

Sample Contract - Private Probation Services – Georgia Courts

The following sample is provided as guidance only for language that Georgia courts or private providers may wish to utilize in constructing contracts for private probation services. It is not mandatory language. It is also not necessarily complete with respect to required elements. Be sure your contract complies with O.C.G.A. § 42-8-102 and Rule 503-1-.21(b)

CMPAC RULE 503-1-.21 Qualifications of Owners, Directors and Agents.

(a) Qualifications: *(this section removed for this document. Refer to CMPAC Rules)*

(b) Private Probation Service Plan. The registration application must demonstrate through a written plan or sample contract form, the reasonable ability to furnish continuous service in compliance with private probation entity requirements from the date operation commences. Plans and contracts must minimally contain the following information and must be filed and maintained current with the council:

1. Description of the extent of services to be rendered by the entity;
2. Staff qualifications which meet or exceed the statute;
3. Criminal records checks completed on all staff in accordance with Rule 503-1-.25 and OCGA §35-3-34 by providing completed fingerprint cards;
4. Policies and procedures for staff training;
5. Bonding of staff;
6. Staffing levels and standards of supervision, including the type and frequency of contacts;
7. Collection procedures for handling court-ordered fines, fees, and restitution;
8. Procedures for handling indigent offenders;
9. Revocation procedures and circumstances;
10. Reporting and record keeping procedures;
11. Default and contract termination procedures; and
12. A schedule of the range of probation fees and charges assessed to the probationers supervised by the entity.

Probation Services Agreement

This Agreement is made by and between _____, a [*insert* corporation, LLC, etc.] organized under the laws of the State of _____, with its principal place of business at _____ hereinafter called “Contractor and the _____ Court of _____, Georgia hereinafter called “Court”.

This Agreement is governed by Article 6 of Chapter 8 of Title 42 of the Official Code of Georgia, Annotated. The parties enter into the Agreement under the specific authority of [*insert* O.C.G.A. §§ 42-8-30.1 & 42-8-100 (f) (1). [For state court and other court agreements, insert O.C.G.A. § 42-8-100 (f) (1) or O.C.G.A. § 42-8-100 (g) (1), and determine which Appendix A to use.]

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SCOPE OF SERVICES AND RESPONSIBILITIES OF CONTRACTOR

In consideration of the obligations of the Court or governing authority, Contractor shall provide the following services.

A. Responsibilities of Probation Services Contractor

(1.) Compliance with Statutes and Rules. Contractor shall comply with Article 6 of Title 42 Chapter 8 of the Official Code of Georgia and all standards, rules and regulations promulgated by the County and Municipal Probation Advisory Council.

2.) Records and Confidentiality. Contractor shall create and maintain individual files for each offender receiving services from Contractor in accordance with this Agreement. Contractor shall maintain the confidentiality of all files, records and papers relative to supervision of probationers under this Agreement. These records, files and papers shall be available only to the judge of the court handling the case, the Department of Audits and Accounts, the County and Municipal Probation Advisory Council and upon transfer of probation supervision to the State, to the Georgia Department of Corrections.

3.) Financial Records. Contractor shall maintain financial records according to generally accepted accounting practices.

4.) Officer Qualifications and Training. Contractor shall employ competent and able personnel to provide the services to be rendered hereunder and to appropriately administer the caseload. All probation officers shall be at least twenty-one (21) years of age and have the educational qualifications as required by Section 42-8-102 of the Official Code of Georgia Annotated. All probation officers shall also comply with the orientation and continuing education training required per annum under the same Code Section. No person who has been convicted of a felony will be employed by Contractor as a probation officer.

5.) Criminal History Check. Contractor shall have a criminal history records check made of all probation officers and certify the results to the County and Municipal Probation Advisory Council.

6.) Officer per Probationer Ratio. . Contractor shall manage caseload limits so as not to exceed _____probationers per probation officer for basic supervision and _____probationers per probation officer for intensive supervision.

7.) Location Place of Business. Contractor shall maintain an office in _____ (County or Municipality) for meeting with and the provision of services to probationers.

B. Reports to Court.

Contractor shall provide written reports monthly to the Court listing the services rendered and provide such other reports as may be requested by the Court during the period of this Agreement which may include but are not limited to statistical reports, caseload data, and other records documenting the identity of the probationer, the status of each probationer's case, the services provided, and the monies collected. Monthly reports will be delivered to the Court on or before the tenth (10th) day of the following month. Contractor shall provide personal history, employment data, and location information to Court and law enforcement as necessary in tracking probation violators.

C. Tender of Collections.

Contractor shall tender to the Clerk of the Court a report of collections and all fines, fees, and costs collected during the month from probationers by _____ (th) day of the following month. Restitution shall be paid to the victim by the _____ (th) day of the month following collection unless the Court orders payment to the clerk of court, and then it shall be paid as such other collections are paid to the Clerk. In the event Contractor cannot locate the victim, payment shall be made to the Clerk of Court. Contractor shall credit payments of funds in the following order of priority: 1) funds paid by the probationer for drug and alcohol screening test fees, 2) restitution, 3) fines, 4) court costs and surcharges, 5) program costs, and 6) probation fees. Contractor shall not retain or profit from any fines, restitution, fees or cost collected from probationers except the probation fee authorized by this Agreement.

D. Access to Contractor Records.

1.) Upon _____ () business days written notice Contractor shall provide to the Court access to all books, records, correspondence, receipts, vouchers, memoranda, and financial information pertaining to the services rendered under this Agreement for any purpose including but not limited to a conducting or reviewing a complete fiscal or program audit for any fiscal or calendar year.

2.) Fiscal Audit: Contractor shall employ an independent auditor to annually audit its records

and books pertaining to the services rendered to the court. A written copy of this audit shall be provided to the Court and (County or Municipal) Governing Authority within _____ () months of the close of the year audited.

3.) Good Business Practices. Contractor shall not engage in any other employment, business or activity that interferes or conflicts with the duties and responsibilities under this Agreement and shall not allow its employees to do so. Furthermore, neither Contractor nor any of its officers, employees or agents shall lend any monies nor have personal business dealings with a probationer under the supervision of Contractor.

E. Scope of Services to Probationers by Contractor

Contractor shall provide the following services to probationers referred to the Contractor by the Court.

1.) Court Attendance and Probationer Case History. During all court sessions, Contractor shall have a probation officer attend and interview each offender to complete a case and personal history and to provide orientation and instruction regarding compliance with the Court's ordered conditions of probation. At orientation, the probation officer shall provide a list of all service fees to the probationer.

2.) Supervision. Contractor shall monitor and supervise probationers to ensure compliance with the Court's order of probation. Contractor shall make a supervision assessment of the offender and determine the probationer's reporting schedule. Offenders determined by the court to be indigent shall be supervised at no cost to the probationer or the Court or governing body.

3.) Restitution, Fine and Fee Collection. Contractor shall collect restitution, fines, court costs and fees, program fees, and probation fees as ordered by the Court. Contractor shall provide an itemized bill prepared in accordance with accepted accounting practices for each month for each probationer.

4.) Community Service. Contractor shall coordinate, monitor, and ensure compliance with community service by each probationer as ordered by the Court. Contractor will maintain records of service participation.

5.) Employment Assistance. Contractor shall prepare referrals and lend reasonable assistance to probationers either to the extent ordered by the Court or to the extent available for probationers desiring employment assistance or counseling.

6.) Drug/Alcohol Screening Contractor shall coordinate with local authorities and facilities, evaluation and assessment of probationers for drug/alcohol rehabilitation, mental health or psychological counseling, or educational programs mandated by the Court and shall require probationer's compliance. Contractor shall conduct drug and alcohol screens as determined necessary by the Court. The probationer shall be responsible for the costs of all drug or alcohol screens and testing.

Alternative 6.) Contractor shall provide the probationer rehabilitation or educational programs as mandated by the Court and allowed by law. Contractor may charge the probationer an amount reasonable as to the cost of the service and no more than that specified in Exhibit ___. A copy of Exhibit “___” shall be provided to the probationer at orientation or at a time as soon as possible following the Court’s order of attendance.

7.) Electronic Monitoring. _Contractor when so ordered shall provide and operate a system of electronic home detention monitoring as specified in Exhibit ___.

8.) Reports of Violations Probation. Contractor shall recommend revocation of probation whenever the probationer has failed to substantially comply with the terms and conditions of probation. The Court shall provide Contractor with direction of what constitutes a substantial failure to comply with probation terms and conditions. Contractor shall prepare probation violation warrants and orders for submission to the Court. Contractor shall have probation officers available to testify at probation revocation hearings, sentencing hearings and such other hearings as deemed reasonable and necessary by the Court. Minor violations of probation although not cause for revocation shall be included in the regular reports made to the Court under this Agreement. The Court shall provide Contractor direction as to what curative measures should be taken in the case of minor violations.

9.) Pre-sentence Investigations. When directed by the Court, Contractor shall conduct pre-sentence investigations for the Court as requested. A written report shall be prepared and delivered to the Court. A pre-sentence investigation shall include: 1) a report on the circumstances of the offense, 2) a social and family background examination, 3) a criminal history check through Georgia Crime Information Center and the National Crime Information Center, and 4) a report of current circumstances and conditions of the defendant.

OBLIGATIONS OF THE COURT OR GOVERNING AUTHORITY

In consideration for the services of _____ Contractor, the Court shall provide the following services.

F. Payment for Contractors Services.

For regular probation supervision which includes a minimum of _____ () contacts per month and _____, probationer shall pay a fee of \$_____per month. For intensive probation supervision which includes _____, probationer shall pay a fee of \$_____ per month. Contractor shall collect such probation fee for each month or portion of a month a probationer is under probation supervision. During the term of this Agreement and Contractor’s satisfactory performance, the Court shall refer all offenders ordered to serve time on probation, to Contractor for purposes of probation supervision services.

G. Probation Fee.

The Court shall make payment of the probation fee a term and condition of the order of probation for each probationer assigned for supervision to Contractor unless the Court determines the probationer to be indigent. The Court shall not be liable for payment of any supervision fee or any program fee of a probationer.

H. (Optional) Pre-sentence Investigations.

When ordered by the Court, Contractor shall provide a pre-sentence investigation report and Court shall pay to __Contractor _____ dollar (\$__)

I. Access to Criminal Histories.

The Court shall assist Contractor in obtaining access to criminal histories in the Georgia Crime Information Center and National Crime Information Center through local law enforcement in order for Contractor to conduct pre-sentence or probationer investigations as may be requested by the Court.

J. Notice of Court Sessions.

The Court shall provide Contractor ____ days advance notice of all court sessions that Contractor is required to attend. Notice for purposes of this provision may be given by mail, by fax or telephone to:

[Contractor Name and Address, Telephone and Fax Numbers]

K. Court Facilities.

The Court shall provide to Contractor an area, as available, for conduct of initial interviews and orientation with the probationer on the day of sentencing.

TERM

L. Period of Service.

Contractor shall commence performance on [*insert date*]. This Agreement shall expire at the end of the current fiscal year. Court may renew this Agreement for the next fiscal year on written notice of at least ____ days, and shall have a similar option to renew for an additional ____ years.

M. Termination.

Either party may terminate this Agreement upon thirty (30) days written notice. The Court may terminate this Agreement immediately for cause, including without limitation material breach of this Agreement, insolvency of Contractor , filing of a voluntary or involuntary case in

bankruptcy. Within _____ () working days of termination, ___Contractor shall peacefully surrender to the Court all records and documents generated by ___Contractor in connection with this Agreement and the services thereunder and any equipment or supplies assigned to Contractor by the Court. Contractor shall turn over to the Clerk of Court any moneys collected or received less supervision fees validly incurred and duly owing to Contractor through the termination date. Any fines, costs, fees or restitution received by Contractor from probationers of this Court after termination of this Agreement shall be forwarded to the Clerk of Court, other than fees earned by Contractor. The Court shall provide Contractor a receipt for all property surrendered under this provision.

**REPRESENTATIONS AND WARRANTIES OF CONTRACTOR
INDEMNITY, INSURANCE, AND BONDING OBLIGATIONS OF CONTRACTOR**

N. Insurance and Bond.

___Contractor shall furnish a surety bond or letter of credit in an amount of not less than _____ dollars (\$) as security for satisfactory performance of this Agreement. ___Contractor shall provide and maintain during the life of this Agreement, workers' compensation insurance as required by statute and general liability insurance as set forth in Appendix A to this agreement. Contractor shall provide written notice to the Court within thirty (30) days of any material changes of insurance coverage, including cancellation. Bond shall be made with a commercial insurer satisfactory to Court and authorized to transact surety insurance in Georgia. Before Contractor commences work, Contractor shall provide to the Court the fidelity bond or letter of credit and an original certificate for the required insurance.

O. Indemnification.

Neither the Court nor the _____(County or Municipal) Governing Authority shall be liable to Contractor nor to anyone who may claim a right resulting from any relationship with Contractor, for any acts of Contractor, its employees, agents or participants in the performance of services conducted on the property of the _____ (County or Municipality.) as provided in Appendix A. Contractor agrees that Appendix A is expressly made a part of this agreement.

Contractor shall indemnify and hold harmless the Court and _____ (County or Municipality), from any claims, demands, actions, proceedings, expenses, damages, liabilities or losses (including but not limited to attorney's fees and courts costs) and any causes of action arising from any acts or omissions arising out of or in connection with the services performed by ___Contractor or its employees and agents under the terms of this Agreement.

DEFAULT

P. Deficiency in Service by Contractor

In the event that the court determines that there are deficiencies in the services provided by Contractor hereunder, the Court may terminate this Agreement in accordance with Item VI or

notify the Contractor in writing as to the exact nature of such deficiency. Within _____ () days of receipt of such notice, the Contractor shall cure or take reasonable steps to cure the deficiencies. In the event the company fails to cure or take reasonable steps to cure the deficiencies to the Court's satisfaction, the Court may declare the Contractor in default and the Court may terminate this Agreement.

MISCELLANEOUS

R. Time is of the Essence of this Agreement.

S. Compliance with the Law.

The Contractor shall comply with all federal, state and local laws statutes, regulations and ordinances arising out of or in connection with the performance of its services pursuant to this Agreement.

T. Independent Contractor

Contractor is an independent contractor and is not an agent, joint venturer or other affiliate of the _____ (County or Municipality) or Court in any way. Contractor shall use its own employees and agents to perform this Contract. It is agreed that Contractor is solely responsible for payment of all federal, state, and local income taxes, self-employed Social Security taxes, and any other similar obligations arising from the performance of this Agreement or receipt of compensation therefore. The Contractor agrees to indemnify and hold harmless the Court and the _____ (County or Municipality) from and against any and all federal, state, or local tax liability or penalties that may arise from the payments made to the Contractor pursuant to this Agreement. The Contractor acknowledges that neither it nor its employees are eligible for any benefits provided by the Court or the _____ (County or Municipality) to their respective employees.

U. Entire Agreement.

This Agreement, including all exhibits attached hereto and incorporated herein by reference, constitutes the entire agreement between the parties hereto and supersedes any and all agreements, whether written or oral, that may exist between the parties regarding the same. No representations, inducements, promises, or agreements between the parties not embodied herein shall be of any force and effect. No amendment or modification to this Agreement or any waiver of any provision hereto shall be effective unless in writing and signed by both parties.

V. Binding Agreement.

This Agreement shall not be binding upon any successor to the undersigned Judge of the _____ Court of _____, Georgia unless ratified by the successor in office. If a successor attains the position of undersigned judge, and this Agreement is not ratified by such successor, then Contractor shall be permitted a reasonable time period, no less than ninety (90)

days, in which to wind up its activities. The Court will be deemed not to have ratified the Agreement unless Court gives written notice of ratification within 30 days of taking the oath of office.

W. Assignment.

The Court has entered into this Agreement in part on the basis of personal reliance in the integrity and qualifications of the staff of Contractor. Contractor may not delegate, assign or subcontract any obligation of Contractor's performance under the Contract and may not assign any right under this Contract, in either case without Court's written approval. The Court's discretion in this regard shall be absolute.

X. Notice.

Any notices made in accordance with this Agreement except as otherwise set out in Item J, shall be in writing and shall be made by registered or certified mail, return receipt requested, to:

Contractor

[]
[]
[]
[]

Court:

[]
[]
[]
[]

IN WITNESS WHEREOF, THE PARTIES HERE TO HAVE EXECUTED THIS AGREEMENT ON THE _____ DAY OF _____, 20__.

<p>PROBATION SERVICES CONTRACTOR:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>COURT:</p> <p>_____</p> <p>Judge, _____ Court of _____</p>
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APPROVED BY:

<p>_____</p> <p>Name: _____</p> <p>Title: _____</p> <p>[County or City of _____</p>

Appendix A

Indemnification and Insurance Coverage

Contractor agrees to indemnify the "State" and to hold it harmless from all "Loss and Liability" due to bodily injury (including death), personal injury, and property damage in any way caused, in whole or in part, by act or omission of Contractor in connection with this Agreement. Contractor also agrees to indemnify the State from all Loss or Liability from breach of copyright, patent, trademark, license or other claim based on property of another and arising in connection with Contractors work.

For purposes of this indemnification,

"State" means the Court, the governing authority or authorities of Court's jurisdiction, the County and Municipal Probation Advisory Council, the State of Georgia, all departments and units of state government, all state instrumentalities, and all the officers and employees of each of the above, and the insurance and self-insurance programs of the Department of Administrative Services established for their protection.

"Contractor includes successors and assigns. In the clause, "caused, in whole or in part, by act or omission of Contractor" "Contractor" also includes Contractor subcontractors, all others acting on its behalf, and their officers and employees.

"Loss or Liability" includes as well the cost of legal representation and all other cost and expense of defense.

The Georgia Tort Claims Act will be the exclusive remedy for any Loss or Liability within its terms. However, upon demand, Contractor will promptly reimburse the following for any payments made by them, which are covered by Contractors obligation to indemnify: the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS").

This indemnification applies even if a tort of the State is partially responsible for the situation giving rise to the claim, but not if a tort of the State is solely responsible. However, this indemnification does not require Contractor to protect the indemnitees for matters beyond the scope of the Agreement. Nor does this indemnification extend to claims by Contractor against the Court for breach or default under the Agreement.

Contractor agrees, and must require its insurers to agree, that the Attorney General may in his discretion represent any state government indemnitee, or determine the representation, in regard to any Loss or Liability indemnified or insured under this Agreement. Any settlement of litigation on behalf of a state government indemnitee must be expressly approved by the

Attorney General.

Before commencing work, for the term of the Agreement, Contractor will procure and maintain the insurance required below at the Contractors own expense.

(a) Workers' Compensation. In accordance with the statutory limits. Proof of insurance or authorized self-insurance, for Contractor and subcontractors.

(b) Commercial General Liability Insurance. The Contractor shall provide Commercial General Liability Insurance with a contract liability endorsement on a form acceptable to the Court and DOAS, which shall at least include coverage for bodily injury and property damage, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<i>Coverage</i>	<i>Limit</i>
1. General Liability	\$1,000,000 per Person Per Occurrence
2. Contractual	\$1,000,000 per Person Per Occurrence
3. General Aggregate	\$3,000,000 aggregate per Occurrence

[These are Tort Claims Act limits.]

The Commercial General Liability Insurance must also satisfy the following:

(1) The policy shall name as additional insureds the officers, members and employees of the Owner and the State of Georgia, but only with respect to claims that arise out of contractor's negligence in performing the work or the additional insured's general supervision of such operations, but only for such claims for which the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 *et seq.* is not the exclusive remedy.

(2) The coverage extended to the additional insureds for any claims not covered by the Georgia Tort Claims Act, shall be no broader than the coverage extended to the Contractor and is not expanded to cover claims and losses that are not insurable under the contractor's policy.

(3) The policy or policies must be on an "occurrence" basis.

(d) Commercial Business Automobile Liability Insurance. The Contractor shall provide Commercial Business Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

An insurer licensed to transact the applicable line of insurance in Georgia must issue the policy. The insurer and the policy must be acceptable to Department and DOAS in their reasonable

discretion. They may require that the insurers have a Best Policyholders Rating of "A+", and a financial size rating of Class V or larger. Each policy must contain the following provisions:

(a) Insurer agrees not to cancel, change, or lapse the policy, or allow it to expire, until 45 days after the Department has received written notice or until Department has received a certificate of replacement insurance in compliance with this Agreement. The insurer's notice must identify this Agreement specifically.

(b) The policy must not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").

(c) The Insurer must agree that the Attorney General of Georgia represents and defends the State, and his prerogative is not waived by any policy of insurance. Any settlement of litigation on behalf of the State must be expressly approved by the Attorney General. Contractor and its insurers may retain, but are not obligated to retain, counsel to assist with the defense of the State.

(d) Contractor may not self-insure or retain, in any policy, more than _____ except for qualified self-insurance for workers compensation.

Contractor must purchase, maintain and have a Georgia resident agent confirm by written certificate the following coverages and limits, not inconsistent with the policies and requirements of O.C.G.A. § 50-21-37:

Before commencing work, Contractor must furnish the Court an insurance certificate listing the Court as the certificate holder. The insurance certificate must contain the following:

- (a) Name and address of authorized agent
- (b) Name and address of insured
- (c) Name of insurers
- (d) Description of policies
- (e) Policy Number(s)
- (f) Policy Period(s)
- (g) Limits of liability
- (h) Name and address of Owner as certificate holder
- (i) Signature of authorized agent
- (j) Telephone number of authorized agent
- (k) Promise to notify State before canceling or not-renewal

ALTERNATE APPENDIX "A"

Contractor agrees to indemnify the "State" and to hold it harmless from all "Loss and Liability" due to bodily injury (including death), personal injury, and property damage in any way caused, in whole or in part, by act or omission of Contractor in connection with this Agreement.

For purposes of this indemnification,

"State means the governing authority of the jurisdiction of Court, the State of Georgia, all departments and other units of governing authority and state government, all their instrumentalities, and all their officers and employees, plus their insurance and self-insurance established for their protection.

"Contractor" includes successors and assigns. In the clause, "caused, in whole or in part, by act or omission of Contractor," "Contractor," also includes Contractors subcontractors, all others acting on its behalf, and their officers and employees.

"Loss or Liability" includes as well the cost of legal representation and all other cost and expense of defense.

This obligation survives the expiration and termination of the Agreement, the dissolution of the Contractor and, to the extent allowed by law, the bankruptcy of the Contractor.

The Georgia Tort Claims Act will be the exclusive remedy for any loss or liability within its terms. However, upon demand, Contractor will promptly reimburse the following for any payments made by them, which are covered by Contractor's obligation to indemnify: any insurance or self-insurance program of governing authority, the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS").

This indemnification applies even if the State is partially responsible for the situation giving rise to the claim, but not if the State is solely responsible.

This indemnification does not extend beyond the scope of the Agreement. Nor does this indemnification extend to claims by Contractor against the Department for breach or default under the Agreement.