion, order or other legal pleadings shall be sent by email to the email address designated for service of legal pleadings. Legal pleadings including orders will not be deemed served on JAC until an electronic copy has been provided in accordance with JAC Policies and Procedures. Any response to a billing audit deficiency that does not contain a legal pleading shall be sent to the email address designated for responses to audit deficiencies. Attorney shall not send more than one (1) electronic copy of any legal pleading or other document to JAC. Prior to resubmitting any document, Attorney shall verify that JAC has not received the document. Absent exigent circumstances, Attorney shall not provide any legal pleading or other document to JAC via facsimile without prior consent.

4. Attorney shall participate in a direct-deposit program under which Attorney authorizes the transfer of funds electronically to an account in the Attorney's or Legal Entity's name at a federal-chartered or state-chartered financial institution. If Attorney seeks an exemption from this provision, Attorney must submit in writing a request for exemption specifically delineating why Attorney cannot comply with this provision. JAC may exempt Attorney from compliance with this provision only if JAC determines that participation in a direct-deposit program creates a financial hardship for Attorney.

#### XV. TERMINATION

1. JAC shall have the right to terminate this Capital Collateral Contract immediately if, in its sole opinion, Attorney or Attorney's agents or employees fail to comply with the terms of this Capital Collateral Contract. Such failure shall constitute a material breach of this Capital Collateral Contract by Attorney. In the event of breach of duty in a case by Attorney, Attorney shall not be entitled to payment of Attorney's fees, costs, and expenses for work performed except by court order.

2. Upon thirty (30) days written notice, JAC or Attorney may, without cause, terminate this Capital Collateral Contract. Following termination of this Capital Collateral Contract pursuant to this paragraph, if Attorney is permitted by the Court to withdraw from appointed cases, Attorney will be compensated pursuant to ss. 27.703, 27.710 and 27.711, F.S.

3. Attorney is not eligible for any new appointments to cases in the event of termination of this Capital Collateral Contract, unless JAC executes a new Capital Collateral Contract with Attorney. Attorney shall notify the Court of the termination of this Capital Collateral Contract.

4. Notice of termination of this Capital Collateral Contract must be in writing and sent by certified or registered United States mail with return receipt requested to the last known address. Any notice of termination of this Capital Collateral Contract by either JAC or Attorney shall be copied to the Court.

5. JAC, at its sole discretion, may suspend this Capital Collateral Contract pending Attorney's failure to maintain status in good standing with The Florida Bar for infractions that are curable. Attorney shall notify the Court of the suspension of this Capital Collateral Contract

#### XVI. NO WAIVER/GOVERNING LAW

1. No waiver by either party of any existing default by the other party shall be deemed to waive any subsequent default. All rights hereunder are cumulative, not alternative, and are in addition to any other rights given by law. The validity, construction, and interpretation of this Capital Collateral Contract shall be governed by the laws of the State of Florida and the Florida Constitution.

2. Any action arising over any dispute over performance or other terms of this Capital Collateral Contract may only be maintained in the Florida state courts. Venue for all equitable or legal actions arising from or related to this Capital Collateral Contract wherein JAC or the State of Florida is a named party shall be in the appropriate state court in Leon County, Florida. The parties waive any right to jury trial.

3. For purpose of the applicable statute of limitation under general law, any cause of action for compensation in relation to attorney's fees and costs, investigative and miscellaneous expenses, or related expenses for a court-appointed case accrues on the date the case reached final disposition notwithstanding any appeals. For purposes of this paragraph final disposition means until the sentence of death is reversed, reduced, or carried out, or until Attorney is released by order of the trial court,

4. Attorney waives the right to seek compensation either directly or indirectly on behalf of due process providers in relation to attorney's fees, due process costs, or related expenses once the statute of limitation has expired.



## XVII. SEVERABILITY

The terms and conditions of this Capital Collateral Contract shall be deemed to be severable. If any clause, term, or condition herein shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions. Notwithstanding any such determination, this Capital Collateral Contract shall continue in full force and effect unless a particular clause, term, or condition held to be illegal or void renders the balance of the Capital Collateral Contract impossible to perform.

## XVIII. AMENDMENT OF CAPITAL COLLATERAL CONTRACT

This Capital Collateral Contract expresses the understandings of the parties concerning all matters covered. No changes or additions to this Capital Collateral Contract or the terms of this Capital Collateral Contract, whether by written or verbal understanding of the parties, their officers, agents, or employees, shall be valid unless in the form of a written amendment executed by the parties.

## XIX. MISCELLANEOUS PROVISIONS

1. Attorney shall provide JAC with any pleading, motion, or other legal document a minimum of five (5) business days before any hearing on said pleading, motion, or other legal document. Attorney shall provide JAC with copies of all attachments to said pleading, motion, or other legal document.
2. Attorney agrees to be responsible for the management and direction of all legal services pursuant to this Capital Collateral Contract.
3. Within thirty (30) days of a change of affiliation of Attorney from Legal Entity, this Capital Collateral Contract shall be terminated.
4. Attorney shall affix Attorney's name and bar number on all communications addressed to JAC. Attorney shall keep JAC informed at all times of Attorney's current name, address, telephone and facsimile numbers, email address, and tax identification number. Notification of changes shall be provided in writing to JAC. Attorney shall be responsible for keeping JAC informed of the name, address, telephone and facsimile numbers, email address, and tax identification number of due process service providers utilized by Attorney.
5. For the purposes of this Capital Collateral Contract, the term "case" shall be defined the matter assigned a case number by the Clerk of the Court to the Client. However, assignment of a case number solely for tracking purposes by the clerk may not constitute a case for payment purposes.

6. If Attorney discovers any information that would raise a concern as to the ongoing indigency of the Client, then the Attorney shall either advise the court and JAC of the changed circumstances or move to withdraw.

7. To obtain reimbursement for travel expenses for Attorney, service providers, or witnesses, Attorney must follow the requirements set forth in s. 112.061, F. S.; the Department of Financial Services (DFS) Regulations; and JAC Policies and Procedures. JAC's specific travel procedures are posted on the JAC's website and Attorney shall abide by these procedures. Attorney may bill only for authorized travel expenses. Attorney must obtain a court order identifying the approved traveler and the purpose of the travel. Any time spent by Attorney or a service provider making travel arrangements and preparing travel vouchers is considered clerical work and is therefore not billable. Attorney must submit a completed DFS approved travel voucher with any request for reimbursement for travel expenses including but not limited to any request for reimbursement for mileage. When authorized, mileage will only be reimbursed for distances exceeding fifty (50) miles one way. Reimbursement for mileage is limited to actual mileage traveled using a personal vehicle. JAC reimburses for the actual mileage incurred during a trip. When Attorney travels on multiple cases, the total amount of mileage billed across those cases cannot exceed the actual distance traveled. Attorney cannot seek reimbursement for the same mileage traveled in more than one case. Mileage must be apportioned appropriately so that Attorney receives compensation for the actual mileage traveled using a personal vehicle. Failure to submit a properly completed travel voucher constitutes a waiver of any right to obtain travel expenses.

8. Attorney travel should be limited to travel necessary for the defense of the case. Attorney should consider alternatives to attorney travel whenever feasible. For depositions for which appearing in person would result in significant travel expenses or travel time, Attorney should consider alternatives to appearing in person such as conducting the deposition through the use of communications equipment including videoconferencing technology or telephones.

9. In dealing with JAC and its staff, Attorney and Attorney's staff or representatives shall act in a professional and respectful manner. Behaviors that contribute to a hostile, humiliating or intimidating work environment, including sexual harassment, bullying, and abusive language or behavior, are unacceptable.

## XX. ENTIRE CONTRACT

This Capital Collateral Contract supersedes all prior negotiations, correspondence, conversations, agreements, contracts, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, contracts, or understandings concerning the subject matter of this Capital Collateral Contract that are not contained in this document. Accordingly, it is agreed that no

deviation from the terms of this Capital Collateral Contract shall be predicated upon any prior representations, agreements or contracts, whether oral or written.

XXI. THIS CAPITAL COLLATERAL CONTRACT CONSTITUTES A UNIFORM STATEWIDE CONTRACT PROMULGATED BY JAC PURSUANT TO S. 27.710 AND S. 27.711, F.S. THIS CAPITAL COLLATERAL CONTRACT MAY NOT BE ALTERED, MODIFIED OR AMENDED EXCEPT THROUGH A SEPARATE CONTRACT EXECUTED BY ATTORNEY AND AN AUTHORIZED REPRESENTATIVE OF JAC. IF ANY TERM OF THIS CAPITAL COLLATERAL CONTRACT IS ALTERED, MODIFIED, AMENDED OR OTHERWISE CHANGED TO DEVIATE FROM THE TERMS OF THE UNIFORM STATEWIDE CONTRACT PROMULGATED BY JAC, THEN THIS CAPITAL COLLATERAL CONTRACT IS VOID AB INITIO IN ITS ENTIRETY NOTWITHSTANDING ANY EXECUTION BY AN AUTHORIZED REPRESENTATIVE OF JAC. ALTERATIONS, MODIFICATIONS, OR AMENDMENTS INCLUDE ANY HANDWRITTEN OR TYPOGRAPHICAL CHANGE OR DEVIATION OF ANY OF THE TERMS OF THE UNIFORM STATEWIDE CONTRACT. PERFORMANCE BY JAC UNDER THIS CAPITAL COLLATERAL CONTRACT SHALL UNDER NO CIRCUMSTANCES WAIVE THIS PROVISION.

REVIEW ONLY

Please check here if Attorney has already registered for Electronic Funds Transfer/Direct Deposit through the Department of Financial Services.

Please check the box if ANY contact information below has changed.

Attorney hereby certifies that a Substitute Form W-9 has been submitted to the Florida Department of Financial Services. All attorneys obtaining payment from JAC are required to submit their Substitute Form W-9 on DFS' Vendor Website at <https://flvendor.myfloridacfo.com>.

ATTORNEY: \_\_\_\_\_

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Signature – Attorney

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Date

Type Name of Attorney  
Florida Bar Number  
Legal Entity (If applicable)  
Mailing Address  
City, State, and Zip Code  
Email Address  
Telephone Number  
Facsimile Number

**Payment by JAC under this Capital Collateral Contract may only be made to Attorney or the Legal Entity. Attorney and Legal Entity (if applicable) designate that payment by JAC under this Capital Collateral Contract shall be made to:**

\_\_\_\_\_  
Name (Attorney or Legal Entity)  
\_\_\_\_\_  
Tax Identification Number \*

Federal Tax I.D.

Social Security Number

**\* A DFS SUBSTITUTE FORM W-9 FOR THE PAYEE MUST BE ON FILE WITH DFS.**

STATE OF FLORIDA, JUSTICE ADMINISTRATIVE COMMISSION

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Alton L. "Rip" Colvin, Jr.  
Executive Director

XXXXXXXXXXXXXX

Date