

**Standard Professional Services Agreement (“PSA”)**  
**Revision G – October 2021**

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AGREEMENT FOR PROFESSIONAL SERVICES

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This agreement ("Agreement"), dated as of July 1, 2023 (“Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Indigent Defense Administration of Sonoma County, LLC (hereinafter "Consultant").

R E C I T A L S

WHEREAS, the United States Constitution and other provisions of law require the appointment of qualified trial counsel other than the Public Defender to represent indigent defendants in cases in the courts of Sonoma County in which Public Defender representation would be a conflict of the interests of those defendants, or other good cause prevents the Public Defender from representing a defendant; and

WHEREAS, the expenses involved in assigning counsel in such conflict situations on a case-by-case basis are unpredictable and disruptive of orderly budget processes; and

WHEREAS, the orderly administration of justice in The Court requires the timely availability of qualified counsel and litigation support in these cases; and

WHEREAS, in accordance with, and to provide for the requirement of Section 987.2 of the Penal Code, the Board of Supervisors of the County of Sonoma hereby enters into this agreement for the above- mentioned services; and

WHEREAS, Consultant represents that it is duly qualified to retain and manage a panel of experienced attorneys to represent individuals in the Superior Court of Sonoma County who the Public Defender has declared a conflict of interest, and related services; and

WHEREAS, in the judgment of the County Administrator it is necessary and desirable to employ the services of Consultant for as the administrator of a panel of attorneys who will represent individuals in the Superior Court of Sonoma County who the Public Defender has declared a conflict of interest.

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

## A G R E E M E N T

### I. Scope of Services.

#### 1.1 Consultant's Specified Services.

Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit "A" and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit "A", the provisions in the body of this Agreement shall control.

1.2 Cooperation With County. Consultant shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Consultant's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with County to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

#### 1.4 Assigned Personnel.

- a. Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from County. County personnel participating in the decision to remove Consultant or subcontractor shall have no actual or apparent legal conflict with the person whose removal is sought.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key

personnel without the prior written consent of County. With respect to performance under this Agreement, Consultant shall employ the subcontractors listed in Exhibit B, List of Subcontractors.

- c. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

## 2. Payment.

For all services and incidental costs required hereunder, Consultant shall be paid in accordance with the following terms:

Consultant shall be paid an annual amount up to \$2,689,025.70 for Fiscal Year 2023-2024, paid in monthly payments of \$224,085.48 with an annual increase of 3% of each subsequent year on the agreement.

A breakdown of costs used to derive the lump sum amount is specified in Exhibit C, attached hereto and incorporated herein by this reference.

Consultant shall submit its bills or invoices for payment in a form approved by County's Auditor and the Head of the County Department receiving the services. The bills or invoices shall identify the services completed and the amount charged.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Consultant for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Consultant does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Consultant does not qualify, County requires that a completed and signed Form 587 be provided by the Consultant in order for payments to be made. If Consultant is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Consultant agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Consultant has

the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement. The term of this Agreement shall be from July 1, 2023 to June 30, 2027 with one (1) two year option to renew unless terminated earlier in accordance with the provisions of Article 4 below.

4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 90 days written notice to Consultant.

4.2 Termination Based on Changes in Law.

If a material change in circumstances occurs as a result of a Court decision, modification of Penal Code section 987.2, modification of the California Rules of Court, and/or modification of California State Bar Rules of Professional Responsibility applicable to criminal defense, this Agreement may be terminated by the County upon the giving of thirty (30) days notice to Consultant.

4.3 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.4 Rules of Professional Responsibility and Termination of Agreement or Representation.

Consultant shall ensure that the attorneys retained to represent individuals pursuant to this Agreement are duly licensed by the State Bar of California. Upon termination or expiration of this Agreement, Subcontracting Attorneys shall have no obligation to further represent defendants to whom they have been appointed, except to the extent required by and subject to the Rules of Professional Responsibility and applicable law related to the substitution of counsel. To the extent the Court requires a Subcontracting Attorney to continue to perform because there is no substitute counsel appointed, in accordance with the Rules of Professional Responsibility and applicable law, as of such date, all applicable terms and conditions shall continue to apply and Subcontracting Attorney will be entitled to compensation in accordance with the rate set by the Courts, until such time as a replacement attorney is secured. Consultant shall include or otherwise cause the provision of the foregoing in all Subcontracting Attorney agreements.

4.5 Payment Upon Termination. Upon termination of this Agreement by County, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which

bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.3, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or County Administrator, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit D, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not exceed the delegated signature authority of the Department Head and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Consultant.

9.1 Standard of Care. County has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by County shall not operate as a waiver or release.

9.2 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the County

9.4 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish County with proof of payment of taxes on these earnings.

9.5 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Consultant shall maintain such records for a minimum period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Consultant's or such other person's financial interests.

9.7 Statutory Compliance/Living Wage Ordinance. Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8 Nondiscrimination. Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.9 AIDS Discrimination. Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.10 Assignment of Rights. Consultant assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY:

OFFICE of the SONOMA COUNTY COUNSEL  
ATTN: Kelli Logasa  
575 Administration Drive, Room 105A  
Santa Rosa, CA 95404

TO: CONSULTANT:

Indigent Defense Administration of Sonoma  
County, LLC  
Kristine Burk  
432 Russell Avenue  
Santa Rosa, CA 95403

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and County

acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

13.10. Counterpart; Electronic Signatures. The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially-available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic

signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: 10ASC, LLC

Kristine M. Burk

By: INDIGENT Defense  
Admin. of Sonoma

Name: County, LLC

Title: Kristine Burk  
manager

Date: 5/26/2023

COUNTY: COUNTY OF SONOMA

CERTIFICATES OF INSURANCE  
REVIEWED, ON FILE, AND APPROVED  
AS TO SUBSTANCE FOR COUNTY:

By: M. Meabego  
Department Director or Designee

Date: 5/15/23

APPROVED AS TO FORM FOR  
COUNTY:

By: [Signature]  
County Counsel

Date: 5/26/23

EXECUTED BY:

By: [Signature]  
Chair, Board of Supervisors

Date: 6.7.2023

ATTEST: m. Christina Rivera  
by: J. P. [Signature]  
Clerk of the Board of  
Supervisors

## **Exhibit A – Scope of Work**

The Consultant shall oversee a panel of subcontracted attorneys who will perform all duties of a public defender when representing a client facing criminal charges, as well as other duties and services specified herein, when the Sonoma County Public Defender has declared a conflict of interest as established or declared by a court, or is otherwise unavailable for good cause.

Each attorney the Consultant selects to serve as a conflict panel attorney, including the Consultant if the Consultant proposes to represent conflict clients, must satisfy the following criteria:

- Is an active member in good standing of the State Bar of California and has been an active trial practitioner with at least 3 years' litigation experience in the field of criminal law. If a proposed attorney does not possess at least 3 years' litigation experience in the field of criminal law, the proposal shall explain why this requirement should be waived;
- Has not previously been the subject of a state bar disciplinary action which led to the suspension or revocation of the attorney's license to practice law. If a proposed attorney has been disciplined by any state bar for any reason, the nature and reasons for such discipline must be disclosed;
- Must be familiar with the practices and procedures of the California criminal courts;
- Has insurance coverage that meets the County's insurance requirements specified in the attached Contract, including but not limited to professional malpractice insurance;
- Provides an office or other suitable place for meetings with clients that is in the City of Santa Rosa or otherwise reasonably close to the Sonoma County courthouse so as to be reachable by clients without undue expense or difficulty (at a location subject to the County's consent, which will not be unreasonably withheld);
- For felony panel assignments, is an active member in good standing of the State Bar of California and has been an active trial practitioner with at least 3 years' litigation experience in the field of criminal law, including substantial education, training and experience in defending or prosecuting felony and misdemeanor criminal cases. If a proposed attorney does not possess at least 3 years' litigation experience in the field of criminal law, the proposal shall explain why this requirement should be waived;
- For misdemeanor panel assignments, is an active member in good standing of the State Bar of California and has been an active trial practitioner with at least 3 years' litigation experience in the field of criminal law, including substantial prior experience as lead trial counsel in defending or prosecuting misdemeanor-level cases. At the Consultant's discretion, an attorney on the misdemeanor panel may be assigned to lower-level felony cases with the intent to provide career advancement to the felony panel, provided the Consultant provides support to the panel attorney to ensure adequate client representation. Any such assignments should be discussed with the County at the regular quarterly meetings. If a

proposed attorney does not possess at least 3 years' litigation experience in the field of criminal law, the proposal shall explain why this requirement should be waived;

- For juvenile panel assignment, has substantial prior experience as lead trial counsel in defending or prosecuting felony or misdemeanor level juvenile-level cases;
- Possesses demonstrated skill in the use of expert witnesses and evidence, including familiarity with common areas of psychiatric and forensic evidence and investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
- Possesses demonstrated skill in the management and conduct of complex negotiations and litigation;
- Possesses demonstrated skill in legal research, analysis, and the drafting of litigation documents.

Consultant and subcontracting attorneys shall maintain the following:

- Coverage for all "levels" of coverage for felony, misdemeanor, contempt, and juvenile cases, and all stages of proceedings in those cases;
- Contact with clients prior to court appearances, including those in custody;
- Availability to clients between court appearances, particularly those in custody;
- Coverage, if applicable, for sentence modification and probation revocation;
- Eligibility screening process to determine the client's financial eligibility for Public Defender Conflict Panel services, including taking a financial declaration and referral back to court when necessary;
- Representation at Appellate Court including, if applicable, misdemeanor appeals and appropriate writs.
- The confidentiality of attorney-client materials and shall not disclose said protected materials to the County. Those materials, including client files, which must be transferred to substitute counsel shall be provided to counsel consistent with the attorney's ethical duties.

Consultant shall provide management statistics regarding caseload and workload. Consultant shall act as a steward of County resources in minimizing costs, such as costs for investigations and experts, without compromising the defense of a client.

For the purposes of this Agreement, every case against every defendant assigned to conflict attorneys counts as a case for reporting purposes. This counting system applies whether the case involves new pending charges, alleged violations of probation/parole/PRCS/mandatory supervision or some other post-conviction issue. The classification of a case as felony or misdemeanor is determined at the time charges are filed with one exception: if a case is filed as a misdemeanor and felony charges are added during the process, the case shall be counted as a felony case. For example, when the court appoints three different conflict attorneys to represent three defendants charged in the same case, that counts as three cases for reporting purposes. On the other hand, when the court appoints one conflict attorney to represent one defendant who is charged with

multiple charges in one case, that counts as one case. If conflict counsel declares a conflict and another conflict attorney is appointed, that is one case.

Consultant shall distribute cases on a rotational basis to all subcontracted attorneys, reassigning cases when a panel attorney declares a conflict and ensuring that cases are distributed as equitably as possible, bearing in mind the various levels of complexity described below. Consultant shall assign felony cases in which the death penalty is being sought only to those subcontracted attorneys who meet and maintain the qualifications for the defense of capital cases as described by the California Rules of Court, Rule 4.117.

### **Extraordinary Cases**

The "The State Bar Of California Guidelines On Indigent Defense Services Delivery Systems' provides that '[f]ixed-period, bulk or flat rates should not be utilized unless based on reliable statistical caseload data, and only in conjunction with a method, specified in the contract, for increasing compensation to account for increases in caseload size or the cost of defending extraordinary cases." Given the unknown number, complexity, frequency and/or seriousness of cases which may occur in the future and complex cases and/or numerous appointments at or near the same time ("overloads") may result in extraordinary circumstances which require increased compensation in order to protect the rights of assigned defendants and enable the orderly administration of justice in the court.

In recognition of the foregoing, the parties agree that the ordinary caseloads and fixed rates contemplated by this agreement are based on reliable statistics caseload data accumulated for part-time subcontracting attorneys during the period 2018-2022. The parties further agree that neither the County, nor IDASC, LLC nor Subcontracting Attorneys have any control over the number, complexity, frequency and/or seriousness of appointments which may occur in the future which are in addition to the ordinary caseload; that such circumstances cannot be accurately predicted or described in advance by anyone; and that complex cases and/or numerous appointments at or near the same time ("overloads") may result in extraordinary circumstances which require increased compensation in order to protect the rights of assigned defendants, and enable the orderly administration of justice in the courts.

Factors which might but do not necessarily cause cases and/or case overloads to be designated 'extraordinary' include, but are not limited to: Multiple defendants, numerous or complex legal issues, extraordinary writs to appellate courts, complex scientific evidence, complex financial evidence, complex gang evidence, lengthy Grand Jury proceedings, voluminous discovery/investigation materials, potential indeterminate life sentences, statutory and court-imposed time constraints including those mentioned in Penal Code §987.05, the number, frequency of appointment, complexity and scheduling of Subcontracting Attorney's other appointed cases, and other unusual circumstances, individually or in combination with one another.

In recognition of the foregoing, the parties agree that the procedures set forth in this Scope of Work will be the exclusive methods used by IDASC, LLC and Subcontracting Attorneys to request additional funds to account for extraordinary increases in caseload size and/or the cost of defending extraordinary cases. IDASC, LLC and Subcontracting Attorneys agree that all extra-hire attorneys will meet the requirements of Scope of Work.

Additionally, IDASC, LLC and Subcontracting Attorneys acknowledge that individual appointments of non-contract attorneys are disruptive of court scheduling and orderly budget processes and are unnecessarily costly as compared to having Subcontracting Attorneys obtain funds for extra-hire assistance in their appointed cases when extraordinary circumstances require such assistance. When able to do so without jeopardizing the rights of any defendant they have been or are being appointed to

represent, Subcontracting Attorneys agree to apply for additional extra-hire funding assistance as hereafter set forth in this section rather than declining appointments due to excessive caseload. Nothing in this paragraph applies to any circumstance in which appointments are declined due to conflict of interest.

If a Subcontracting Attorney believes that an assigned case and/or case overload is 'extraordinary', the attorney shall, before incurring extra expense, make written application to the IDASC, LLC requesting additional funds and stating the reasons, therefore. The IDASC, LLC shall forward the application to the County within two working days and shall recommend to the County whether the application should be granted. The IDASC, LLC's recommendation is not binding on the County. The County and IDASC, LLC shall treat all applications as confidential. Regardless of the IDASC, LLC's recommendation, if the County agrees that the case and/or case overload is 'extraordinary', in addition to the compensation provided by this Agreement in Section 2.1, Subcontracting Attorney shall be compensated from the retention account described in Section 7 (E), below, for the reasonable value of services the cost of which are incurred by virtue of defending such cases under this Agreement, requiring Subcontracting Attorney to delegate such duties and obligations as set forth in Scope of Work Section 2. Such additional cost shall consist of the reasonable sum for services provided by such delegation of duties and obligations as provided in that Section 2. The County may take into account any per diem amounts provided for by Section 6 and may place a limit on the amount of extra expenses which may be incurred.

If the County does not agree that the case and/or overload is 'extraordinary', or the County does not provide written approval of the application within five working days, or the limit on the amount of extra expenses is less than the amount requested, Subcontracting Attorney may submit written application directly to the Court, with proof of service on the County and the IDASC, LLC, setting forth the reasons why the case and/or overload should be deemed 'extraordinary', stating the amounts requested and what they will be used for, and stating that a prior application to the County was not approved. The County and IDASC, LLC shall treat all applications as confidential. If the application is based on a single case, it shall be presented to the judge presiding over the case. If that judge declines to consider the application, or if the application is based on an overload of numerous cases, it shall be presented to the Supervising Judge of the Criminal Division of the Court. The application shall include a copy of the Scope of Work Section. If the Court determines that the case and/or overload is 'extraordinary', Subcontracting Attorney shall serve a copy of the Court's order on the County and the IDASC, LLC within two working days; and, in addition to the compensation provided by this Agreement, Subcontracting Attorney shall be compensated from the retention account described for the reasonable value of services the cost of which are incurred by virtue of defending such cases under this Agreement, requiring Subcontracting Attorney to delegate such duties and obligations as set forth. The Court may take into account per diem amounts provided for and may place a limit on the amount of extra expenses which may be incurred, which may be less than the amount requested.

If the Court does not grant the application, subcontracting attorney shall not be entitled to any additional compensation and shall serve a copy of the Court's order on the County and the IDASC, LLC within two working days.

### **Reports**

The Consultant shall provide the County with a quarterly report of account activity and information regarding the number and type of appointments made under the terms of this Agreement. Consultant

### **Change of Venue.**

The parties to this Agreement acknowledge that the defense of cases involving change of venue requires time and services extraordinary to Ordinary Courtrooms and Caseloads referred to in paragraph 3. The parties also acknowledge that the time and services required of Subcontracting Attorneys in defending change of venue cases may interfere with their ability to attend to their other appointed cases in a timely manner, to the detriment of the rights of defendants in the other appointed cases and to the detriment of the orderly administration of justice. Therefore, in cases in which a change of venue is ordered by Court, IDASC, LLC and County staff shall meet and use their best efforts to keep all additional costs reasonable, Subcontracting Attorneys are entitled to reasonable and necessary expenses for any time and services necessitated by reason of the change of venue over and above the compensation provided for in Section 2.1 of this Agreement. Such compensation shall consist of a reasonable sum for expenses related to the change of venue as well as costs for necessary delegation of the duties and responsibilities as set forth in this Agreement, and per diem pay in accordance with Section 6, below. All claims for compensation under this Section must be in writing in a format approved by the County and in amounts approved by the judge presiding over the case in which venue has been changed, and a copy must be served on the IDASC, LLC.

Payments made by the County pursuant to this Section will not be charged to either the ancillary or emergency retention account.

### **VPN Access.**

The County agrees to provide remote internet access to the Sonoma County Integrated Justice System for IDASC, LLC, its designated staff, and its Subcontracting Attorneys pursuant to this Section, once such persons are properly vetted. The access granted to the Integrated Justice System will be limited to Criminal and Civil query access with the ability to print dockets. Each user granted access must have his/her own password into the Integrated Justice System for security purposes. Access is granted only to the named user and cannot be shared. Juvenile Justice Access must be approved in writing by the Courts before access can be granted. IDASC, LLC and Subcontracting Attorneys agree to comply with all system and security requirements required by the County. The IDASC, LLC and Subcontracting Attorneys are responsible for loading the software for new users. Any requests for reports or other programming changes to the Integrated Justice System will be billed to the attorney requesting the reports or changes in accordance with then-prevailing rates. In FY 2023-2024 the hourly rate of \$150/hr. will be charged for

work performed by the County. The access charge to be assessed by the County will also be subject to then prevailing rates. For FY 2023-2024 the access charge is \$536.74/year per user. Access charges will be billed by the County to Court Support. IDASC, LLC agrees not to sell this access to attorneys not performing work for the County pursuant to this Agreement.

Parking Permits.

The County agrees to provide County Complex parking permits to IDASC, LLC, for use by all Subcontracting Attorneys regularly assigned to cases at the Sonoma County Hall of Justice. The number of parking permits to be provided is 14. All users of said permits shall agree to comply with all permit requirements imposed by the County.

## **Exhibit B – List of Subcontractors**

### **ATTORNEYS - Adult Felony Litigation:**

1. Joe Stogner (SBN 119340)
2. Kristine Burk (SBN 178487)
3. Evan Zelig (SBN 229740)
4. Gabriel Quinnan (SBN 239844)
5. Jessyca Hoagland (SBN 251025)
6. Ted Somers (SBN 265802)
7. Rachel McAllister (SBN 269557)
8. Orchid Vaghti (SBN 275510)
9. Rahul Balaram (SBN 305868)

### **ATTORNEYS - Adult Misdemeanor Litigation:**

1. Heather Wise (SBN 305867)
2. Scott Emerick (SBN 315150)
3. Aaron Frisbie (SBN 319460)
4. Alicia Durand (SBN 309465)
5. Caitlin Van Loben Sels (SBN 319197)
6. Rahul Balaram
7. Rachel McAllister
8. Evan Zelig
9. Joe Stogner

### **ATTORNEYS - Family Law Contempt:**

1. Chris Chouteau (SBN 228961)
2. Scott Emerick

### **ATTORNEYS - Juvenile Delinquency Representation:**

1. Debra Hoffmann (SBN 142157)
2. Caitlin Van Loben Sels
3. Orchid Vaghti
4. Jessyca Hoagland
5. Scott Emerick
6. Aaron Frisbees

### **ATTORNEYS - Misdemeanor Appeals:**

1. Julia McIlroy (SBN 254796)
2. Chris Chouteau

### **ATTORNEYS - Capital Case Qualified: California Rules of Court, Rule 4.117**

1. Joe Stogner, supra.
2. Kristine Burk, supra.

**ATTORNEYS - Post-Conviction:**

1. Ted Somers, supra. Felonies
2. Morgan Daly (SBN 243375) Admitted 6/2/2006 (17 years). Felonies
3. Heather Wise Misdemeanors
4. Debra Hoffmann Juvenile delinquency (felonies and misdemeanors).
5. Caitlin Van Loben Sels Juvenile delinquency and misdemeanors

**ATTORNEYS - Criminal Immigration Advisor:**

1. Heather Wise

**INVESTIGATIONS:**

1. Scott Wilmore, licensed California Private Investigator #9451
2. John Garretson, licensed California Private Investigator #188603

**FORENSIC SOCIAL WORKERS:**

1. Shelly Itelson, Master of Social Work
2. Crystal Sheffield, Master of Arts in Human Services Counseling

### Exhibit C – Payment

Annual contract costs are listed below. The total cost is comprised of operating, ancillary and emergency retention funds.

	FY 23-24	FY 24-25	FY 25-26	FY 26-27
Operating	\$ 2,393,232.87	\$ 2,465,029.86	\$ 2,538,980.75	\$ 2,615,150.18
Ancillary	\$ 268,902.57	\$ 276,969.65	\$ 285,278.74	\$ 293,837.10
Emergency	\$ 26,890.26	\$ 27,696.96	\$ 28,527.87	\$ 29,383.71
<b><u>Annual Total</u></b>	<b><u>\$ 2,689,025.70</u></b>	<b><u>\$ 2,769,696.47</u></b>	<b><u>\$ 2,852,787.37</u></b>	<b><u>\$ 2,938,370.99</u></b>
Monthly	\$ 224,085.48	\$ 230,808.04	\$ 237,732.28	\$ 244,864.25

Ancillary expenses are included within the figures listed above, but the funds are set aside by Consultant and the Consultant holds them in trust for the duration of the contract period. On a monthly basis, over the course of the four-year contract, 10% of the total contract amount will be set aside in a retention (trust) account for use by panel attorneys subject to IDASC LLC Consultant approval.

On a quarterly basis, annual and at the end of the contract, the Consultant will provide a report which details the balances in the account and reflects how the money was spent, while protecting confidential information. At the end of the contract, the balance left in the Ancillary account will be returned to the County.

Ancillary expenses will be used by the Consultant in order to ensure that all of the attorneys have the necessary resources to ensure that all indigent defendants have access to ancillary litigation services such as attorneys with expertise in niche areas, such as emergency writs and the consequences of criminal charges on immigration, investigators, social workers, expert consultation and testimony, interpreters, transcripts, discovery, materials for use in litigation, travel related to case preparation, large duplication jobs, case specific resources and any other item requested by the attorney and deemed reasonable by the Consultant.

The parties agree that, except for three months' worth of Ancillary expenses at the '23-'24 contract rate of \$20,189.80 per month (e.g., \$60,569.40), the unused Ancillary funds from the 2022-2023 contract shall be refunded to the County on June 30, 2022.

### **Emergency Retention Funds**

Given the unpredictable nature of the criminal court system, both the County and the Consultant shall set aside funds for an extraordinary situation such as the extraordinary cases listed in the scope of work or other emergency situations. If necessary, this account can be used to pay for extraordinary unanticipated costs associated with providing constitutionally essential services in a dynamic and unpredictable environment. To fund this account, the County will contribute an additional amount - representing 1% of the operating cost – and that sum will be transferred to the Emergency Retention Account. The Consultant will contribute money on a monthly basis to the Emergency Fund. The amount contributed will be 0.5% of the operating cost, exactly half of what the County contributes.

As a result, two-thirds of the deposits to the Emergency Fund will be held in trust for the County and, if they are unused at the end of the contract period, will be refunded to the County. Similarly, one-third of those deposits will be held in trust for the Consultant, and, if they are unused at the end of the contract period, will be returned to the Consultant.

If monies are needed from the Emergency Fund during the term of the contract, the Consultant shall make a written application to the Deputy County Counsel and County Consultant assigned to oversee the conflict contract. Said application shall explain the reason the Emergency Funds are needed to be used and how much will be needed. Upon written approval, the monies shall be utilized, and the withdrawal will be deemed taken from the fund, effectively two-thirds of the expense will be paid from the County's deposits and one-third from the Consultant's funds.

The Emergency Fund is not the source of resources for traditional ancillary expenses nor for trial (lengthy hearing) per diem invoices, venue change motions, Keenan counsel or defense expenses associated with capital defense litigation.

The parties agree that the unused Emergency funds from the 2022-2023 contract shall be returned to the contributing parties on June 30, 2022.

**Per Diem.**

The parties to this Agreement acknowledge 'The State Bar Of California Guidelines On Indigent Defense Services Delivery Systems' which provide that 'The terms of any indigent defense contract should avoid any actual or apparent financial disincentives to the attorney's obligation to provide clients with competent legal services', and that contracts for indigent defense services may burden a defendant's right to jury trial if they do not take into account the additional expense of presenting a case for trial. The parties agree that the expense of presenting a case for trial or hearing of five days or less is an ordinary circumstance within the meaning of this contract with respect to ordinary compensation of a Subcontracting Attorney. The parties further agree that trials or hearings lasting longer than five full days are extraordinary, may interfere with their ability to attend to their other appointed cases in a timely manner, to the detriment of the rights of defendants in the other appointed cases and to the detriment of the orderly administration of justice. For the period of fiscal

year 2023-2024 – if a Subcontracting Attorney is required by their contract to conduct a trial or preliminary examination which lasts longer than five days, that Subcontracting Attorney shall receive a \$330 per diem (\$165 per half day) beginning on the 6th day of the trial or hearing. The per diem rate shall increase to \$340 (\$170 half day) for fiscal year 2024-2025, \$350 (\$175 half day) for fiscal year 2025-2026 and \$360 (\$180 half day) for fiscal year 2026-2027. The parties agree that this per diem is to compensate Subcontracting Attorneys for the extra time involved which is over and above their ordinary part-time status, and for necessary delegation of the duties and responsibilities in other assigned cases as set forth in this Agreement in accordance with Scope of Work Section 2. All claims for compensation under this Section must be in writing in a format approved by the County, and a copy must be served on the IDASC, LLC.

Payments made by the County pursuant to this Section will not be charged to the extraordinary retention account described above.

**Re-opener Provisions**

The parties recognize that additional impacts or events, not foreseen and addressed in this agreement, such as change in law or other unforeseen circumstances that fundamentally change the assumptions made in entering into this agreement. Pricing must remain firm for a minimum of 2 years. The contract costs may be subject to negotiated adjustments (“re-openers”) if:

1. the number of case appointments increase or decrease by more than 10% in two consecutive quarters as compared with the Baseline Year of January 1, 2022 – December 31, 2022. The contract shall be eligible for a re-opener by individual subcategory of case -- adult felonies, adult misdemeanors, and juvenile delinquency; or
2. the annual Consumer Price Index (CPI) for the San Francisco Area increases or decreases by more than 5% from the prior year and Consultant demonstrates this has resulted in a significant problem of retention or recruitment for the program.

Re-openers must be requested by the re-opening party in writing, supported by data, and specifying the amount of the cost increase/decrease being sought. The responding party shall answer within 30 calendar days and formal negotiations shall conclude by no later than 60 days after the re-opener was requested. If a cost adjustment is agreed upon, the start date shall be subject to negotiation.