

CONFLICT CONTRACT AGREEMENT - EXTENSION

JULY 1, 2022 – JUNE 30, 2023

PREAMBLE

THIS AGREEMENT, dated as of July 1, 2022 (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 ("IDASC, LLC").

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; 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 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, the County has found and determined that IDASC, LLC, its sole owner and manager Kristine M. Burk, Attorney at Law, and, relying on the IDASC, LLC, that the Subcontracting Attorneys, as described below, are especially qualified as trial counsel in all varieties of criminal proceedings;

NOW, THEREFORE, IN CONSIDERATION OF the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

1.1 IDASC, LLC's Specified Services. IDASC, LLC shall perform the services described below and described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), 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 of the body of this Agreement shall control.

1.2 Cooperation with County. IDASC, LLC shall cooperate with County and County staff in the performance of all work hereunder.

1.3 Performance Standard. IDASC, LLC 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 IDASC, LLC's profession. County has relied upon the professional ability and training of IDASC, LLC as a material inducement to enter into this Agreement. IDASC, LLC 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 IDASC, LLC'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 IDASC, LLC to meet with County to review the quality of the work and resolve matters of concern; (b) require IDASC, LLC to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to its provisions; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

a. IDASC, LLC 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 IDASC, LLC to perform work hereunder, IDASC, LLC shall remove such person or persons immediately upon receiving written notice from County.

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

2. Payment.

2.1 Annual Amount.

County shall pay IDASC, LLC the sum of \$2,591,832 for fiscal year 2022-2023.

2.2 Monthly Payment.

The County shall pay IDASC, LLC the sum of \$215,986 each month of the Contract upon the presentation by IDASC, LLC of a monthly claim on a form approved by the Auditor of the County of Sonoma.

2.3 Partial Month

Any partial month's payment shall be determined by multiplying the total amount of one month's payment, by a fraction, the numerator of which is the number of days that this contract is in effect during the respective month and the denominator of which is the total number of days in said month. This consideration shall include all overhead and ordinary expenses of IDASC, LLC and Subcontracting Attorneys associated with representing defendants as assigned counsel, including, ordinary expenses for investigative services and forensic expenses including expert witnesses, as set forth in the Scope of Work.

2.4 Manner of Payment.

Payments shall be made by County within 30 days of presentation of the Monthly Invoices by Consultant for services performed in the designated month. Payments shall be made only upon the satisfactory completion of the services as determined by County.

3. Term of Agreement.

The term of this Agreement shall be from July 1, 2022, to June 30, 2023, unless terminated earlier in accordance with the provisions of this Agreement.

4. Termination.

4.1 Expiration of Agreement.

It is expressly understood by and among the parties to this Agreement that this contract expires on June 30, 2023.

4.2 Termination of Agreement; Termination of Subcontracting Attorney.

- (A) This Agreement may be terminated by the County, with or without cause, upon the giving of 60-days' prior written notice to IDASC, LLC. Such termination shall be effective regardless of whether IDASC, LLC has or has not performed satisfactorily during the term of this Agreement.
- (B) 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 ten (10) days prior written notice to IDASC, LLC.
- (C) 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 Court requires 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. IDASC, LLC shall include or otherwise cause the provision of the foregoing in all Subcontracting Attorney agreements.

5. Indemnification.

IDASC, LLC 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 IDASC, LLC, that arise out of, pertain to, or relate to IDASC, LLC's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. IDASC, LLC agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such IDASC, LLC's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. IDASC, LLC'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 IDASC, LLC's expense, subject to IDASC, LLC'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 IDASC, LLC 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, IDASC, LLC shall maintain and shall require all of its subcontractors, IDASC, LLCs, and other agents to maintain, insurance as described in Exhibit B, which is attached and incorporated by this reference.

7. Representations of IDASC, LLC.

7.1 Standard of Care.

The County has relied upon the professional ability and training of IDASC, LLC, and IDASC, LLC's representation as to the professional ability and training of Subcontracting Attorneys, as a material inducement to enter into this Agreement. IDASC, LLC hereby warrants for himself and for Subcontracting Attorneys that all work will be performed in accordance with generally accepted and applicable professional practices and standards.

7.2 IDASC, LLC Is Independent Contractor.

IDASC, LLC is retained as independent contractor and nothing contained in this Agreement shall be construed as creating in IDASC, LLC or any Subcontracting Attorney, any of the rights, powers, privileges, or immunities of an employee of the County of Sonoma, or of The Court, including any right of indemnification provided by Government Code Section 995 et seq., or other legal provisions. IDASC, LLC understands and agrees that neither IDASC, LLC nor any Subcontracting Attorney is entitled to any substantive or procedural protections or rights created by the Civil Service Ordinance or Rules of the judicial branch or of Sonoma County.

IDASC, LLC expressly waives and disclaims any right to pre-termination or post- termination notice or hearing. The parties agree that the term of service is solely for the term of this contract and is

not for continuous nor permanent employment. IDASC, LLC acknowledges, understands, agrees, and warrants that no document, handbook, policy, resolution or oral or written representation, of any nature whatsoever, shall be effective or construed to be effective to extend the term hereof or otherwise grant IDASC, LLC any right or claim to employment with the County or The Court. This warranty has been relied upon as a material inducement to enter into this Agreement and, in the absence thereof, the parties would not have entered into this Agreement.

The parties intend that IDASC, LLC and Subcontracting Attorneys, in performing the services hereinafter specified, shall act as independent contractors and shall have control of the work and the manner in which it is performed, consistent with Rules of Professional Responsibility and applicable law related to Subcontracting Attorney's representation of assigned defendants. In the event the County exercises the right to terminate this Agreement as authorized hereunder, IDASC, LLC expressly agrees that IDASC, LLC shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

IDASC, LLC agrees to insert similar language, as set forth within this section, in the independent contracts entered with Subcontracting Attorneys.

7.3 Taxes.

IDASC, LLC 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. IDASC, LLC agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California, because of IDASC, LLC'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, IDASC, LLC agrees to furnish County with proof of payment of taxes on these earnings.

7.4 Records Maintenance.

IDASC, LLC 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. IDASC, LLC shall maintain such records for a period of four (4) years following completion of work hereunder.

7.5 Conflict of Interest.

IDASC, LLC 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. IDASC, LLC 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, IDASC, LLC 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 IDASC, LLC's or such other person's financial interests.

7.6 Statutory Compliance/Living Wage Ordinance.

IDASC, LLC 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, IDASC, LLC expressly acknowledges and agrees that this Agreement is 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.

7.7 Nondiscrimination.

Without limiting any other provision hereunder, IDASC, LLC shall comply with all applicable federal, state, and local laws, rules, and regulations regarding 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.

7.8 AIDS Discrimination.

IDASC, LLC 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.

8. 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.

9. Notice Requirements, 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: IDASC, 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.

10. Miscellaneous Provisions.

10.1 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.

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

10.3 Consent.

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

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8. 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.

10.9 Time of Essence.

Time is and shall be of the essence of this Agreement and every provision hereof. The parties have executed this Agreement, on the dates set forth below, effective as of July 1, 2023.

DEFENSE ADMINISTRATION OF SONOMA COUNTY, LLC

COUNTY OF SONOMA

By: _____

By: _____

Kristine Burk

County Administrator

Title: _____

County of Sonoma

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

County Counsel

EXHIBIT A
SCOPE OF WORK

Effective Date and Assignments.

1. Effective as of July 1, 2022 and continuing as provided in this Agreement or by cessation of funding by the Board of Supervisors, IDASC, LLC shall require Subcontracting Attorneys to accept all assignments from the courts, including the Juvenile Court, to act as counsel to defendants and minors in those cases described in Section 987.2 of the Penal Code, but excluding Keenan Counsel, sexually violent predator civil cases, and appeals, except those to Superior Court's Appellate Department.

IDASC, LLC's Obligations.

2. It is expressly understood by the parties to this Agreement that the County is securing (1) the individual expert personal services of IDASC, LLC; (2) her expertise in the administration of this contract as it relates to the retention of attorneys for appointment in the various cases assigned to conflict defense counsel ("Subcontracting Attorneys") and (3) IDASC, LLC's actual retention and payment for services, via separate independent agreements, of Subcontracting Attorneys with the necessary legal experience and expertise in the areas pertinent to this Agreement, for the representation of criminal defendants. IDASC, LLC shall comply with all laws applicable to the recruitment, hiring, and management of any Subcontracting Attorney. It is understood that all Subcontracting Attorneys must be approved for representation under this contract by the Supervising Judge of the Criminal Division of the Sonoma County Superior Court. Subcontracting Attorneys' relationship to criminal defendants assigned to them via the independent subcontracts arising from this contract shall be that of attorney and client. As to Subcontracting Attorneys, their initial assignment to the list of attorneys available for conflict counsel representation must be:

authorized in advance by the Supervising Judge of the Criminal Division of the Sonoma County Superior Court; and the Subcontracting Attorneys must agree in writing to perform the terms and conditions of this Agreement applicable to IDASC, LLC's performance.

Considering the foregoing statement of the IDASC, LLC's unique qualifications, IDASC, LLC is 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. IDASC, LLC accordingly shall be and remain employed in the performance of all services under this Agreement. IDASC, LLC shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.

If IDASC, LLC becomes unavailable due to resignation, sickness, or other factors outside of IDASC, LLC's control, IDASC, LLC shall be responsible for timely provision of adequately qualified replacement(s).

In the event of death, incapacity, or other circumstance under which IDASC, LLC can no longer render services, County shall have the right, at its sole option, to assign this Agreement to another qualified professional, as determined by County, subject to continuation of all terms and conditions of this Agreement and all Subcontracting Attorney agreements. In such event, Subcontracting Attorneys shall attorn, novate, or otherwise recognize and agree to the replacement IDASC, LLC. It is the intent of the parties that such provisions will ensure the continuity of the unique services County is securing via this Agreement and that such continuity is of valuable consideration to County. All Subcontracting Attorney agreement shall contain provisions effectuating and ensuring the foregoing.

For purposes of the foregoing provision, the terms “disability” and “incapacity” do not include any Subcontracting Attorney’s refusal to accept assigned cases or refusal to perform as assigned counsel in previously assigned cases on grounds of conflict of interest among criminal defendants assigned or proposed to be assigned.

Ordinary Courtrooms and Caseloads.

3. (A) The County and IDASC, LLC recognize that the possibility of conversion, creation, or elimination of departments of the Sonoma Superior Court (felony, misdemeanor and/or juvenile) during the contract period, and that the possibility for significant annual increases or decreases in the number of appointments also exists.

(B) At such time as the Superior Court informs the County of its intent to convert, add or eliminate departments, the County and IDASC, LLC will engage in discussions as to the nature of support needed, considering caseloads that may transfer from existing departments and the implementation or elimination of early case resolution models. These discussions may result in a contract amendment to reflect an expanded or reduced scope of work, revised distribution of work, and increased or decreased number of Subcontracting Attorneys and/or levels of coverage.

(C) It is anticipated that the period of this contract extension (7/1/2022-6/30/2023) will become the baseline year if a conflict contract is negotiated and formed between the County and IDASC, LLC, for the period of July 1, 2023 – June 30, 2026.

(D) 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.

(E) At present there are: 5 felony trial courts, 4 misdemeanor trial courts, 2 1 juvenile court, 1 ECR arraignment court, 1 domestic violence court, 1 drug court, and 4 family law courts.

(F) For the fiscal year 2022, the allocations of the contract are: Felony 64%, Misdemeanor 24%, Juvenile 9%, Contempt 1.4%, Witnesses 0.8% and Appeals 1.3%.

(G) The County and IDASC, LLC agree that this Section concerning ordinary courtrooms and caseloads refers only to the number of courtrooms and number of cases ordinarily assigned during the course of a year and to possible changes in the number of courts and annual 'caseload year' adjustments of ordinary caseloads, and not to the complexity of individual cases, nor to the possibility of extraordinary cases and/or extraordinary number of appointments occurring within a 'caseload year' or fiscal year. The County and IDASC, LLC agree that the provisions of this Section concerning ordinary courtrooms, caseloads and 'caseload year' adjustments are separate and apart from other Sections of this Agreement that deal with extraordinary circumstances and that this Section has no effect or limitation on the provisions set forth in those Sections.

Capital Cases.

4. The parties to this Agreement acknowledge that the defense of capital cases requires time and services extraordinary to regularly assigned conflict cases referred to in paragraph 3 above, and that only attorneys who meet the requirements of Rule 4.117, California Rules of Court and who are approved by the Court can represent defendants in capital cases. The parties also acknowledge that the time and services required of Subcontracting Attorneys in defending capital 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 orderly administration of justice. In capital cases that appear to the IDASC, LLC to have a strong likelihood of continued prosecution as a capital case, in addition to the compensation provided by this Agreement in Section 2.1, Subcontracting Attorneys representing a defendant in a capital case shall be compensated 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 for other appointed cases as set forth in Section 3, above. Such additional cost shall consist of the reasonable sum for services provided by such delegation of duties and obligation as provided in Section 3, above, and per diem pay in accordance with Section 6 in addition to any funds authorized by the court under Penal Code Section 987.9. 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 in Sections 7 and 8, below.

Change of Venue.

5. 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 the extraordinary retention account described in Sections 7 and 8, below.

Per Diem.

6. 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 this contract – fiscal year 2022-2023 – 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 \$320 per diem (\$160 per half day) beginning on the 6th day of the trial or hearing. 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 in Sections 7 and 8, below.

Other Extraordinary Cases and Caseloads.

7. (A) The parties to this Agreement acknowledge the *'The State Bar Of California Guidelines On Indigent Defense Services Delivery Systems'* which provide 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.' In recognition of the foregoing, the parties agree that the ordinary caseloads and fixed rates contemplated by this agreement and stated in Section 3, and the provisions for possible annual increases or decreases stated in Section 3, are based on reliable statistics caseload data accumulated for part-time subcontracting attorneys during the period 2005-2021. 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 Section 2.

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.

(B) 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.

(C) 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 in Section 2, Subcontracting Attorney shall be compensated from the retention account described in Section 7 (E) 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 Section 2. The Court may take into account per diem amounts provided for by Section 6 and may place a limit on the amount of extra expenses which may be incurred, which may be less than the amount requested.

(D) 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.

(E) Sharing of extraordinary expenses. If such extraordinary expenses are either agreed to by the County or ordered by the Court, IDASC, LLC and County agree to share such expenses as follows: IDASC, LLC will put \$13,399.44 of the Contract Amount for the period of this Contract

(\$1,116.62/month) in a separate retention account and County will allocate \$26,798.88 of the Contract Amount per fiscal year (\$2,233.24/month) (see Section 8, below) to that account. Any expenditures from that account will be allocated two-thirds to the County and one-third to the IDASC, LLC. At the end of this one-year extension contract any unused funds will be refunded in the same allocation within thirty days of the termination of the Agreement unless another provision is negotiated in a future agreement. IDASC, LLC shall provide County with a quarterly report of account activity. See example in Exhibit C.

The parties agree that the unused Extraordinary funds from the 2019-2022 contract shall be returned to the contributing parties on June 30, 2022, except for the following: three-months worth of deposits (\$9,522) which shall be reserved and remain in the account through the term of the agreement. Two-thirds of the reserved funds are deemed to be contributed by the County (\$6,348) and one-third is deemed to have been contributed by the Administrator.

Unless other written agreements are reached between these parties, the County and IDASC, LLC agree that the unused funds in the Extraordinary Account as of June 30, 2023 shall be distributed to the contributing parties on that date, leaving the balance at zero.

IDASC, LLC Retention Amounts: Ancillary Services and Extraordinary Expense

8. Of the annual Contract Amount County agrees to provide \$254,589.36 for ordinary ancillary services which includes investigation services, social worker costs, expert witness fees, criminal immigration advice, law clerk services and language interpretation. (\$21,215.78/month) This sum is in addition to the previously discussed extraordinary expenses as that term is defined in Section 7. Ancillary expenses include items related to presenting cases for trial or hearing, such as court transcripts, interpretation of materials, preparation of exhibits, and clothing for indigent defendants in jury trial. The retentions for ancillary will be held by IDASC, LLC and disbursed upon a proper showing by the Subcontracting Attorneys to IDASC, LLC of the need for their use. The retentions for extraordinary expenses will be held by IDASC, LLC and disbursed as provided in Section 7. Unless an alternative disposition is agreed to in writing, if the full amounts of the retentions are not utilized during the contract, said monies will be returned by IDASC, LLC to the County of Sonoma within thirty days of the termination of the Agreement, except as otherwise provided in Section 7(E) regarding refunds of extraordinary expense retentions. IDASC, LLC shall provide County with a quarterly report of account activity. See example in Exhibit C.

The parties agree that the unused Investigations and Forensic funds from the 2019-2022 contract shall be merged into a single Ancillary Retention account on July 1, 2023, and that those funds shall rollover for this one-year extension contract. The parties further agree that those carryover funds shall not be deducted from any County payment during the period of this extension agreement.

If the amounts required exceed the allowed retentions for each year during the term of this contract, or if extraordinary cases or caseloads such as those referred to in Sections 4-7 require additional funds, IDASC, LLC may submit written application to the County requesting funds in excess of the retention amounts, stating the reasons and amounts requested and what they will be used for.

Levels of Coverage.

9. IDASC, LLC agrees that for the purposes of fulfilling the terms of this Agreement, the IDASC, LLC will retain the services of Subcontracting Attorneys, via independent contracts, to ensure conflict coverage for felonies up to nine (9) levels, for misdemeanors up to nine (9) levels, civil contempt up to two (2) levels, and for juvenile matters up to six (6) levels. These levels will ensure that only in the most unusual circumstances will there be an appointment of an attorney other than a Subcontracting Attorney. In addition to the foregoing, IDASC, LLC agrees to provide two (2) qualified Subcontracting Attorney for the felony Early Case Resolution Court. In addition, IDASC, LLC agrees to provide coverage for the representation of witnesses. Except when otherwise required by the Courts or when the attorney already represents the witness, such representation shall be by attorneys other than the felony-level Subcontracting Attorneys. IDASC, LLC will have contract language with felony-level Subcontracting Attorneys that precludes them from representing such witnesses unless required by the court or unless the attorney already represents the witness.

IDASC, LLC agrees to provide a complete list of Subcontracting Attorneys and a copy of each of their individual contracts to the County. IDASC, LLC agrees that he will retain the services of at least three (3) Subcontracting Attorneys that qualify to represent defendants accused of capital offenses.

IDASC, LLC agrees to include in its Subcontracts language to ensure that conflicts are avoided and only declared when necessary. IDASC, LLC further agrees to implement an administrative review policy to ensure that Subcontracting Attorneys are abiding that term of the contract.

Language Required in Subcontracts.

10. In each agreement with each Subcontracting Attorney, IDASC, LLC shall include or cause the provision of all provisions, terms, conditions, and specific clauses which, by their nature or as otherwise specified, apply to the Subcontracting Attorneys, their work, and/or the contractual arrangement with the IDASC, LLC. County reserves the right, but without having any obligation, to review and approve the forms of agreement between the IDASC, LLC and Subcontracting Attorneys, which shall remain the sole responsibility of IDASC, LLC.

Without limiting the generality of the foregoing requirements, IDASC, LLC agrees to add language to each subcontract that requires each Subcontracting Attorney to (i) use his/her best efforts to tell defendants to go to Court Collections and pay the registration fee and (ii) at the end of case, to remind The Court of its ability to impose fees, under Penal Code §987.8. IDASC, LLC agrees to include language in his contracts with Subcontracting Attorneys that provide:

“Subcontracting Attorney agrees that if at any time during the term of the subcontract, he/she has a privately retained criminal defendant or minor who has a case pending in the courts of this County and who can no longer afford Subcontracting Attorney’s services, Subcontracting Attorney can: (1) Ask the court to relieve Subcontracting Attorney and appoint the Public Defender to represent the defendant or minor; or (2) if the Public Defender is unavailable due to conflict of interest, ask the court to relieve

Subcontracting Attorney and appoint the regularly assigned conflict attorney to represent the defendant or minor; or (3) ask the court to appoint Subcontracting Attorney under the contract to represent the defendant or minor; or (4) continue to represent the defendant or minor without making any requests of the court; but in no event shall Subcontracting Attorney ask the court to appoint Subcontracting Attorney to represent the defendant or minor independently outside the contract to be paid outside the contract. Subcontracting Attorney agrees that this clause does not prevent Subcontracting Attorney from being retained to represent clients at their expense, nor does it prevent Subcontracting Attorney from asking the court to appoint Subcontracting Attorney to represent the defendant or minor if the Public Defender is not available due to conflict of interest. It only prevents Subcontracting Attorney from being paid at public expense outside the contract to represent an indigent client."

"Subcontracting Attorney agrees to disclose, upon signing this contract, the defendant's or minor's name and case number of any case in which the Subcontracting Attorney currently represents a defendant or minor by court appointment, at public expense, outside the contract, regardless of when that appointment was made, whether by 'Harris' appointment or otherwise, and agrees that if such disclosure is not given when the contract is signed, no requests to the County for payment outside the contract for work done after the date the contract is signed will be honored."

"Nothing in this Section shall prevent The Court from appointing Subcontracting Attorney to represent an indigent defendant when required by law."

"Subcontract Attorney agrees that if appointed to represent a defendant or minor pursuant to this contract, Subcontract Attorney is prohibited from being retained to represent the defendant or minor in the same case or cases in which the contract appointment(s) occurred. If a client appointed pursuant to this agreement is able to retain an attorney, Subcontract Attorney will request the Court to relieve him/her of the appointment, and the client shall be notified to retain some attorney other than Subcontract Attorney."

"The limitations of this section prohibiting appointment of Subcontracting Attorneys 'outside the contract' do not apply to situations in which coverage in a case has been provided to the level set forth in Section 9 by other Subcontracting Attorneys, additional non-contract appointments are required, and the Subcontracting Attorney to be appointed 'outside the contract' was not on the list of attorneys assigned to provide coverage for that court. Example: A juvenile case involves 12 minors. Nine levels of coverage are required by Section 9. Nine Subcontracting Attorneys currently assigned to juvenile court provide the required level of coverage by accepting appointments or declaring conflicts. Non-contract appointments are thus required for the remaining minors. The Court can appoint a felony Subcontracting Attorney 'outside the contract' to represent a minor at County expense, because juvenile court contract coverage has been provided to the level required by the contract by the attorneys assigned to juvenile court, and the felony Subcontracting Attorney was not assigned under the contract to provide coverage in the juvenile court. The same would apply to misdemeanor and juvenile attorneys being appointed 'outside the contract' in felony cases, and to felony and juvenile attorneys being appointed 'outside the contract' in misdemeanor cases."

Data To Be Provided By IDASC, LLC.

11. IDASC, LLC agrees to provide, as one report, information regarding the number and type of appointments made under the terms of this Agreement. Information shall be provided quarterly (within 30 days of the end of each calendar quarter) in accordance with the performance format attached as Exhibit D. IDASC will continue to maintain a case management system for the accurate tracking of case data and will report on that data in both numeric and narrative form.

VPN Access.

12. 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 2022-2023 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 2022-2023 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.

13. 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 INSURANCE

With respect to performance of work under this Agreement, IDASC, LLC shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review all the required insurance policies and/or endorsements but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve IDASC, LLC from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

Workers Compensation and Employers Liability Insurance

- a. Required if IDASC, LLC has employees.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If IDASC, LLC currently has no employees, IDASC, LLC agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If IDASC, LLC maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by IDASC, LLC.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. IDASC, LLC is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether IDASC, LLC has a claim against the insurance or is named as a party in any action involving the County.
- d. The County of Sonoma, its officers, agents and employees shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the IDASC, LLC in the performance of this agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.

- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between County and IDASC, LLC and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If IDASC, LLC currently owns no autos, IDASC, LLC agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

Professional Liability/Errors and Omissions Insurance

- a. Minimum Limit: \$2,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County.
- c. If IDASC, LLC’s services include: (1) programming, customization, or maintenance of software; or (2) access to individuals’ private, personally identifiable information, the insurance shall cover:
 - i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
 - ii. Claims against IDASC, LLC arising from the negligence of IDASC, LLC, IDASC, LLC’s employees and IDASC, LLC’s subcontractors.
- d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

- f. Required Evidence of Insurance: Certificate of Insurance specifying the limits and the claims-made retroactive date.

Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A.

Documentation

- a. The Certificate of Insurance must include the following reference: Conflict IDASC, LLC Agreement.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. IDASC, LLC agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- a. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma County Office of County Counsel, 565 Administration Drive, Suite 105A, Santa Rosa, CA 95403.
- c. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- d. IDASC, LLC shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- e. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

Policy Obligations

IDASC, LLC's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Material Breach

If IDASC, LLC fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from IDASC, LLC resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to IDASC, LLC, County may deduct from sums due to IDASC, LLC any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.