CONTRACT FOR

MITIGATION SERVICES

This *Contract for Mitigation Services* is entered into this day of , 20\_\_, by and between (i) (“Attorney”) and (ii) (“Social Worker”).

WHEREAS, Attorney has been appointed by the Circuit [or Family] Court for County, West Virginia, to represent the defendant in the case numbered (the “Client”);

WHEREAS, the Client is to be sentenced due to conviction on the charges of by [plea; trial by jury; otherwise];

WHEREAS, Standard 8.2(d) of the Standards for the Indigent Defense Function in the State of West Virginia provides:

Defense counsel should gather and submit to the presentence officers, prosecution, and court as much mitigating information relevant to sentencing as reasonably possible; and in an appropriate case, with the consent of the accused, counsel should suggest alternative programs of service or rehabilitation or other non-imprisonment options, based on defense counsel’s exploration of employment, educational, and other opportunities made available by community services.

WHEREAS, Social Worker holds a Bachelor’s [or Master’s] degree in Social Work and has a certification of specialized training from Public Defender Services on the development of mitigation information for defendants to be sentenced in criminal proceedings (“Mitigation Services”);

WHEREAS, with education and training in social work and with specialized training on developing mitigation information, Social Worker is uniquely equipped to provide Mitigation Services to Attorney with respect to the Client, including providing information to Attorney about community services potentially available to the Client; and

WHEREAS, in fulfillment of the duties imposed by Standard 8.2(d), Attorney desires the Social Worker to provide Mitigation Services to Attorney;

NOW, THEREFORE, in consideration of the matters set forth in the above recitals and in further consideration of the mutual obligations and promises set forth below, Attorney and Social Worker hereby agree:

1. **Contracted Services.** Pursuant to the terms and conditions set forth in this *Contract for Mitigation Services,* Social Worker agrees to develop mitigation information for the Client to be potentially used by Attorney in the Client’s sentencing.

1. **Compensation.** Attorney will compensate the Social Worker for delivery of the contracted services by payment of the amount of upon completion of the services [or, alternatively, by payment of the hourly rate of to be paid upon completion of the services].
2. **Expenses.** Attorney will reimburse Social Worker for the ordinary expenses incurred in providing the services in this contract, including reimbursement for mileage at the rate set by Public Defender Services for panel attorneys. Extraordinary expenses are not to be incurred by the Social Worker until authorized by Attorney.
3. **Timekeeping.** Social Worker will provide to Attorney a statement of services showing a daily recording of the time spent on discrete tasks. The time is to be reported in tenths of an hour, rounded up to the nearest tenth of an hour. Descriptions of services are to be itemized; that is, services are not to be grouped into blocks of time. Attorney will submit the Social Worker’s statement of services to Public Defender Services for compensation to Attorney for paralegal services provided out-of-court on behalf of the Client.
4. **Independent Contractor.** Social Worker will be an independent contractor and not an employee of Attorney. Attorney will be obligated to provide to Social Worker a timely 1099 form for tax purposes in accord with the governing tax law. As an independent contractor, Social Worker will not be entitled to any benefits such as annual leave, sick leave or retirement contributions. Attorney will not withhold any amount on behalf of Social Worker based on Social Worker’s tax obligation.
5. **Consultation.** Social Worker is to consult regularly with Attorney or when requested by Attorney. Social Worker will prepare a plan for developing mitigation information that is to be reviewed by Attorney before being implemented. Attorney may revise the steps set forth in the plan or may add steps to the plan. Social Worker is to consult with, and obtain the approval of, Attorney for additional steps not set forth in the plan. Attorney has final authority over whether an action is to be taken by Social Worker. Social Worker is to keep Attorney informed of any scheduled conferences with the Client and is not to meet with Client unless authorized by Attorney. If necessary, Attorney will provide Social Worker with a letter authorizing Social Worker’s consultation with the Client within a detention facility.
6. **Confidentiality**. Social Worker is to maintain the confidentiality of any communication with the Client. Any information received from or for the Client is not to be disclosed to any person except as expressly directed by Attorney. Social Worker is also to comply with the requirements of the law commonly known as HIPPA when disclosing information about the Client to anyone other than Attorney. In providing mitigation services, Social Worker will be an agent of Attorney and the resulting work product of the Social Worker will be considered attorney work product subject to disclosure only by Attorney or at Attorney’s direction.
7. [optional] **Insurance.** Attorney is to confirm that Social Worker is covered by Attorney’s policy of malpractice insurance while performing the Mitigation Services.
8. **Schedule.** Social Worker is to timely perform the services for Attorney. Upon execution of this *Contract for Mitigation Services*, the timeline for providing the services is to be attached as Attachment “A” and initialed by Attorney and Social Worker. The timeline can be altered only upon the agreement of, or at the direction of, Attorney with due regard for the Social Worker’s schedule.
9. **Governing Law**. This *Contract for Mitigation Services* is to be governed by the law of the State of West Virginia.

WHEREFORE, by their respective signatures below, Attorney and Social Worker hereby mutually execute this *Contract for Mitigation Services*, which is to be effective as of the date that is set forth in the first paragraph.

BY: BY:

ATTORNEY SOCIAL WORKER

**ATTACHMENT “A”**

**TIMELINE FOR MITIGATION SERVICES**