

**STATE OF MISSISSIPPI  
MISSISSIPPI DEPARTMENT OF CHILD PROTECTION SERVICES  
CONTRACT FOR LEGAL TRAINING SERVICES**

***Proposed Contract Agreement***

1. Parties. The parties to this contract are the Mississippi Department of Child Protection Services (hereinafter “MDCPS”) and American Bar Association, an Illinois not for profit corporation (“ABA”), on behalf of its Center on Children and the Law (“CCL”) (hereinafter “Independent Contractor”).

Purpose. The purpose of this contract is for MDCPS to engage Independent Contractor for Legal Training Services specifically for Child Welfare Attorneys. Independent Contractor hereby agrees to render certain professional services described in Paragraph 3, “Scope of Services.”

2. Scope of Services. Independent Contractor will perform and complete in a timely and satisfactory manner the services described in the Scope of Services, attached hereto as Exhibit A, and the “*2<sup>nd</sup> Modified Mississippi Settlement Agreement and Reform Plan*”, attached hereto as Exhibit B, and incorporated herein by reference.
3. Consideration. As consideration for the performance of this Contract, Independent Contractor shall be paid a fee not to exceed forty-five thousand six hundred sixty six dollars and zero cents (\$45,660.00) in accordance with the budget attached hereto as Exhibit C.
4. Period of Performance. This contract will become effective for the period beginning September 18, 2023 and ending on September 17, 2024 upon the approval and signature of both parties hereto.
5. Method of Payment. Independent Contractor agrees to accept payments referenced in Paragraph 4, “Consideration”, to be paid as billed by Independent Contractor, upon review and approval by MDCPS. Independent Contractor agrees to submit invoices to MDCPS that contain a detailed account of each billing. **The final invoice is to be submitted no later than fifteen (15) days after the contract end date.** Independent Contractor is classified as an independent contractor and not a contractual employee of MDCPS. As such, any compensation due and payable to Independent Contractor will be paid as gross amounts. Independent Contractor invoices shall be submitted to the Agency as set forth in Paragraph 27. Independent Contractor invoices shall be submitted to MDCPS at [contract.invoices@mdcps.ms.gov](mailto:contract.invoices@mdcps.ms.gov) by the 10<sup>th</sup> day of each month following completion.
6. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the federal courts in the State or in a court of competent jurisdiction in Hinds County, Mississippi. Independent Contractor shall comply with applicable federal, state, and local laws and regulations.

7. Availability of Funds. It is expressly understood and agreed that the obligation of the MDCPS to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MDCPS, MDCPS shall have the right upon ten (10) working days written notice to Independent Contractor, to terminate this agreement without damage, penalty, cost or expenses to the MDCPS of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
8. Representation Regarding Contingent Fees. Independent Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
9. Representation Regarding Gratuities. The Independent Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.
10. Compliance with Laws. Independent Contractor understands that MDCPS is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Independent Contractor agrees during the term of the agreement that Independent Contractor will strictly adhere to this policy in its employment practices and provision of services. Independent Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
11. Insurance. Independent Contractor represents that it will maintain workers' compensation insurance as required by the State of Mississippi which shall inure to the benefit of all the Independent Contractor's personnel provided hereunder; comprehensive general liability or professional liability insurance, and employee dishonesty insurance or fidelity bond insurance with third party liability coverage. All general liability, professional liability, employee dishonesty, and fidelity bond insurance will provide coverage MDCPS as an additional insured. MDCPS reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.
12. Indemnification. To the fullest extent allowed by law, Independent Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the

State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Independent Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, Independent Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Independent Contractor defends said claim, suit, etc., Independent Contractor shall use legal counsel acceptable to the State. Independent Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Independent Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

13. Stop Work Order.

- 1) Order to Stop Work: MDCPS may, by written order to Independent Contractor at any time, and without notice to any surety, require Independent Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Independent Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Independent Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, MDCPS shall either:
  - a) cancel the stop work order; or,
  - b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- 2) Cancellation or Expiration of the Order: If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Independent Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Independent Contractor price, or both, and the contract shall be modified in writing accordingly, if:
  - a) the stop work order results in an increase in the time required for, or in Independent Contractor's cost properly allocable to, the performance of any part of this contract; and,
  - b) Independent Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if MDCPS decides

that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

- 3) **Termination of Stopped Work:** If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- 4) **Adjustments of Price:** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

14. **Termination.** The Commissioner may terminate this contract with or without cause upon thirty (30) days prior written notice to the Independent Contractor.

15. **Termination for Convenience.**

- 1) *Termination.* The Commissioner or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Commissioner or designee shall give written notice of the termination to Independent Contractor specifying the part of the contract terminated and when termination becomes effective.
- 2) *Independent Contractor's Obligations.* Independent Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Independent Contractor will stop work to the extent specified. Independent Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Independent Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Commissioner or designee may direct Independent Contractor to assign Independent Contractor's right, title, and interest under terminated orders or subcontracts to the State. Independent Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

16. **Termination for Default.**

- 1) *Default.* If Independent Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Commissioner or designee may notify Independent Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Commissioner or designee, such officer may terminate Independent Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Commissioner or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the

Commissioner or designee. Independent Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- 2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Independent Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Independent Contractor in which the State has an interest.
- 3) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Independent Contractor such sums as the Commissioner or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- 4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Independent Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Independent Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Commissioner or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Independent Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Independent Contractor to meet the contract requirements. Upon request of Independent Contractor, the Commissioner or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Independent Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-priced contracts, "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- 5) *Erroneous Termination for Default.* If, after notice of termination of Independent Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for

termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

- 6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
17. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by MDCPS upon written notice to Independent Contractor, if Independent Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Independent Contractor of an assignment for the benefit of its creditors. In the event of such termination, Independent Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
18. Modification or Renegotiation. This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary. Modifications shall not be initiated by the Independent Contractor within the last 90 days of the contract period, without prior approval from the Commissioner's Office.
19. Anti-assignment/Subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
20. Non-Solicitation of Employees. Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State or Contractor.
21. Waiver. No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party

to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

22. E-Payment. Independent Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.
23. E-Verify. If applicable, Independent Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Independent Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Independent Contractor agrees to provide a copy of each such verification. Independent Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Independent Contractor to the following:
- (1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
  - (2) the loss of any license, permit, certification or other document granted to Independent Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
  - (3) both. In the event of such cancellation/termination, Independent Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.
24. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent MDCPS contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Independent Contractor as trade secrets, or other proprietary information, including confidential vendor

information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

25. Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Independent Contractor's choice. The State may, at its sole discretion, require Independent Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Independent Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
26. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business listed herein. Notice shall be deemed given when actually received or when refused. MDCPS and Independent Contractor agree to promptly notify each other in writing of any change of address.

For the Agency:	For Contractor:
MS Dept of Child Protection Services Attn: Contracts & Finance 750 N. State Street Jackson, MS 39202	American Bar Association Authorized Official

27. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 700, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.dfa.ms.gov/pprb/>.
28. Severability. If any term or provision of this Contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
29. Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.



30. Requirements Contract. During the period of the contract, Independent Contractor shall provide all the service described in the contract. Independent Contractor understands and agrees that this is a requirements contract and that MDCPS shall have no obligation to Independent Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of MDCPS for the period of the contract. The amount is only an estimate and Independent Contractor understands and agrees that MDCPS is under no obligation to Independent Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Independent Contractor further understands and agrees that MDCPS may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.
31. Entire Agreement. This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understanding, and agreements, written or oral, between the parties relating thereto.
32. Approval Clause. It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the date indicated below, after first being authorized so to do.

By: \_\_\_\_\_  
Mississippi Department of Child  
Protection Services  
Andrea Sanders  
Commissioner

By: \_\_\_\_\_

# **EXHIBIT A**

## **Scope of Services**

The Contractor will perform the following services upon request of the Agency in fulfillment of the purposes of this contract:

The American Bar Association will provide training and coaching 75 child welfare attorneys. ABA will provide best practices for representing the best interests of children in legal matters involving child abuse, neglect, dependency, custody, foster care, adoption, and other issues. by providing prevention services to children and their families of origin.

The ABA shall perform the services required at any place or location selected by MDCPS that is consistent with the Services to be provided. MDCPS shall select a location with sufficient space that will accommodate breakout sessions and will enable the ABA to utilize AV equipment.

### **Outcomes of Contracted Services:**

- Improved skills in examining and cross-examining witnesses in court;
- Practical experience working through child welfare case scenarios in a mock trial setting with personalized feedback from experienced national child welfare litigators; and
- Encourage competent interactions with families, jurors, and judges.

## **EXHIBIT B**

# **2<sup>nd</sup> Modified Mississippi Settlement Agreement and Reform Plan**

(See Mississippi Department of Child Protection Services Website)  
<https://www.mdcp.ms.gov/about/olivia-y-lawsuit/>

# EXHIBIT C

## Budget

### Contract Rate Schedule

This contract is not to exceed forty-five thousand six hundred sixty dollars and zero cents (\$45,600.00).

Payment Schedule	Amount to Bill
The 1 <sup>st</sup> half of the Trials Skills Work is completed.	(\$20,000)
The 2 <sup>nd</sup> half of the Trials Skills Work is completed.	(\$25,660)

The Independent Contractor shall be paid in two payments upon submission of invoices. The first invoice in the amount of twenty thousand dollars and zero cent (\$20,000) shall be submitted to MDCPS after half the work is completed. The second invoice in the amount of twenty-five thousand six hundred sixty-six dollars and zero cents (\$25,660) shall be submitted to MDCPS once all work has been completed.