

GOVERNANCE AGREEMENT RESPECTING LEGAL AID  
Dated for Reference April 1, 2019

Among:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA,  
As represented by the Minister of Justice and Solicitor General  
for the Province of Alberta  
(the “Minister”)

and

THE LAW SOCIETY OF ALBERTA  
(the “Law Society”)

and

THE LEGAL AID SOCIETY OF ALBERTA  
(“Legal Aid Alberta”)

WHEREAS Legal Aid Alberta was established to provide and continues to provide a system of legal aid in criminal, family and civil matters;

WHEREAS the parties are committed to a principle-based approach to the funding and operation of a legal aid program in Alberta;

WHEREAS the parties recognize Alberta’s Legal Aid Plan contributes to the well-being of low-income and other vulnerable Albertans, and provides meaningful access to legal rights and protections benefiting all Albertans;

WHEREAS the parties recognize the social return on investment into Alberta’s Legal Aid Plan within the broader system of social supports to Albertans, including the benefits to individuals, children, families, and communities;

WHEREAS Alberta’s Legal Aid Plan operates in conjunction with other social services and programs offered by non-governmental legal assistance organizations to provide a client-centred, holistic and coordinated approach to access to justice;

WHEREAS the parties are committed to a financially stable, effective, flexible and innovative legal aid system that provides value for money;

WHEREAS the parties believe in the principle that financial eligibility should be set at a level to protect the most vulnerable Albertans who rely on the Legal Aid Plan, and the parties agree to index financial eligibility guidelines with the Alberta Consumer Price Index;

NOW THEREFORE it is agreed among the parties hereto as follows:

#### DEFINITIONS

1. In this Agreement:
  - (a) “Approved Budget” has the meaning as set out in Section 12.1(a);
  - (b) “Approved Business Plan” has the meaning as set out in Section 12.1(b);
  - (c) “Board” means the board of directors of Legal Aid Alberta;
  - (d) “Certificate” means a document issued by Legal Aid Alberta to a lawyer outlining the matter for which he/she is retained to act on behalf of a Legal Aid Client pursuant to the Rules and any specific conditions that may apply;
  - (e) “Chief Executive Officer” shall be a member of the Law Society unless the Human Resources Committee referred to in Section 6 recommends otherwise, and means the senior executive of Legal Aid Alberta who reports to and takes direction from the Board and who is responsible for the overall operations of Legal Aid Alberta;
  - (f) “Court Appointed Counsel Case” includes
    - a. a legal matter involving an individual in which a court appoints counsel pursuant to express authority to appoint under the *Criminal Code*, the *Youth Criminal Justice Act*, or any other enactment of Alberta or Canada; and
    - b. a legal matter involving an individual in which a court appoints counsel at a rate higher than the Legal Aid Tariff;
  - (g) “Eligible Individual” means an individual whom Legal Aid Alberta determines to be qualified to receive Legal Aid Services;
  - (h) “Fiscal Year” means the period from April 1<sup>st</sup> of a year to March 31<sup>st</sup> of the following year;
  - (i) “Law Society Board” means the governing body of the Law Society;
  - (j) “Legal Aid Client” means a person who receives Legal Aid Services from Legal Aid Alberta and for the purposes of Sections 19.1, 19.2 and 19.3, includes a person who

- has asked to receive Legal Aid Services from Legal Aid Alberta and for all purposes includes any agent designated in writing by that person;
- (k) “Legal Aid Plan” means the programs and services that are provided to Eligible Individuals in accordance with the Rules and that are described in the last business plan approved by the Minister pursuant to Section 12.1(b), and which programs and services may be changed from time to time pursuant to this Agreement;
- (l) “Legal Aid Tariff” means the existing schedule (set out in the Rules) of fees and disbursements payable for Legal Aid Services provided pursuant to a Certificate which schedule may be amended from time to time with the approval of the Minister pursuant to this Agreement;
- (m) “Legal Aid Services” includes:
- a. Representation by a lawyer:
    - i. in adult criminal cases where the matter is a Required Counsel Case, or a Court Appointed Counsel Case;
    - ii. in proceedings under the *Youth Criminal Justice Act* where the matter is a Required Counsel Case or a Court Appointed Counsel Case;
    - iii. in adult criminal cases where the adult is an Eligible Individual;
    - iv. in proceedings under the *Youth Criminal Justice Act* where the young person is an Eligible Individual; and
    - v. in family law, child welfare, immigration, refugee and adult guardianship and trusteeship matters where the person is an Eligible Individual.
  - b. Twenty-four hour telephone legal advice for individuals detained by police;
  - c. At the request of a court, representation by a lawyer for children in private custody and/or access disputes that are of a high conflict nature, if Legal Aid Alberta determines that:
    - i. Such counsel is necessary to protect the best interests of the child;
    - ii. Such counsel is to be paid in accordance with the Legal Aid Tariff; and
    - iii. either or both parents having regard to their respective financial means are to reimburse Legal Aid Alberta for the costs of such counsel.
  - d. Duty counsel services;
  - e. Enhanced resolution counsel services;

- f. Legal services for an individual if an order for apprehension and confinement was made against that individual under the *Protection of Children Abusing Drugs Act*, S.A. 2005 c.P-27.5 as amended;
  - g. Legal services to be provided pursuant to an agreement;
    - i. if approved by the Minister, with an Indian Band as defined under the *Indian Act* (Canada), or with a Metis Settlement or the Metis Nation Association of Alberta or any other Metis group;
    - ii. between Legal Aid Alberta and the federal government respecting terrorism or national security related matters; and
    - iii. between the Minister and the federal government respecting legal aid and court ordered counsel in federal prosecutions.
  - h. Brief or limited scope legal advice; and
    - i. Assistance from a non-lawyer if determined by Legal Aid Alberta to be appropriate based on an evaluation of a client's needs, provided such assistance does not result in legal advice being given.
- (n) "Ministry" means the Ministry of Justice and Solicitor General;
- (o) "Nominating Committee" means the Nominating Committee described in Appendix I;
- (p) "Required Counsel Case" means a legal matter in which a court or the government authority with conduct of the matter determines, or Legal Aid Alberta reasonably determines that an individual requires Legal Aid Services to meet the requirements of s.7 or 11 of the *Canadian Charter of Rights and Freedoms*; and
- (q) "Rules" means the rules existing as of the date of this Agreement respecting the operation of the Legal Aid Plan, including rules respecting the substantive and financial eligibility guidelines, choice of counsel, Legal Aid Services, and the Legal Aid Tariff, and any amendments to such rules which may be made from time to time pursuant to this Agreement.

#### MANDATE OF THE LEGAL AID PLAN

2. The Legal Aid Plan provides essential and high quality legal services for disadvantaged and low income Albertans and other persons specified in this Agreement and in the Rules to ensure meaningful access to legal rights and the protection of the law for the benefit of all Albertans. The Legal Aid Plan seeks to provide people with timely and lasting solutions in addressing their legal needs.

### ROLE OF LEGAL AID ALBERTA

3. Legal Aid Alberta administers the Legal Aid Plan and advances the public interest by helping people resolve their legal problems. By providing advice to the Minister about Alberta's Legal Aid Plan and the needs of Legal Aid Clients, and by working collaboratively with the Minister and the Law Society, as well as with other government departments and third parties offering legal information and assistance, Legal Aid Alberta strives to create a cost effective, innovative and flexible legal aid program to maximize value for dollars spent and provide the best possible coverage within an affordable funding envelope and contribute to a fair, accessible justice system for all Albertans.

### BOARD OF DIRECTORS

- 4.1. Subject to this Agreement, the Board shall have the responsibility to supervise and direct the management of Legal Aid Alberta in accordance with sound governance practices, and to establish whatever policies may be needed or required to operate Legal Aid Alberta. The Minister, the Law Society, and Legal Aid Alberta agree to the articles relating to the establishment, role and function of the Board, as set out in the current registered by-laws of Legal Aid Alberta. The Board and the members of Legal Aid Alberta shall not amend the by-laws of Legal Aid Alberta without the prior consent of the Minister and the Law Society.
- 4.2 The Board shall maintain a Governance Committee.
- 4.3 In consultation with the Minister and the Law Society the Board shall undertake an independent assessment of its performance and governance practices through an external management consultant at least once during the term of this Agreement. The consultant shall prepare a confidential written report for the Board, with a copy provided to the Law Society and the Minister no later than the end of the fourth year of the term of this Agreement.

### APPOINTMENTS TO THE BOARD

- 5.1 The Board shall establish a Nominating Committee as set out in Appendix I to this Agreement and with the terms of reference as set out in Appendix I.
- 5.2 Upon the appointment of all Board members the Law Society shall provide to the Minister and Legal Aid Alberta a list of the Board members, their addresses, phone numbers, occupations, and the respective term(s) of their appointment.

### CHIEF EXECUTIVE OFFICER

6. For the recruiting and hiring of replacements for the Chief Executive Officer the Human Resources Committee of the Board shall be expanded to include a respective representative of each of the Minister and the Law Society. The Committee shall determine its recruitment process and make a report to the Board with respect to the hiring of any replacement Chief Executive Officer.

#### ROLE OF THE MINISTER

- 7.1 The Minister may develop guidelines binding on Legal Aid Alberta with respect to Legal Aid Client financial contributions toward the fees and disbursements of their Legal Aid Services.
- 7.2 The Minister shall establish funding levels for Legal Aid Services to be provided by Legal Aid Alberta.
- 7.3 The Minister may, in consultation with Legal Aid Alberta, establish a provincial performance measurement framework and set targets for Legal Aid Alberta to meet in the delivery of Legal Aid Services under this Agreement.

#### ROLE OF THE LAW SOCIETY OF ALBERTA

- 8.1 The Law Society, as the independent regulator of the legal profession, may exercise authority binding on Legal Aid Alberta to protect the confidentiality of client information, solicitor-client privileged communications, the independence of legal counsel, and the competent and ethical delivery of legal services. In addition, the Law Society may require Legal Aid Alberta to report to the Law Society on these matters.
- 8.2 The Law Society appoints and revokes the members of the Board in accordance with Appendix I and may require Legal Aid Alberta to provide information to ensure that sound governance practices are utilized by the Board.
- 8.3 The Law Society may provide advice to the Minister about access to justice issues affecting people who might access the Legal Aid Plan.

#### INDEPENDENCE

- 9.1 Subject to this Agreement, Legal Aid Alberta is independent from the Minister and the Law Society, but is accountable to both for the operation of Legal Aid Alberta and the Legal Aid Plan.
- 9.2 The principle of independent operation is recognized and respected by the parties to this Agreement. Legal Aid Alberta is free to provide Legal Aid Services to clients, act in the

public interest and to improve the Legal Aid Services without interference of any sort except as provided in this Agreement.

- 9.3 The principle of independence of legal counsel, including the protection of the confidentiality and privacy rights of Legal Aid Clients, is recognized and respected by the parties to this Agreement. The principle applies to private roster counsel and staff counsel. Legal counsel serving a Legal Aid Client is free to act in the best interest of the client without interference of any sort except through the established policies and procedures as set out in the Rules.

#### PROVISION OF LEGAL AID SERVICES

- 10.1 Legal Aid Alberta shall deliver the Legal Aid Plan in a cost effective, innovative and flexible manner and strive to maximize value for dollars spent and make the most efficient use of the Courts' time while providing a sufficient and personalized level of service to assist Legal Aid Clients to achieve timely and appropriate resolutions to their legal problems. In delivering the Legal Aid Plan in an innovative and responsive manner, Legal Aid Alberta shall consider, among other factors to be determined by Legal Aid Alberta, factors of geography, including location of Legal Aid Clients, proximity of legal counsel and courts, and travel costs.
- 10.2 Legal Aid Alberta shall assess the legal needs of Legal Aid Clients and:
- (a) make appropriate decisions on the type and amount of Legal Aid Services to provide, including but not limited to:
    - a. full representation services;
    - b. limited scope services; or
    - c. early resolution services; and
  - (b) make appropriate referrals to third parties.
- 10.3 Legal Aid Alberta shall:
- (a) comply with the requirements of the federal/provincial cost-sharing agreement regarding legal aid;
  - (b) encourage the coordination to the extent practicable of the Legal Aid Services with the other services and facilities available in Alberta to help meet the special legal needs of the Legal Aid Clients;
  - (c) continue the practice of using both the private roster and staff counsel to deliver the Legal Aid Services;

- (d) systematically review legal counsel accounts to ensure that all work done falls within the Rules;
- (e) continually strive to maintain and improve the quality, efficiencies and cost effectiveness of the operation of the Legal Aid Plan;
- (f) in accordance with guidelines established under Section 7.1 develop policy to be publicly available with respect to financial contribution of Legal Aid Clients toward the fees and disbursements associated with their Legal Aid Services;
- (g) pay all amounts received from the Alberta Law Foundation pursuant to the *Legal Professions Act* (Alberta) (“Foundation Proceeds”) into the contingent reserve fund referred to in Section 12.1(c). If the amount in the contingent reserve exceeds the amount calculated in accordance with Section 12.1(c), then Legal Aid Alberta may transfer up to a maximum of \$1 million annually of Foundation Proceeds into an innovation fund to be spent by Legal Aid Alberta on Legal Aid Services with the prior approval of the Minister which shall be identified and tracked appropriately in Legal Aid Alberta’s financial statements. Legal Aid Alberta shall report to the Minister the amount of any Foundation Proceeds remaining after the maximum has been paid into the innovation fund, for the purposes of the budgeting process described in Section 12.1(a). The Minister may consider these remaining Foundation Proceeds in determining any future biennial grant to Legal Aid Alberta; and
- (h) work in collaboration with the Minister to meet provincial performance measurement targets and to report to the Minister, upon request and in a format chosen by the Minister, Legal Aid Alberta’s present status with respect to meeting the targets.

10.4 Where counsel in any matter requests of Legal Aid Alberta,

- (a) a discretionary increase in any Legal Aid Tariffs;
- (b) extra Legal Aid Tariff items to be covered by Legal Aid Alberta; or
- (c) special disbursements,

Legal Aid Alberta shall consider such requests in an administratively fair manner and may only approve such requests up to the extent of legal or other services that a reasonable person of modest means would use to resolve the problem, as determined solely by Legal Aid Alberta.

10.5 Without limiting Legal Aid Alberta’s sole discretion under Section 10.6, a Legal Aid Client’s choice of legal counsel is recognized and respected by the parties to this Agreement.

- 10.6 For the provision of all Legal Aid Services, Legal Aid Alberta shall in its sole discretion and respecting a Legal Aid Client's choice of counsel, choose the staff lawyer, roster lawyer or law firm to provide services based on factors including, but not limited to, the nature of the case, the cost to provide the services, and the experience of the lawyer.
- 10.7 Subject to Section 10.6, Legal Aid Alberta may allow lawyers to transfer certificates with the consent of the Eligible Individual or Legal Aid Client and in accordance with any rules or policies that Legal Aid Alberta may develop.
- 10.8 Legal Aid Alberta may enter into agreements with roster, staff lawyers or law firms to provide Legal Aid Services to all Legal Aid Clients,
  - (a) with respect to certain categories of legal matters as determined by Legal Aid Alberta if Legal Aid Alberta can demonstrate cost savings over assigning individual lawyers on a case by case basis while maintaining quality of service; or
  - (b) in response to a request for proposals issued by the Minister for Legal Aid Alberta to provide certain Legal Aid Services.
- 10.9 Legal Aid Alberta may operate a discretionary coverage program whereby individuals who would not ordinarily qualify under the Financial Eligibility Guidelines (where those Guidelines are applicable) may, based upon criteria approved by the Minister, be provided legal or other services in exceptional circumstances as determined by Legal Aid Alberta in its sole discretion.
- 10.10 Legal Aid Alberta shall engage with stakeholders or representatives of stakeholder groups in order to seek input on potential operational changes that may affect those stakeholders or stakeholder groups.
- 10.11 The Board shall ensure the implementation of effective quality assurance and service delivery protocols and procedures to ensure client, program and justice system outcomes are achieved.
- 10.12 Subject to the regulatory authority of the Law Society, Legal Aid Alberta may establish legal practice standards for lawyers, and review the continued participation of those lawyers against the Rules and Legal Aid Alberta policies. In addition, Legal Aid Alberta shall respond to Legal Aid Client complaints in an administratively fair and timely manner.
- 10.13 In the event that the Minister receives a complaint from a Legal Aid Client in respect of any aspect of the administration of the Legal Aid Plan or the delivery or availability of

the Legal Aid Services, the Minister may refer the matter to Legal Aid Alberta who shall respond to the Legal Aid Client in an administratively fair and transparent manner.

#### LEGAL SERVICE PROPOSALS

- 11.1 The Minister may, from time to time, request Legal Aid Alberta to submit a proposal for the provision by Legal Aid Alberta of certain Legal Aid Services to be determined by the Minister.
- 11.2 Upon Legal Aid Alberta's receipt of a request for proposal from the Minister, and in a timeline to be agreed upon by the Minister and Legal Aid Alberta, Legal Aid Alberta shall submit a proposal in a format chosen by the Minister which shall be responsive to the Minister's request.
- 11.3 Legal Aid Alberta may, of its own initiative, and in a form and format chosen by the Minister, submit a proposal by which Legal Aid Alberta will provide certain Legal Aid Services for consideration by the Minister.
- 11.4 Proposals submitted by Legal Aid Alberta shall include a business case describing how the proposal will be cost effective while maintaining quality Legal Aid Services. The Minister may approve in whole or in part any proposal and may request modifications prior to approval. The Minister may approve any proposal with conditions.

#### BUDGETING, BUSINESS PLANNING AND AUDIT

- 12.1 The principle of sustained funding for the provision of the Legal Aid Services based on agreed projections of volume and cost is recognized and respected by the parties to this Agreement. Unless otherwise directed by the Minister, in regard to the operation of the Legal Aid Plan and the provision of Legal Aid Services, Legal Aid Alberta shall:
  - (a) In the format specified by the Minister, and based on the approved annual budget estimates of the Ministry, and in prior consultation with the Minister, prepare a two-year ("biennial") budget, which shall be updated annually, for approval by the Minister and present it to the Minister no later than September 30 of each year. The Minister may approve, in whole or in part, the submitted biennial budget and may require Legal Aid Alberta to revise, in whole or in part, the submitted biennial budget. The biennial budget that has been approved by the Minister is known as the "Approved Budget". Each biennial budget submitted by Legal Aid Alberta shall include a schedule of services which shall describe in detail the Legal Aid Services to be provided, the funding level, relevant budget assumptions, volume and average cost projections for each Legal Aid Service inclusive for both private roster and staff. Subject to Section 12.1(a.1), the schedule of services shall include the service categories described in Appendix II. The Approved Budget will establish the

- maximum funding level for the Legal Aid Services that the Minister will approve for each of the two Fiscal Years. Until a biennial budget submitted by Legal Aid Alberta can be approved by the Minister, the previous Approved Budget shall be in effect subject to Section 16.5;
- (a.1) The actual level and amount of Legal Aid Services described in Appendix II to be provided and their “Descriptions and Components” shall be determined in accordance with Section 12.1(a) and the schedule of services. The Minister and Legal Aid Alberta may agree to add new service categories to Appendix II. The Minister may eliminate a service category described in Appendix II upon giving Legal Aid Alberta 12 months written notice so that Legal Aid Alberta can inform stakeholders and plan for the transition of services. The Minister is not required to give notice to eliminate a service category where:
- a. The contingent reserve referred to in Section 12.1(c) is forecasted to be insufficient to allow Legal Aid Alberta to provide the Legal Aid Services in accordance with the then current Approved Budget; or
  - b. The Minister and Legal Aid Alberta otherwise agree.
- (b) In the format specified by the Minister, prepare a three-year business plan, which shall be updated annually, for approval by the Minister. Each business plan submitted to the Minister shall include an appendix which describes in sufficient detail the programs and services that are being provided by Legal Aid Alberta to Eligible Individuals in accordance with the Rules, their modes of delivery, and how the Legal Aid Services are being provided by Legal Aid Alberta. The three-year business plan for a particular Fiscal Year that has been approved by the Minister is known as the “Approved Business Plan”;
- (c) In its proposed biennial budget submitted pursuant to Section 12.1(a), maintain an ongoing contingent reserve for each Fiscal Year in an amount to be determined by Legal Aid Alberta and approved by the Minister. The size of the contingent reserve is based on Legal Aid Alberta’s estimate of non-forecasted/unbudgeted costs by taking into account the risk of increased costs based on historical and projected future costs. Legal Aid Alberta may, upon giving the Minister written notice and supporting documentation, draw down the contingent reserve to pay for,
- a. Legal Aid Services described in Section 1(m)(a)(i)-(iv), (b), (c), (f); or
  - b. family law matters specifically in regard to the *Child Youth and Family Enhancement Act* (Alberta), or the *Protection Against Family Violence Act* (Alberta) or other forms of protection related to family violence
- when the forecasted amounts for those Legal Aid Services are expected to exceed the amounts set out in the Approved Budget. Legal Aid Alberta shall obtain the Minister’s prior approval to draw down the contingent reserve to pay any other non-forecasted/unbudgeted costs or revenue shortfalls in providing the Legal Aid Services

- described in the Approved Budget for that particular Fiscal Year. This contingent reserve shall be identified and tracked appropriately in Legal Aid Alberta's financial statements;
- (d) at the end of each Fiscal Year any surplus Legal Aid Alberta revenue will be deemed to be part of the ongoing contingent reserve referred to in Section 12.1(c);
  - (e) in the proposed biennial budget and business plan, and in accordance with the performance measurement framework established under Section 7.3, specify the key program and business performance measures in regard to the quality, efficiency and cost-effectiveness of the Legal Aid Plan and the Legal Aid Services, that will be utilized to evaluate the legal and administrative services connected therewith; and
  - (f) prepare and provide upon request to the Minister an enterprise risk management plan, a business continuity plan, a service delivery and case management framework, a quality assurance audit report, and evaluations of Legal Aid Services.
- 12.2 Legal Aid Alberta, in accordance with its obligations under this Agreement, may, pending the submission of its next budget and business plan, address as it deems appropriate on an interim basis any particular unforeseen circumstance or problem affecting the operation of the Legal Aid Plan.
- 12.3 If the actions taken pursuant to Section 12.2 require the Minister's approval pursuant to this Agreement or will have an adverse financial impact on the Approved Budget, then Legal Aid Alberta shall immediately advise the Minister and request any necessary approvals.
- 12.4 The Auditor General of Alberta or a duly licensed accountant in the Province of Alberta designated by the Minister may conduct a detailed audit of Legal Aid Alberta's finances at any time.

#### CHANGES TO THE LEGAL AID PLAN

- 13.1 Each biennial budget and three-year business plan shall include any proposals being made by the Board with respect to changing the Legal Aid Plan, its operation (including its modes of delivery, but respecting the practice of using both the private roster and staff counsel) or the Rules. At the request of the Minister, Legal Aid Alberta shall re-submit to the Minister the appendix to the business plan referred to in Section 12.1(b), restated to include the proposed changes to the Legal Aid Plan to the extent such changes are approved by the Minister.
- 13.2 Notwithstanding Section 13.1, the Board may, from time to time, make changes to the Rules with the Minister's prior written approval. The Board may, from time to time,

make changes to the Rules without the Minister's prior approval provided such changes are non-substantive and are administrative in nature and do not impact the then current Approved Budget or the role of the Law Society as the regulator of the legal profession. Any such changes shall be tracked and reported to the Minister as part of the year-end financial reports for the Fiscal Year in which such changes are made.

- 13.3 Any proposed changes to the Rules shall continue to respect the principle of independence of legal counsel as defined in Section 9.3.

#### COMMON INTERESTS OF THE PARTIES

- 14.1 The parties to this Agreement recognize that the Minister and Legal Aid Alberta are key participants in the delivery of the Legal Aid Services in Alberta and each is committed to the principles of transparency, mutual respect and consultation in matters that affect this common interest.
- 14.2 Without compromising the principles of independence that are enshrined in Article 9 of this Agreement, the parties recognize that transparency between the parties on certain matters that affect the provision of Legal Aid Services is in the best interests of stakeholders, Legal Aid Clients and Albertans generally. Where Legal Aid Alberta contemplates any public facing action or communication that might reasonably be expected to result in the Minister having to respond publicly, to stakeholders or to Legal Aid Clients, then Legal Aid Alberta shall advise the Minister in advance with respect to its contemplated action or communication.

#### COLLABORATION AND REVIEW OF LEGAL AID PLAN

- 15.1 Representatives of Legal Aid Alberta and the Minister, and/or the Minister's representative(s), shall meet as needed, but at least once, upon or about the half-way point of the term of this Agreement (and the Law Society may attend), to address any issues that may affect the provision of Legal Aid Services described in the then current Approved Business Plan, including federal and provincial legislative changes, Alberta Justice and Solicitor General policy/program changes, the state of the provincial economy, provincial revenues and expenditures, justice reform and Legal Aid Alberta financial needs.
- 15.2 Legal Aid Alberta shall review the Legal Aid Tariff periodically to ensure it is fair and reasonable. In conducting the review, Legal Aid Alberta will consult with lawyers and any proposals to change the Legal Aid Tariff will be submitted in the costs of the next biennial budget pursuant to Section 12.1(a).
- 15.3 The Minister shall in collaboration with Legal Aid Alberta, and at least every three years, review the Legal Aid Tariff. In conducting the review, the Minister shall consider

relevant factors to be determined by the Minister such as, but not necessarily including or limited to:

- (a) tariff rates from other jurisdictions;
- (b) the provision of essential and high quality Legal Aid Services;
- (c) the state of the provincial economy;
- (d) provincial government revenues and expenditures; and
- (e) Legal Aid Alberta financial needs.

Any proposals to change the Legal Aid Tariff will be submitted in the costs of the next biennial budget pursuant to Section 12.1(a).

15.4 The parties agree that the Financial Eligibility Guidelines set out by Legal Aid Alberta in the Rules shall be indexed to the Alberta Consumer Price Index. Additionally, persons who are receiving Assured Income for the Severely Handicapped (AISH) are presumptively financially eligible for Legal Aid Services.

15.5 The Minister shall in consultation with clients and stakeholders, and at least every three years, review Financial Eligibility Guidelines which are set out by Legal Aid Alberta in the Rules. In conducting the review, the Minister shall consider relevant factors to be determined by the Minister such as, but not necessarily including or limited to:

- (a) financial eligibility guidelines from other jurisdictions;
- (b) the Alberta Consumer Price Index;
- (c) relevant socio-economic factors;
- (d) provincial government policy/program changes;
- (e) the state of the provincial economy;
- (f) provincial government revenues and expenditures;
- (g) scope and availability of Legal Aid Services; and
- (h) Legal Aid Alberta financial needs.

Any proposals to change the Financial Eligibility Guidelines will be submitted in the costs of the next biennial budget pursuant to Section 12.1(a).

15.6 Early each calendar year the Minister, the Chair of the Board and the President of the Law Society, or their designates, shall meet to discuss matters relating to legal aid, including any operational, policy or financial issues regarding the provision of legal aid.

15.7 In addition to the annual meeting referred to in Section 15.6 of this Agreement, the Minister and respective representatives (no more than 3 representatives each) of the Board and the Law Society may meet as necessary each year to discuss any legal aid matters.

## FUNDING OF THE LEGAL AID PLAN

- 16.1 The amount of the proposed biennial grant to Legal Aid Alberta set out in the Approved Budget and Approved Business Plan shall be included in the annual budget estimates of the Ministry for recommendation to Treasury Board and then to the Legislature for appropriation of the necessary funds to operate the Legal Aid Plan and provide the Legal Aid Services.
- 16.2 Subject to Section 16.5, and in accordance with the *Justice and Solicitor General Grants Regulation*, AR 97/2001, as amended, and unless the parties agree otherwise in writing, the Minister shall pay to Legal Aid Alberta the approved biennial grant for legal aid in four equal instalments on April 1<sup>st</sup> and October 1<sup>st</sup> of each Fiscal Year.
- 16.3 Legal Aid Alberta may use the grant money only in accordance with the conditions on which the grant is made, or if the original conditions on which the grant is made are varied with the consent of the Minister, in accordance with the conditions as varied.
- 16.4 If Legal Aid Alberta does not comply with any of the conditions of the grant, or does not use the money as required under this Agreement, the Minister may require Legal Aid Alberta, and Legal Aid Alberta shall, repay all or part of the grant money to the Minister, in favour of the Minister of Finance within 90 days of notification. Any amounts not repaid may be deducted from future grant payments.
- 16.5 Notwithstanding any other provisions of this Agreement, if the approved annual budget estimates of the Ministry for a Fiscal Year are reduced, then for that Fiscal Year, Section 16.1 shall cease to apply and the Minister shall pay to Legal Aid Alberta, as and when determined by the Minister, the amount prescribed for legal aid in the reduced annual budget estimates of the Ministry. If proposed funding is reduced pursuant to this Section, the Minister and Legal Aid Alberta may meet in accordance with Section 15.1, and Legal Aid Alberta may submit a revised biennial budget and three-year business plan in accordance with Section 12.1.
- 16.6 Legal Aid Alberta may, with the approval of the Minister, transfer approved budgeted dollars in any Fiscal Year between capital and operating in order to provide the Legal Aid Services described in the then current Approved Business Plan, provided such transfers are tracked and reported in Legal Aid Alberta's monthly financial statements pursuant to Section 19.2, and provided that the Minister is satisfied that Legal Aid Alberta will continue to provide the same level of quality of Legal Aid Services.
- 16.7 Legal Aid Alberta may raise funds from other private and public sources and any funds so raised:
- (a) shall be placed in the contingent reserve referred to in Section 12.1(c); or

- (b) if such funds are for a specific legal aid purpose, which is set out in the agreement with the other private or public funding source, then such funds shall be used for that purpose and identified and tracked appropriately in Legal Aid Alberta's financial statements.

#### EXCEPTIONAL CASES

17. The Minister acknowledges that Legal Aid Alberta in fulfilling its responsibilities under this Agreement may encounter a very exceptional case or cases, which require significant resources, and as a result the continued viability of the Legal Aid Plan and the provision of the Legal Aid Services may be at risk. In such event, Legal Aid Alberta shall first utilize funds budgeted for high cost cases in the Approved Budget. If a shortfall still exists, then pursuant to Section 12.1(c) Legal Aid Alberta may draw down the contingent reserve or request the Minister's approval to draw down the contingent reserve as the case may be.

#### INDEMNIFICATION AND LIABILITY

- 18.1 The Minister acknowledges on behalf of the Government of Alberta, that if a member of the Board has acted in good faith in fulfilling his or her responsibilities under this Agreement, then such member of the Board would not be personally responsible for the payment of the unfunded liabilities for outstanding Certificates; and the Minister hereby promises, as also reflected by Section 4(2) of the *Legal Profession Act* (Alberta), that the Government of Alberta will not commence any action against such member of the Board for such payment.
- 18.2 Subject to the approved annual budget estimates of the Ministry and appropriation by the Legislature, the Minister, upon termination of this Agreement and if a further governance agreement is not negotiated amongst the parties, shall provide Legal Aid Alberta with sufficient grant funding to enable Legal Aid Alberta to pay all of its unfunded liabilities in regard to its Certificates outstanding as at the date of termination of this Agreement and in regard to any personal liabilities imposed on the members of the Board by provincial or federal statute. The obligation under this Section necessarily extends beyond termination of this Agreement in order to fully achieve its intended purpose and as such shall survive termination of this Agreement.

#### REPORTING

- 19.1 The principle of transparency in reporting is recognized and respected by the parties to this Agreement. Legal Aid Alberta shall provide to the Law Society:

- (a) An annual report, including audited financial statements, within 90 days of the end of each Fiscal Year;
- (b) Any legal practice standards referenced in Section 10.12; and
- (c) Any financial, statistical, or other non-Legal Aid Client specific information relating to the business and operations of Legal Aid Alberta and the services provided by it that may be reasonably requested by the Law Society.

19.2 Legal Aid Alberta shall provide to the Minister:

- (a) Monthly reports, including unaudited financial statements, in a format acceptable to or in a format specified by the Minister;
- (b) An annual report, including audited financial statements, within 90 days of the end of each Fiscal Year; and
- (c) Any financial, statistical, or other non-Legal Aid Client specific information relating to the business and operations of Legal Aid Alberta and the services provided by it that may be reasonably requested by the Minister and which shall be provided in a format acceptable to or in a format specified by the Minister.

The Minister may publicly disclose any of the above and any other reports that are requested by the Minister pursuant to this Agreement in order to meet the Minister's obligations to be transparent and accountable to Albertans with regard to the value, benefits and costs of the Legal Aid Plan.

19.3 Subject to any provincial or federal privacy legislation and without any Legal Aid Client specific information, Legal Aid Alberta will provide to the Law Society, upon request and prior to any regular Board meeting, its annual general meeting and any other duly constituted meeting of the Board, an executive summary setting out the Board agenda items. Legal Aid Alberta shall make the approved minutes of such meetings, including the related Board decisions, available to the Minister and the Law Society. If the Law Society or the Minister require any further information with respect to any agenda items or any Board decisions, they may request the same from Legal Aid Alberta pursuant to Sections 19.1 and 19.2 of this Agreement.

## GENERAL PROVISIONS

- 20. This Agreement shall be interpreted in accordance with the laws and in the Courts of Alberta.
- 21. If any provisions of this Agreement are found to be prohibited by law or otherwise ineffective this shall in no way invalidate or otherwise affect the remaining provisions of this Agreement.

22. Except where the context otherwise requires, any word in this Agreement importing the singular number shall include the plural, any word importing the masculine gender shall include the feminine gender, and any word importing a person shall include the parties to this Agreement.
23. Whenever in this Agreement it is required or permitted that notice, reports, or other information (“Formal Communications”) be given by any party to this Agreement to the others, such notice will be in writing and such Formal Communications will be validly given or sufficiently communicated if delivered, e-mailed, faxed, or sent by registered mail as follows:

To the Minister: Minister of Justice and Solicitor General  
323 Legislature Building  
10800 – 97 Avenue  
Edmonton, Alberta T5K 2B6  
Fax#: (780) 422-6621

With a copy to: Director, Legal Aid  
Justice Services Division  
Alberta Justice and Solicitor General  
2<sup>nd</sup> Floor, 9942 – 108 Street  
Edmonton, Alberta T5K 2J5

To the Law Society: President  
The Law Society of Alberta  
Suite 500, 919 – 11<sup>th</sup> Avenue SW  
Calgary, Alberta T2R 1P3  
Fax#:(403) 228-1728

With a copy to: Executive Director  
The Law Society of Alberta  
Suite 500, 919 – 11<sup>th</sup> Avenue SW  
Calgary, Alberta T2R 1P3  
Fax#:(403) 228-1728

To Legal Aid Alberta: Chair of the Board  
The Legal Aid Society of Alberta  
400, Revillon Building  
10320 – 102 Avenue  
Edmonton, Alberta T5J 4A1  
Fax#:(780) 427-5909

With a copy to: Chief Executive Officer  
The Legal Aid Society of Alberta  
400, Revillon Building  
10320 – 102 Avenue  
Edmonton, Alberta T5J 4A1  
Fax#:(780) 427-5909

Any party by giving notice as above provided may change its address for all Formal Communications or any parts thereof from time to time.

24. In the event of any dispute between the parties regarding the interpretation or operation of this Agreement or the obligations of the parties under it, and that dispute cannot be resolved through the communication processes described in this Agreement, the parties shall:
- (a) remain committed to the principles of collaboration and communication described in this Agreement;
  - (b) promptly provide each other with written notice of the dispute, including full particulars of the nature of the dispute, any underlying interests, and proposed solutions; and
  - (c) attempt in good faith to resolve the dispute through direct negotiation.

The parties may agree to attempt to resolve the dispute with the assistance of a mediator. If they agree to attempt to resolve the dispute with the assistance of a mediator, or if they fail to resolve the dispute through direct negotiation within 20 working days after the delivery of the notices of dispute, the parties will appoint a mediator.

The parties will meet with the mediator within 20 working days of the mediator's appointment and will attempt in good faith to resolve the dispute with the assistance of the mediator.

The period of mediation of the dispute will not exceed 30 working days. The parties will bear equally the costs of the mediation, including fees and expenses.

#### TERM OF AGREEMENT

- 25. The term of this Agreement is from April 1, 2019 to March 31, 2024. (Extended to June 30, 2024, as per signed MOU)
- 26. The parties may amend the provisions of this Agreement at any time, but only by mutual agreement evidenced in writing, signed by the parties.

*Original signed by*

\_\_\_\_\_  
Minister of Justice and Solicitor General, the  
Honourable Kathleen Ganley, on behalf of  
Her Majesty the Queen in Right of Alberta

\_\_\_\_\_  
Date

*Original signed by*

\_\_\_\_\_  
President of the Law Society of Alberta,  
Don Cranston, Q.C., on behalf of the  
Law Society of Alberta

\_\_\_\_\_  
Date

*Original signed by*

\_\_\_\_\_  
Chair of the Board,  
Deanna Steblyk, on behalf of the  
Legal Aid Society of Alberta

\_\_\_\_\_  
Date

## Appendix I

## THE LEGAL AID SOCIETY OF ALBERTA

NOMINATING COMMITTEE  
TERMS OF REFERENCE

## A OVERVIEW AND PURPOSE

1. The Nominating Committee (the “Committee”) is responsible for proposing, to the Law Society Board (the “Benchers”), new nominees and reappointments to the Board of Directors (the “Board”) of the Legal Aid Society of Alberta (“Legal Aid Alberta”).

## B MEMBERSHIP AND ATTENDANCE AT MEETINGS

1. The Committee shall be comprised of two members appointed by the Benchers, two members appointed by the Minister and a member of the Board of Legal Aid Alberta, who is not being considered for reappointment. If the Board of Legal Aid Alberta cannot attain quorum, then the balance of the Board members have the power and shall appoint a member to the committee. If the Board fails to appoint a member to the Committee within 14 days after receiving a written request to do so jointly from the Minister’s and the Benchers’ appointments to the Committee or if there is no duly constituted Board, then the Committee members appointed by the Minister and by the Benchers shall constitute the Committee.
2. The Chair of the Committee shall be the member of the Board of Legal Aid Alberta (the “Committee Chair”). If there is no such member, one of the members appointed by the Minister and one of the members appointed by the Benchers shall be Co-Chairs of the Committee.
3. Attendance at Committee meetings, other than the appointed members, will be at the invitation of the Committee.
4. Meetings of the Committee are held as required.
5. Committee meetings may be called by the Committee Chair or by a majority of the Committee members. The Secretary of Legal Aid Alberta shall be notified when a meeting is called.
6. A quorum for the transaction of business at any meeting of the Committee is at least one member appointed by the Benchers, one member appointed by the Minister and the Committee Chair. A quorum for the transaction of business at any meeting of the

Committee constituted without a Legal Aid Alberta Board member is at least one member appointed by the Benchers and one member appointed by the Minister.

7. The Secretary of Legal Aid Alberta shall provide for the delivery of notices, agendas and available related materials to the Committee members no later than the day prior to the date of the meeting; however, it should be standard practice to deliver the agenda and materials for consideration at the meeting at least five days prior to the meeting except in unusual circumstances.
8. Meetings may be conducted with members present or by telephone or other communications facilities, which permit all persons participating in the meeting to hear or communicate with each other.
9. A written resolution signed by all Committee members entitled to vote on that resolution at a meeting of the Committee is as valid as one passed at a Committee meeting.
10. The members of the Committee shall appoint a secretary of each meeting and the person so appointed shall keep minutes of that meeting.
11. Minutes of meetings of the Committee, prepared in draft, shall be distributed to all members of the Committee within five working days of each meeting, and shall be submitted for approval at the next regular meeting of the Committee.

## C DUTIES AND RESPONSIBILITIES

1. The Committee shall:
  - (a) determine the criteria, profile and qualifications for new nominees to fill vacancies on the Board, in accordance with the by-laws of Legal Aid Alberta;
  - (b) make its best efforts to canvas various sources for names of persons for consideration by the Committee as nominees to the Board;
  - (c) request from the Board whatever information the Committee requires to consider reappointments and revocations;
  - (d) identify and interview a short-list of candidates as possible nominees, providing such candidates with background information on Legal Aid Alberta prior to the interview;
  - (e) obtain the agreement of all nominees that they will serve on the Board if appointed; and

- (f) recommend to the Benchers the slate of directors for appointment to the Board of Legal Aid Alberta.
2. In making recommendations for appointment of directors, the Committee shall, where possible, provide additional nominees, in addition to the minimum number of nominees to be appointed, in order to provide the Benchers with a choice of candidates. The recommendations for appointment or reappointment may be accompanied by a recommendation as to the length of term of appointment or reappointment, being either one year or two years or three years.
  3. In the event that the Benchers do not concur with a minimum number of nominees necessary to fill the vacancies on the Board from the list of nominees recommended by the Committee, the matter must be referred back to the Committee, with reasons, for further review and recommendations by the Committee.
  4. The Committee may recommend to the Benchers that the appointment of a member of the Board be revoked. Revocation of Directors and Officers is set out in the by-laws of Legal Aid Alberta.
  5. All recommendations by the Nominating Committee must be unanimous.
  6. The Committee shall plan their work on a timely basis in order that appointments or reappointments to the Board can be made by the Benchers.
  7. When the Benchers have made their decision on the appointments or reappointments to the Board, the Chair of the Board of Legal Aid Alberta shall advise the nominees of the results.
  8. The Committee shall review annually the Committee's terms of reference and recommend any changes to Legal Aid Alberta, the Law Society and the Minister for approval.

## Appendix II

## LEGAL AID SERVICES

Ref. #	Service Category	Description and Components –*May be modified in accordance with the Agreement and the schedule of services.
1	Brydges - Adult	Adult Brydges Duty Counsel is the provision of legal advice by telephone to persons who have been detained by police. It is a 24-hour, 7 day a week toll-free line for access to immediate legal advice for all detained persons in Alberta, regardless of their financial standing.
2	Brydges - Youth	Youth Brydges Duty Counsel is a 24-hour service providing assistance and advice to young Albertans under arrest, in-custody or under active investigation.
3	Active participation in improving the justice system	These activities include non-client, non-management activities that are performed in addition to regular duties, such as justice committees, court services, education & training, advocacy & client related activities, and stakeholder outreach.
4	Client Intake and Assessment	Determine client eligibility for legal representation. Intake and application includes all calls and in person applications from qualified and unqualified applicants, duty counsel referrals as well as family diversion.
5	Appointing	Internal support function to appoint lawyers to represent eligible clients.
6	Case Management - High Cost	Internal support function and management for the administration of high cost cases where LAA will screen all cases, on an ongoing basis, to determine whether they fall within the High Cost Case Program.
7	Case Management - Regular	Internal support function and management for the administration of cases where LAA will manage cases and make decisions on their management to a) ensure that the provisions of the Legal Aid Tariff are being followed and identify where changes to the Legal Aid Tariff should be considered; b) identify potential high cost cases and manage them so that they proceed as efficiently and cost-effectively as possible, while ensuring clients receive the right services for the right issues; and c) identify systemic factors which contribute to costs or hinder effectiveness of service delivery and, where possible, address them on its own or in partnership with others.
8	Certificate and Tariff Administration	Internal support function, where staff administer certificates and manage tariffs resulting from appointment process. This includes the development and administration of protocols and guidelines for certificate-based matters.

Ref. #	Service Category	Description and Components –*May be modified in accordance with the Agreement and the schedule of services.
9	Opinions	Legal advice on cases including decision appeals.
10	Criminal - Youth - Level 1	Legal representation for youth criminal matters involving charges that are less serious in nature and have less severe penalties relative to other types of charges.
11	Criminal - Youth - Level 2	Legal representation for youth criminal matters involving charges that are of a moderately serious nature and have moderately severe penalties relative to other types of charges.
12	Criminal - Youth - Level 3	Legal representation for youth criminal matters involving charges that are of a serious nature and have severe penalties relative to other types of charges.
13	Criminal - Adult - Level 1	Legal representation for adult criminal matters involving charges that are of a less serious nature relative to other types of charges, and require the least resources to resolve.
14	Criminal - Adult - Level 2	Legal representation for adult criminal matters involving charges that are of a moderately serious nature relative to other types of charges, and require moderate resources to resolve.
15	Criminal - Adult - Level 3	Legal representation for adult criminal matters involving charges that are of the highest level of severity relative to other types of charges, and require substantial resources to resolve.
16	Discretionary Coverage Process Management	Internal support function to manage the DCP. Staff reviews files meeting the criteria and applies established legal criteria considered by the courts. Determines eligibility for the DCP program, provides legal opinions as to whether or not counsel should be appointed and negotiates with AB Justice regarding coverage.
17	Duty Counsel	Duty counsel refers to the provision of lawyers at courts or hearings to provide legal representation to individuals who do not have a lawyer present.
18	Indigenous community services	Services on site to members of indigenous communities which may include information, referrals and legal advice.
19	Child Welfare	Child welfare legal representation may include cases covering private guardianship and child protection/child welfare.
20	Criminal - Adult - Bail Only	Legal representation for individuals facing adult criminal charges in bail hearings.

Ref. #	Service Category	Description and Components –*May be modified in accordance with the Agreement and the schedule of services.
21	Immigration and Refugee	<p>Legal representation on immigration and refugee law cases limited to:</p> <ul style="list-style-type: none"> <li>- Refugee claims;</li> <li>- Judicial reviews of failed refugee claims;</li> <li>- Refugee appeals to RAD;</li> <li>- Detention reviews;</li> <li>- Admissibility hearings; and</li> <li>- Removal appeals (criminality only).</li> </ul>
22	Civil - Other	<p>Legal representation on adult guardianship/trusteeship, when the client is the subject of the application.</p>
23	Family - Other	<p>Legal representation for cases covering:</p> <ul style="list-style-type: none"> <li>- Child Welfare matters;</li> <li>- Interjurisdictional Support Orders Act;</li> <li>- Protection Against Family Violence Act or other forms of protection related to family violence;</li> <li>- Divorce Act or Family Law Act matters which may include custody, access, guardianship, parenting or contact time, spousal or child support;</li> <li>- matrimonial property where the client's equity in the property is \$50,000 or more;</li> <li>- constructive trust matters where the client's equity in the property is \$50,000 or more;</li> <li>- partition and sale matters between spouses where the client's equity in the property is \$50,000 or more; and</li> <li>- other family law matters that LAA includes from time to time, through a Board Policy and approved in accordance with the Governance Agreement.</li> </ul>
24	Administration	<p>General support / shared services underlying service delivery of all other line items.</p>
25	Client Coverage Appeals	<p>Internal support function, where staff reviews a client's eligibility for service after initial denial of service. Clients may also appeal a review where service is denied.</p>
26	Collections	<p>Internal support function for collecting and administering client contributions to legal aid plan.</p>
27	Legal Support Services	<p>Any activities that support legal representation (e.g. legal assistance, system navigators, mentorship and training to lawyers, participation and instruction of Poverty Law (U of A) and articling students, etc.)</p>

Ref. #	Service Category	Description and Components –*May be modified in accordance with the Agreement and the schedule of services.
28	Management and Support	Internal support function where general management functions ensure compliance with regulatory, privacy, HR/employment law, law society code of conduct, enterprise conflict management, provide advice and coordinate services with external counsel with respect to administration of contracts entered into by Legal Aid Alberta.