

**ATTACHMENT B  
MINIMUM CONTRACT TERMS**

**EXHIBIT A  
TERMS AND CONDITIONS**

**1. INDEMNIFICATION**

The Contractor shall indemnify, defend (with counsel satisfactory to the State), and save harmless the State and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all other contractors, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor or its agents or employees in the performance of this Agreement.

**2. RELATIONSHIP OF PARTIES**

The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

**3. TERMINATION FOR CAUSE**

A. Pursuant to this provision, the State may terminate this Agreement in whole or in part under any one of the following circumstances, by issuing a written Notice of termination for default to the Contractor:

- i. If the Contractor (a) fails to perform the services within the time specified herein or any extension thereof, (b) fails to perform any requirements of this Agreement, or (c) so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, after receipt of a written Notice from the State specifying failure due to any of the preceding three (3) circumstances, the Contractor does not cure such failure within a period of five (5) business days or a longer period, if authorized in the Notice of failure; or,
- ii. If the Contractor should cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors.

B. In the event the State terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the State may procure, upon such terms and in such

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manner as it may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the State for any excess costs for such similar supplies or services, subject to the limitations contained elsewhere herein; further, the Contractor shall continue the performance of this Agreement to the extent not terminated under this provision.

- C. The Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of acts of Force Majeure; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- D. If, after Notice of termination for default of this Agreement, it is determined for any reason that the Contractor was not in default under this provision, or that the default was excusable under this provision, the obligations of the State shall be to pay only for the services rendered at the rates set forth in the Agreement.
- E. The rights and remedies of either party provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**4. NO ASSIGNMENT**

Without the written consent of the State, the Contractor shall not assign this Agreement in whole or in part.

**5. TIME OF ESSENCE**

Time is of the essence in this Agreement.

**6. VALIDITY OF ALTERATIONS**

Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

**7. CONSIDERATION**

The consideration to be paid to the Contractor under this Agreement shall be compensation for all the Contractor's expenses incurred in the performance of this Agreement, including travel and per diem, unless otherwise expressly provided.

**8. MANNER OF PERFORMANCE OF WORK**

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Nondiscrimination / No Harassment Clause, as set forth in this Exhibit.

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**9. TERMINATION OTHER THAN FOR CAUSE**

- A. In addition to termination for cause under Exhibit A, Terms and Conditions, paragraph 3, the State may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.
- B. If the State terminates all or a portion of this Agreement other than for cause, the State shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.

**10. STATE'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS**

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
  - i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
  - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

**11. AGREEMENT ADMINISTRATION/COMMUNICATION**

- A. Under this Agreement, the Project Manager, @PM, shall monitor and evaluate the Contractor's performance. All requests and communications about the Work to be Performed under this Agreement shall be made through the Project Manager.
  - i. Any Notice from the Contractor to the State shall be in writing and shall be delivered the Project Manager as follows:

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TBD, Project Manager  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

- ii. Other than for Notices, the Project Manager may be contacted as follows:

TBD, Project Manager  
Telephone: 415-865-\_\_\_\_  
Facsimile: 415-865-\_\_\_\_  
Email: \_\_\_\_\_.\_\_\_\_@jud.ca.gov

- iii. Notice to the Contractor shall be directed in writing to:

TBD

- iv. Other than for Notices, the Contractor may be contacted as follows:

TBD

**12. STANDARD OF PROFESSIONALISM**

The Contractor shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement.

**13. EVALUATION OF CONTRACTOR**

The State shall evaluate the Contractor's performance under the Agreement.

**14. SERVICES WARRANTY**

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

**15. CHANGES AND AMENDMENTS**

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Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Project Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

**16. CONTRACTOR'S PERSONNEL--REPLACEMENT**

The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the State under this Agreement (i) at the request of any judge or justice, or any executive of the AOC who holds a position at or above the level of a department director; or (ii) if in the State's reasonable opinion, either the performance of the Contractor's personnel is unsatisfactory or continued assignment of any of Contractor's personnel is not in the best interest of the State. The State agrees to provide written Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor shall assign replacement personnel, possessing equivalent or greater experience and skills as soon as reasonably practical. Any reassignment of the account executive serving the State that is not initiated by the State and that is not the result of a termination of employment or medical or family leave of absence will be discussed with the State to the extent reasonably practicable prior to such reassignment. Contractor shall have no obligation to provide the State with the details of any employment action, confidential health information or other information of a personal nature with respect to such reassignment.

**17. ACCOUNTING SYSTEM REQUIREMENT**

The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP.

**18. RETENTION OF RECORDS**

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State and Federal law, a minimum retention period being no less than four (4) years. The retention period starts from the date of the submission of the final payment request. The Contractor is also obligated to protect Data adequately against fire or other damage.

**19. AUDIT**

The Contractor shall permit the authorized representative of the State or its designee or both at any reasonable time to inspect or audit all Data relating to performance and billing to the

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State under this Agreement. The Contractor further agrees to maintain such Data for a period of four (4) years after final payment under this Agreement.

**20. TRANSITION SERVICES**

- A. During the Transition Period, the Contractor shall provide to the State or the State's designee, in a manner consistent with Contractor's normal business practices, the services set forth in the Transition Plan, if any, or any other services reasonably necessary to enable the State to obtain from another contractor, or to provide for itself, services to substitute for or replace the services provided by Contractor under this Agreement without interruption or adverse effect and to facilitate the orderly transfer of the Services to the State or the State's designee (collectively, "Transition Services"). Contractor shall provide Transition Services to the State or the State's designee regardless of the reason for termination or expiration.
- B. Transition Services shall be provided at no cost to the State or the State's designated successor except as otherwise provided for in Exhibit C, Payment Provisions.

**21. INSURANCE REQUIREMENTS**

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.
- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
  - i. Workers' Compensation at statutory requirements of the State of residency.
  - ii. Employers' Liability with limits not less than **\$1,000,000.00** for each accident.
  - iii. Commercial General Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
  - iv. Business Automobile Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and

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Property Damage, including owned and non-owned and hired automobile coverage, as applicable.

- v. Professional Liability: **\$1,000,000.00** per occurrence.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
- i. The State, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
  - ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the State, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,
  - iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.
- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within **fifteen (15) Days**, mailed to the following address: **Judicial Council, Administrative Office of the Courts, Senior Manager, Business Services, 455 Golden Gate Ave., 7<sup>th</sup> Floor, San Francisco, CA 94102-3688.**

**22. CONFIDENTIALITY**

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- A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to the Contractor.
- B. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the State's Confidential Information on a "need to know" basis to the Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the State that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor's clients and business.
- C. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

**23. PERMITS AND LICENSES**

The Contractor shall observe and comply with all federal, state, city, and county laws, rules, and regulations affecting services under this Agreement. The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the Work contemplated in this Agreement.

**24. LIMITATION ON PUBLICATION**

The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the State without prior review and written permission by the State.

**25. CONFLICT OF INTEREST**

- A. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v)

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adverse effects on the confidence of the public in the integrity of the government or this Agreement.

- B. The Contractor certifies and shall require any Subcontractor to certify to the following: Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.

**26. COVENANT AGAINST GRATUITIES**

The Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

**27. NATIONAL LABOR RELATIONS BOARD**

By executing this Agreement, the Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

**28. DRUG-FREE WORKPLACE**

The Contractor certifies that it will provide a drug-free workplace as required by California Government Code, Section 8355 through Section 8357.

**29. NONDISCRIMINATION/NO HARASSMENT CLAUSE**

- A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

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- B. During the performance of this Agreement, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- C. The Contractor shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 *et seq.*, and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 *et seq.* The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- D. The Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. The Contractor shall include the nondiscrimination / no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

**30. AMERICANS WITH DISABILITIES ACT**

By signing this Agreement, Contractor assures the State that it complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. Sections 012101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

**31. CALIFORNIA LAW**

This Agreement shall be subject to and construed in accordance with the laws of the State of California.

**32. SEVERABILITY**

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

**33. WAIVER**

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at

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the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

**34. SIGNATURE AUTHORITY**

The parties signing this Agreement certify that they have proper authorization to do so.

**35. SURVIVAL**

The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

**36. AGREEMENT TERM AND OPTIONS TO RENEW**

A. The Agreement shall commence on January 1, 2010 and expire on December 31, 2010 (“Initial Term”). Thereafter, the State, in its sole discretion, has the option to extend the term of the Agreement, on the same terms and conditions applicable during the Initial Term, for up to three consecutive, additional one-year periods defined below:

**First Option Term:** January 1, 2011 – December 31, 2011

**Second Option Term:** January 1, 2012 – December 31, 2012

**Third Option Term:** January 1, 2013 – December 31, 2013

Fourth Option Term: January 1, 2014 – December 31, 2014

B. In the event the State elects to extend the Agreement for an additional Term, the parties agree to modify the Agreement via bilateral execution of the State’s Standard Agreement form and incorporate the extended Term(s) via one (1) or more Amendments.

**37. ENTIRE AGREEMENT**

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized representative of the State.

*END OF EXHIBIT*

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**EXHIBIT B  
SERVICES**

1. DEFINITIONS

In addition to the definitions set forth in Exhibit E, the following terms shall have the meanings given them in this paragraph unless the context requires otherwise.

- 1.1 Additional Services: the Run-Off Services, Seminars and Related Services, and Critical Incident Stress Management Services, as described in paragraphs 2.3.3, 2.3.6 and 2.3.7, respectively, of this Exhibit B.
- 1.2 Base Fee: the PEPM Rate multiplied by the applicable Covered Employee Count for Base Services.
- 1.3 Base Population: the Covered Employee Count as of the Effective Date and thereafter, the Covered Employee Count as of any adjustment pursuant to paragraph 3.5.1.
- 1.4 Base Services: all Services described in paragraphs 2.3 through 2.6 of this Exhibit B other than the Additional Services.
- 1.5 Brief Counseling: a problem-focused form of individual or family outpatient counseling that (a) seeks resolution of problems in living (e.g., parenting concerns, emotional stress, marital and family distress, alcohol- and drug-related problems) rather than basic character change; (b) emphasizes counselee skills, strengths and resources; (c) involves setting and maintaining realistic goals that are achievable in a one to five month period; (d) encourages counselees to practice behavior outside the counseling session to promote therapeutic goals; and (e) in which the counselor provides structure, interprets behavior, offers suggestions, and assigns "homework" activities.
- 1.6 COBRA Beneficiary: a qualified beneficiary who has elected to obtain coverage through the State under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), for services to be delivered by the Contractor.
- 1.7 Combined Evidence of Coverage and Disclosure Form: The document issued to a Participant setting forth his/her eligibility for participation in the EAP, an example of which is set forth in Exhibit D.
- 1.8 Contract Anniversary Date: the day following the last day of the Initial Term or any renewal term of this Agreement.
- 1.9 Contract Year: a one year period commencing on the Effective Date or a Contract Anniversary Date, as applicable, except that with respect to the Initial Term of the Agreement it shall mean whatever portion of a year is included within the Initial Term, as set forth in paragraph

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35 of Exhibit A.

1.10 Covered Employee: a full-time or part-time employee or COBRA Beneficiary, not including a former employee whether by retirement, termination or lay-off, of the Judicial Council of California, Administrative Office of the Courts, Supreme Court, Courts of Appeal, Habeas Corpus Resource Center or Commission on Judicial Performance of the State of California; and all justices, assigned justices, judges, and subordinate judicial officers of the Supreme Court, Courts of Appeal, and all Superior Courts of the State of California.

1.11 Covered Employee Count: the number of Covered Employees eligible for EAP services at any point in time. For purposes of calculating Base Fees and Supplemental Fees any adjustment in the Covered Employee Count shall be effective as of the first day of the first billing cycle following the effective date of such change in the number of Covered Employees.

1.12 Crisis Counseling: The process of responding to a request for immediate services in order to determine whether an emergency exists and, based on that determination, of making a referral to emergency behavioral health services, to community resources, or to an EAP counselor. Crisis counseling includes communication with the person in crisis that is focused on defusing the person's severe emotional reaction to a situation in order to enable that person to accept the referral and deal with the immediate crisis without causing harm to self or others.

1.13 Critical Incident Stress Management ("CISM") Services: a response to and consultation in connection with a sudden, unanticipated, traumatic incident or circumstance occurring at the workplace (e.g., accident, death, threat of violence, natural disaster) that produces a high degree of distress in the affected workplace of the State or an immediate or delayed emotional reaction in employees, that surpasses normal coping mechanisms, as set forth in paragraph 2.3.7 of this Exhibit B.

1.14 EAP Consultant: A licensed mental health professional employed by the Contractor at its service center to respond telephonically to requests for EAP services or a licensed mental health professional employed by an affiliate of the Contractor outside the Contractor's business day.

1.15 EAP Counselor: A psychologist, clinical social worker, marriage, family and child counselor or other professional who is licensed under the laws of the State of California to deliver counseling services and who is contracted with the Contractor to provide EAP services.

1.16 Employee Assistance Program ("EAP"): a systematic program to help individuals resolve personal problems, such as family conflict, stress, and drug or alcohol abuse, and address common work/life issues, and to provide training, consultation, and other management services relating to the effective utilization of the EAP by the State and the Participants.

1.17 Episode of Care: A continuous course of counseling for a specific problem or set of problems, up to the number of In-person Sessions specified in paragraph 2.3 of this Exhibit.

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1.18 Household Member: a member of a Covered Employee's household, including domestic partners and their dependents who are members of a Covered Employee's household, or an unmarried dependent child of a Covered Employee or a Covered Employee's domestic partner, whether or not residing with the Covered Employee.

1.19 Judicial Officers' Assistance Program ("JOAP"): the title of the EAP program as presented to justices, assigned justices, judges and subordinate judicial officers of the Supreme Court, Courts of Appeal, and all Superior Courts of the State of California.

1.20 In-person Session: a fifty (50) minute counseling session at the office of an EAP Counselor for a Participant, individually or with Household Members or others, as appropriate for the Participant's concern.

1.21 Participant: a Covered Employee or a Household Member.

1.22 PEPM Rate: the per employee per month rate that is determined in accordance with the Covered Employee Count, as set forth in paragraph 2 of Exhibit C.

1.23 Run-Off Services: the Services described in paragraph 2.3.3 of this Exhibit B.

1.24 Seminars and Related Services: the Services described in paragraph 2.3.6 of this Exhibit B.

1.25 Services: all of the services described in paragraphs 2.3 to 2.6 of this Exhibit B, including the Base Services and the Additional Services.

1.26 Supplemental Fees: all fees and charges, except for Base Fees, due and payable by the State to the Contractor for performance of Services at the rates listed in Exhibit C.

2. PRINCIPAL SERVICES AND COVERAGE

2.1 General

The Contractor shall, upon the request of Participants, directly provide or arrange for the provision of all Services described in paragraphs 2.3.1-2.3.3 and 2.4-2.6 of this Exhibit. The parties acknowledge that the JOAP is the same program as the EAP, though the name JOAP will appear on all materials distributed to the group of Participants who are identified in the definition of JOAP; and that accordingly all references in this Agreement to the EAP shall be deemed to be references to the JOAP as well, except where the context shows a clear intention to refer only to one or the other. In addition, the parties acknowledge that the Participants in the JOAP are constitutional officers of the State of California; and references to employees or employment in this Agreement, its Exhibits and Attachments, and any other written materials concerning the subject matter of this Agreement, to the extent such references may include such judicial officers, shall not be construed as contradicting the characterization of their relationship to the State as constitutional officers.

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### **2.2 Utilization of Program Services**

Participants will be able to access EAP services by calling the toll-free telephone number assigned by the Contractor for access by Participants.

### **2.3 EAP Services**

#### **2.3.1 Personal Consultation Services**

The Contractor will maintain a toll-free telephone access line 24 hours per day, 365 days per year, for Participants to access EAP services. EAP Consultants will be available through the telephone access line to assess the caller's problem and arrange for appropriate assistance (e.g., forward via e-mail or facsimile transmission educational materials and/or refer to an EAP Counselor, a Participant benefit plan or a community resource). In addition, EAP Consultants will provide Crisis Counseling.

The Contractor will link each Participant who requests in-person counseling services to an EAP Counselor. In-person Sessions will be available by appointment on weekdays, evenings, and Saturdays at the offices of the Contractor's EAP Counselors nationwide. An EAP Counselor will be available to provide an In-person Session within seven (7) days of the request for service in connection with routine matters and within forty-eight (48) hours for urgent matters. The EAP Counselor will assess the Participant's problems and, in accordance with the EAP Counselor's best judgment, provide Brief Counseling and/or refer the Participant to an appropriate treatment provider and/or community resource. Each Participant is eligible for up to six (6) In-person Sessions per problem per year, as clinically appropriate. If the EAP Counselor determines that a Participant requires services beyond the scope of the EAP, including medical care or other specialized services, the EAP Counselor will refer the Participant to an appropriate treatment provider and/or community resources.

Participants have no financial responsibility in connection with Services. However, fees for professional services provided by resources other than the Contractor or EAP Counselors will be the responsibility of the Participant and/or his or her group health plan or other benefit programs, as applicable.

Throughout the State of California, at least one EAP Counselor will be available to provide In-person Sessions as follows: urban and suburban areas: within a 5-mile radius, at least 95% of the time, of a Participant's home or work location; and rural areas: within a 25-mile radius, at least 95% of the time, of a Participant's home or work location. All EAP Counselors will have (1) training and experience in assessing substance abuse problems and in conducting focused, problem-resolution counseling and (2) at least a master's level degree in the appropriate field or such other training and practical experience in behavioral health treatment settings that qualify them to provide the applicable Services.

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Participants will have access to clinical EAP services through self-referral, supervisor referral, and human resources referral.

### 2.3.2 Treatment Compliance Monitoring

Upon request and with the concurrence of the Covered Employee, the Contractor will monitor a Covered Employee's compliance with a substance abuse treatment program, monthly as needed, for up to one (1) year.

### 2.3.3 Run-Off Services

This is an Additional Service. For a period of sixty (60) days following termination of this Agreement, the Contractor agrees to provide In-person Sessions, so long as clinically appropriate and In-person Sessions remain available, to those Participants with open routine cases as of the effective date of termination. On or about sixty (60) days after termination of the Agreement, the Contractor will furnish the State with the number of cases, if any, that require Brief Counseling more than sixty (60) days after termination of the Agreement. Upon the State's request, the Contractor will provide Brief Counseling, so long as clinically appropriate and In-person Sessions remain available, to those Participants with open routine cases more than sixty (60) days after termination of the Agreement ("Run-Off Sessions"). The State agrees to pay the Contractor the Supplemental Fees at the rate specified for Run-Off Sessions in paragraph 4.C of Exhibit C for each Run-Off Session provided to a Participant pursuant to this paragraph. Mandatory referrals will be transitioned to a successor vendor or other provider as directed by the State on a case-by-case basis.

### 2.3.4 Management Consultation

Upon request, the Contractor will provide consultation to any manager or supervisor considering the referral of an Employee to the EAP and will assist the manager or supervisor in the "supportive confrontation" process as needed. In the case of a supervisor-referred Employee, the Contractor will remain in regular contact with the referring supervisor regarding work performance issues. The Contractor will also provide consultation regarding management of high-risk situations in which an Employee's personal problems may create a threat of violence in the workplace. As appropriate and to the extent authorized by an Employee or as otherwise permitted by law, the Contractor will provide consultation on the process required to facilitate an Employee's return to work.

### 2.3.5 Employee Communications Program

The Contractor will, together with the State, develop a communications program to promote the EAP. All EAP communications materials, including Exhibit D, shall be produced in two forms, one of which shall identify the program consistently throughout as the EAP and the other as the JOAP. In addition, in all JOAP materials, all references to "employees" and "employment" shall be replaced by references to "judicial officers." The

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Contractor will work closely with the State in designing all EAP communications to be consistent with both the needs of employees and the timing of benefit announcements. The State will actively promote the benefits of the EAP to Employees and will seek the Contractor's prior review and approval of all employee communications concerning the Contractor and/or the Services that are not prepared by the Contractor prior to issuing such communications. Except as expressly set forth in this Agreement, the State agrees that the Contractor's obligation under this paragraph does not include (a) the costs of postage and stationery associated with home mailings, (b) non-standard or customized promotional materials or (c) notices to Employees or Household Members required by state or federal laws or regulations. The Contractor shall provide as many copies of all EAP and JOAP communications materials as the State may reasonably request, all of which shall be delivered to:

Judicial Council of California  
Administrative Office of the Courts  
Attn: TBD  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

**2.3.6 Seminars and Related Services**

This is an Additional Service. The Contractor will provide up to one (1) hour per 250 Covered Employees per Contract Year, as may be requested by the State, of employee education or supervisor training, wellness seminars, attendance at the State health fairs and/or other services but not including CISM services ("Service Hours") at no additional cost to the State. The State will give the Contractor a minimum of three (3) weeks advance notice to provide such services. Unless otherwise agreed by the Contractor and the State, all Service Hours shall be delivered at a State worksite. Service Hours in excess of those set forth in this paragraph will be available for a Supplemental Fee at the rate specified for Seminars and Related Services in paragraph 4.A of Exhibit C. Service Hours do not include the costs of non-local travel (i.e., travel in excess of seventy-five (75) miles from the office of the Contractor representative to the worksite) or special instructional materials requested by the State, if any. In the event that any Service Hours are scheduled and subsequently canceled by the State with less than a minimum notice of three (3) business days, the State will be billed as if the scheduled Services Hours had been delivered. The State will not reimburse the Contractor for any travel costs that have not been approved in advance in writing by the State.

**2.3.7 Critical Incident Stress Management**

This is an Additional Service. At the request of the State's Project Manager, the Contractor will provide CISM services to employees to counter emotional distress caused by catastrophic or traumatic events and to foster sharing of reactions, normalizing of reactions, and education on appropriate coping strategies for a Supplemental Fee at the rate specified for CISM Services in paragraph 4.B of Exhibit C. CISM services do not include the costs

## **ATTACHMENT B MINIMUM CONTRACT TERMS**

of non-local travel (i.e., travel in excess of seventy-five (75) miles from the office of the Contractor representative to the worksite). In the event that any CISM session is scheduled and subsequently canceled by the State with less than a minimum notice of twenty-four (24) hours, the State will be billed as if the scheduled services had been delivered. Unless otherwise agreed by the Contractor and the State, CISM services shall be delivered at a State worksite.

### **2.3.8 Records and Reporting**

The Contractor will maintain records for each Participant who contacts the Contractor for Services. Subject to the Contractor's confidentiality obligations, the Contractor will provide the State a statistical report on a quarterly basis of Participant utilization of the Services, which shall include at a minimum the number of requests for Services and the types of Services provided. Such reports will reflect aggregate data and will not include Participant-identifiable information. Upon request, the Contractor will provide customized reports exclusively designed for the State for an additional fee to be mutually agreed upon by the parties hereto.

### **2.3.9 User Evaluation**

Participants utilizing the Contractor's personal consultation and selected other services will be afforded an opportunity to anonymously evaluate those services. Supervisors making referrals to the EAP will also have an opportunity to anonymously evaluate the effectiveness of the EAP as a supervisory tool. Results will be included in the quarterly standard utilization reports provided to the State pursuant to paragraph 2.3.8 of this Exhibit.

## **2.4 Enhanced Work/Life Services**

### **2.4.1 Description of Services – Full Life Management**

The Contractor will provide, or arrange for a third party to provide, telephone consultation, information, education, access to an expanded on-line library of information and tools, and referral services in connection with child care, elder care, parenting issues, children with special needs, schooling and education, teen and young adult issues and adoption assistance ("Work/Life Services").

### **2.4.2 Access**

Participants may access Work/Life Services by telephoning the Contractor's toll-free telephone number. Work/Life Services are available 24 hours per day, 7 days per week, 365 days per year.

### **2.4.3 Dependent Care Referrals**

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When a Participant requests a referral for child care or elder care, a consultant will gather information about the Participant's dependent care needs and send the Participant a packet of educational materials and a list of no fewer than three (3), to the extent available, licensed, certified or registered dependent care providers with confirmed vacancies matching the Participant's expressed needs. In all cases, information provided to Participants by consultants about a particular information agency, resource organization, placement agency, or direct child care or elder care service provider, does not imply, and is not, a recommendation or endorsement of that particular information agency, resource organization, placement agency, or direct child care or elder care service. The information about, and description of, a particular information agency, resource organization, placement agency, or direct child care or elder care service provider has been provided by the agency, organization, or direct child care or elder care service provider. The Contractor or the third party Work/Life Services provider will make reasonable efforts to ensure the accuracy of the information provided to Participants, but cannot guarantee its accuracy. The final decision about any child care or elder care arrangement must be made by Participants themselves. In addition, Participants shall be responsible for determining and monitoring the quality and appropriateness of a particular child care or elder care arrangement.

### **2.5 Legal and Financial Consultation Services**

#### **2.5.1 Description of Services**

The Contractor will provide legal and financial consultation services through a third party legal and financial services vendor. Legal consultation services consist of free initial consultation for routine legal needs with a plan attorney located in the Participant's state of domicile. The consultation may be in-person or telephonic. During the consultation, the plan attorney will explain the Participant's rights, identify options, and, if needed, recommend a course of action ("Legal Consultation Services"). The Participant will choose whether to retain the attorney at his or her expense, seek alternative counsel, or adopt an alternative plan of action. Participants who elect to retain legal counsel after the initial consultation will be entitled to a twenty-five percent (25%) reduction in fees from the plan attorney's normal hourly rate and/or fee schedule, as applicable. Financial consultation services include telephonic information and consultation on debt management, basic financial and tax planning, insurance, retirement, savings and investments, budgeting for vacations, family financial issues and identity theft ("Financial Consultation Services").

#### **2.5.2 Access to Services**

Participants may access Legal Consultation Services and Financial Consultation Services by calling the Contractor's toll-free telephone number. The Contractor will link callers directly to the call center of its Legal Consultation Services and/or Financial Consultation Services vendor during the vendor's normal business hours, Monday through Friday (excluding legal holidays) from 9:00 a.m. to 8:00 p.m. (Eastern Time). At all other times, at the request of the Participant, the Contractor will arrange for such vendor(s) to contact the Participant during the vendor's normal business hours. The vendor(s) will gather

## **ATTACHMENT B MINIMUM CONTRACT TERMS**

information regarding the issues for which consultation is sought. For Legal Consultation Services, Participants will be linked to a plan attorney by telephone or referred to a plan attorney for an in-person appointment. For Financial Consultation Services, the vendor will connect Participants with a financial counselor or arrange for a financial counselor to call the Participant.

### 2.5.3 Limitations

There is no restriction on the number of times a Participant may use Legal Consultation Services or Financial Consultation Services; however, Legal Consultation Services are not intended to provide a Participant with continuing access to a plan attorney in order to undertake his or her own representation. Financial Consultation Services are intended to assist Participants in formulating financial planning strategies and to serve as an information resource and planning tool. Financial consultants will not advise nor instruct Participants as to any course of action, nor be responsible for any decisions made by Participants about their financial planning.

### 2.5.4 Exclusions

Excluded Legal Consultation Services are services (i) in connection with employment-related or business-related matters, (ii) in connection with disputes or proceedings involving the Contractor, its subsidiaries, affiliates or customers, a Participant's employer, the Contractor's legal and/or financial services vendor(s) or any of its attorneys, or (iii) that are frivolous, harassing, or otherwise involve violation of ethical rules.

### 2.5.5 Suspension of Services

The Contractor reserves the right to suspend or terminate Legal Consultation Services and/or Financial Consultation Services upon ninety (90) days' written notice if, in the Contractor's judgment, such services cease to be available on commercially reasonable terms from third party vendors. If the Contractor elects to suspend or terminate Legal Consultation Services and/or Financial Consultation Services, the remaining provisions of this Agreement will remain in full force and effect, except that the Contractor will adjust its fees pro rata to reflect the suspension or termination of these services.

## 2.6 Convenience Services

The Contractor will provide telephonic referral and information regarding pet care, relocation services, home repair/improvement and other personal services ("Convenience Services"). Participants may access Convenience Services by telephoning the Contractor's toll-free telephone number 24 hours per day, 7 days per week, 365 days per year.

## 2.7 Participant Coverage

### 2.7.1 Commencement and Termination of Coverage

## ATTACHMENT B MINIMUM CONTRACT TERMS

The eligibility of a Covered Employee for Services under this Agreement shall commence on the first day of his/her qualifying employment (i.e., the employment which causes him or her to meet the definition of a Covered Employee) following the availability of service to Participants on or after the Effective Date. A Household Member shall commence eligibility on the later of the date he/she becomes a Household Member and the date on which the Covered Employee becomes eligible.

The eligibility of a Covered Employee for Services under the Agreement shall terminate on the earlier of the last day of his/her qualifying employment, the last day of his/her continuation coverage under COBRA, or termination of the Agreement. Household Members shall remain eligible for Services until the eligibility of the Covered Employee connected with them ceases or until they cease to be Household Members as defined in paragraph 1.15 of this Exhibit, whichever occurs first. However, each Participant will be entitled to receive the full number of In-person Sessions identified in paragraph 2.3 of this Exhibit for an identified problem, as clinically appropriate, if he/she has scheduled an appointment with an EAP Counselor for that problem prior to the last date of eligibility as specified in this paragraph. The Contractor reserves the right to terminate the eligibility of any Participant, without right of reinstatement, for fraud or deception in the use of Services or for knowingly permitting such fraud or deception by another, for threatening the safety of the Contractor employees, EAP Counselors, or others eligible for or receiving EAP services and for repeated behavior substantially interfering with the Contractor's ability to furnish or arrange services for the Participant or others or the ability of an EAP Counselor to provide services to others. Any such termination will be effective on the date the Contractor mails notice of cancellation, unless the notice specifies a later date. The Contractor will not terminate the eligibility of any Participant because of his/her health status or use of the EAP.

### 2.7.2 Individual Continuation of Eligibility

Except as expressly stated in this Exhibit, an individual Participant does not have the right to renew his or her eligibility for Services under this Agreement once the qualifying employment relationship of the Participant (or the relevant Covered Employee, if the Participant is a Household Member) or continuation coverage under COBRA is terminated. A Participant's right to receive such Services is determined solely by this Agreement.

## 3. PARTICIPANT DISPUTES AND COMPLAINTS

### 3.1 Grievance Process

The Contractor will maintain grievance policies and procedures that comply with Chapter 2.2 of Division 2 of the California Health and Safety Code and Title 28 of the California Code of Regulations (“Knox-Keene”) and make them available to the State and to Participants upon request. The Contractor will offer a resolution for each grievance within thirty (30) days of receipt.

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### 3.2 Prohibition of Retaliation

Neither the Contractor nor any EAP Counselor will discriminate against a Participant for having filed a grievance. The Contractor will investigate any alleged retaliation and take appropriate action.

### 3.3 Review by Director

If any person believes that a Participant has been canceled or denied eligibility or services under the Agreement because of a Participant's health status or requirements for health services, he/she may request a review by the Director of the Department of Managed Health Care of the State of California under Section 1365(b) of the California Health and Safety Code.

### 3.4 Department of Managed Health Care

The following information will be made available to Participants on all communications relating to the Contractor's grievance procedures or Participant grievances:

The California Department of Managed Health Care is responsible for regulating health care service plans. If you have a grievance against your health plan, you should first telephone your health plan at the toll-free number assigned to the State's program and use your health plan's grievance process before contacting the department. Utilizing this grievance procedure does not prohibit any potential legal rights or remedies that may be available to you. If you need help with a grievance involving an emergency, a grievance that has not been satisfactorily resolved by your health plan, or a grievance that has remained unresolved for more than 30 days, you may call the department for assistance. You may also be eligible for an Independent Medical Review (IMR). If you are eligible for IMR, the IMR process will provide an impartial review of medical decisions made by a health plan related to the medical necessity of a proposed service or treatment and payment disputes for emergency or urgent medical services. The department also has a toll-free telephone number (1-888-HMO-2219) and a TDD line (1-877-688-9891) for the hearing and speech impaired. The department's Internet Web site <http://www.hmohelp.ca.gov/> has complaint forms, IMR application forms and instructions online.

## 4. LIMITATIONS, EXCEPTIONS AND EXCLUSIONS

### 4.1 Choice of Providers

Participants may select an EAP Counselor identified (i) by an EAP Consultant or (ii) through the online referral service at the Contractor's website at **TBD**. The Contractor has no obligation to provide or arrange for EAP services by any person who is not an EAP Consultant or EAP Counselor.

### 4.2 Liability of Participants for Payment

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No individual Participant shall be obligated in any way to pay for EAP services rendered by the Contractor or EAP Counselors in accordance with the terms of the Agreement, including the payment of deductibles, copayments, or co-insurance. As required by statute, every contract between the Contractor and its EAP Counselors states that in the event that the Contractor fails to pay an EAP Counselor, Participants shall not be liable to that EAP Counselor for any sums owed by the Contractor. However, if a Participant chooses to receive EAP services from a provider other than an EAP Counselor and/or without first calling the Contractor to request services for a particular Episode of Care, the Contractor will not pay the provider for services rendered to the Participant, and the Participant may be liable to the provider for the cost of services.

4.3 Exclusions

The Contractor has no obligation under the Agreement to provide to Participants or arrange for any services other than the services described in paragraphs 2.3 -2.6 of this Exhibit or any of the following:

- (a) Evaluations required by any state or federal judicial officer or other governmental official or agency mandating that a Participant undergo counseling;
- (b) Court-mandated counseling; evaluations or recommendations to be used in child custody proceedings, child abuse proceedings, criminal proceedings, workers' compensation proceedings, or any legal actions of any kind;
- (c) Evaluations for fitness for duty determinations or excuses for leaves of absence or time off;
- (d) Medical care, including services for a condition that requires psychiatric treatment (for example, a psychosis);
- (e) Inpatient treatment;
- (f) Services by providers who are not part of the Contractor's EAP Counselor network;
- (g) EAP sessions that were not accessed through the Contractor (either through the toll-free telephone access line or the on-line self-referral service) for the particular episode of care;
- (h) Psychological, psychiatric, neurological, educational, or IQ testing;
- (i) Remedial and social skills education services, such as evaluation or treatment of learning disabilities, learning disorders, academic skill disorders, language disorders, mental retardation, motor skill disorders, or communication disorders; behavioral training; cognitive rehabilitation;
- (j) Medication or medication management;
- (k) Examinations and diagnostic services in connection with obtaining employment or a particular employment assignment, admission to or continuing in school, securing any kind of license (including professional licenses), or obtaining any kind of insurance coverage;
- (l) Testimony in legal proceedings or creation of records for legal proceedings or other preparation for legal proceedings;
- (m) Guidance on workplace issues when the Participant sues, or threatens to sue, the State;
- (n) Acupuncture;

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- (o) Biofeedback or hypnotherapy.

5. CONFIDENTIALITY

The Contractor shall comply at all times with the Confidentiality of Medical Information Act, California Civil Code Section 56, et seq. and all other applicable laws relating to the confidentiality of counseling records.

6. CANCELLATION, AMENDMENT, AND RENEWAL

6.1. Termination for Cause

Cancellation of the Agreement in connection with the delivery of EAP services in California may only be effected as set forth in paragraphs 3 and 9 of Exhibit A, as limited by the following:

The Contractor shall not terminate the Agreement for non-payment of its professional fees unless the State's payment is delinquent for more than sixty (60) days, the State has been duly notified and billed by the Contractor, and at least sixty (60) days have elapsed since the date of notification. If the State pays the delinquent amount in full prior to the next payment date after such cancellation of the Agreement and the Agreement was not previously cancelled for non-payment during the 12-month period prior to the effective date of cancellation, the Contractor shall reinstate the Agreement as though it had never terminated.

6.2 Modification of Terms

The Contractor may not increase the fees nor decrease the level of services during the term of the Agreement except (i) upon the written agreement of the State's Business Services Manager or (ii) as otherwise expressly set forth in this Agreement.

7. SPONSOR'S OBLIGATIONS

7.1 Distribution of Information

The State shall disseminate to Covered Employees its information about the EAP and their eligibility for participation in the EAP, and copies of the Contractor's Combined Evidence of Coverage and Disclosure Form, a sample of which is attached hereto as Exhibit D. The State shall distribute the Combined Evidence of Coverage and Disclosure Form at the inception of the program, to all individuals who become Covered Employees after the inception of the program, and following receipt from the Contractor of a Combined Evidence of Coverage and Disclosure Form with material revisions, provided the State has agreed in writing to the revisions or the revisions are required by law.

7.2 Notice of Termination

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In the event that the Contractor sends notice of cancellation for any reason to the State, the State shall mail promptly to each Covered Employee a legible, true copy of such notice and shall promptly provide the Contractor with proof of such mailing and the date thereof.

7.3 Notice of Material Changes

In the event that the Contractor sends notice to the State with respect to a material matter, the State shall disseminate such notice to Covered Employees by the next regular communication to employees but in no event later than 30 days after receipt of the notice from the Contractor.

8. DISRUPTION OF SERVICE BY EAP COUNSELORS

8.1 Notice to the State

In the event that any termination, breach of contract, or inability to perform of any EAP Counselor could materially and adversely affect the State, the Contractor shall provide the State reasonable written notice thereof.

8.2 Continuation of Care

In the event that the EAP Counselor from whom any Participant is receiving counseling under the Agreement terminates his/her contractual relationship with the Contractor, the Contractor will permit the Participant to continue counseling with that EAP Counselor, as clinically appropriate, up to the limit on maximum number of In-person Sessions, provided the EAP Counselor agrees to provide the counseling on the same terms and conditions, unless the Contractor terminated the provider contract because of fraud, criminal activity, incompetence or unprofessional conduct likely to be harmful to clients. If counseling with that EAP Counselor is not available, the Contractor will arrange for another EAP Counselor without charge to the State or the Participant.

9. COMPLIANCE WITH ANTI-DISCRIMINATION LAWS

The Contractor will not discriminate against any Participant or employee or applicant for employment because of race, color, religion, gender, national origin, ancestry, marital status, sexual orientation, age or disability. The Contractor will reasonably accommodate Participants seeking Services. The Contractor agrees to comply with all applicable state and federal statutes, Executive Orders and regulations relating to nondiscrimination in employment and delivery of Services.

10. KNOX-KEENE

The EAP described in this Agreement is subject to Chapter 2.2 of Division 2 of the California Health and Safety Code and to Title 28 of the California Code of Regulations. Any provision required to be in the Agreement by either of the above shall bind the Contractor whether or not any such provision appears in the Agreement.

*END OF EXHIBIT*

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**EXHIBIT B  
ATTACHMENT 1  
CONTRACTOR'S STANDARD SERVICE PRACTICES**

1. Access to services is through a single dedicated toll-free number that is answered by a designated intake team on a multiple customer telephone queue. Contractor's intake personnel identify the account from the toll-free telephone number displayed.
2. Services are provided to callers without verifying their eligibility.
3. Contractor's telephone answering performance will meet standard service factor measurements:  $\leq 30$  second Average Speed of Answer,  $\leq 5\%$  Abandonment Rate.
4. In-person clinical services are provided by Contractor network EAP providers in the service offices of these providers. Contracted EAP providers who meet Contractor credentialing standards may serve Participants. In-person clinical services are not available at Contractor sites and are not available through providers other than contracted EAP counselors.
5. Services to Participants are limited as described under Exclusions in the Combined Evidence of Coverage and Disclosure Form, as set forth in Exhibit D.
6. Follow-up is provided telephonically for substance abuse cases once a month for a period of one year. EAP providers who refer Participants to their benefit plans for mental health/substance abuse treatment make a follow-up call to the Participants to offer assistance, as needed, in pursuing treatment recommendations. No other follow-up is provided.
7. Telephonic consultation and support regarding workplace issues is available to management personnel. In-person management consultation is not available.
8. As determined by the State, reasonable quantities of standard communication materials, branded with the customer name, program name, and program toll-free number, are provided to one central State location. The State distributes all communication materials as well as the Combined Evidence of Coverage and Disclosure Form to Covered Employees.
9. One standard report, including year-to-date aggregates, is provided each quarter for the State. No multiple division or custom reports are furnished.
10. Website access, design, and content are standard, with customer-specific portal if so requested. No custom content or design or dedicated servers/portals are available.
11. Designated account management staff supports the product and provides regular service to the State. Account manager is not dedicated exclusively to the State.

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12. Contractor will link each Participant who requests in-person counseling services to an EAP counselor. Access standards are as follows:

- At least one EAP counselor within a 5-mile radius for urban areas (3000 or more residents per square mile) at least 95% of the time.
- At least one EAP counselor within a 5-mile radius for suburban areas (1000-2999 residents per square mile) at least 95% of the time.
- At least one EAP counselor within a 25-mile radius for rural areas (150-999 residents per square mile) at least 95% of the time.

*END OF ATTACHMENT*

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**EXHIBIT C  
FEES AND PAYMENT PROVISIONS**

1. Contract Amount

The total amount the State may pay to the Contractor under this Agreement, in connection with providing the Services set forth in Exhibit B, Services, shall be the actual fees and reimbursable expenses not to exceed the Contract Amount of **\$TBD**. No fees, expense reimbursements, or other charges of any kind will be paid by the State to the Contractor in connection with this Agreement except as expressly set forth in this Exhibit C.

2. PEPM Rate for Base Services

A. For performing the Base Services during the Initial Term, the State shall compensate the Contractor using the monthly rates set forth in Table 1, below. The monthly compensation shall be calculated by multiplying the number of Covered Employees on a monthly basis, as set by State in the Covered Employee Count, times the appropriate rate per Covered Employee.

**Table 1: Monthly PEPM Rates for the Base Services during the Initial Term**

| <i>Number of Covered Employees</i> | <i>Rate per Covered Employee Per Month</i> |
|------------------------------------|--|
| 500 – 2,500                        | <b>\$TBD</b>                               |
| 2,501 – 5,000                      | <b>\$TBD</b>                               |
| 5,001 – 10,000                     | <b>\$TBD</b>                               |
| 10,001 +                           | <b>\$TBD</b>                               |

B. For performing Base Services during a subsequent Option Term, the State shall compensate the Contractor using the monthly rates set forth in Table 2, below. The monthly compensation shall be calculated by multiplying the number of Covered Employees on a monthly basis, as set by State in the Covered Employee Count, times the appropriate rate per Covered Employee.

**Table 2: Monthly PEPM Rates for Base Services during any subsequent Option Term**

| <i>Number of Covered Employees</i> | <i>Rate per Covered Employee Per Month for First Option Term</i> | <i>Rate per Covered Employee Per Month for Second Option Term</i> | <i>Rate per Covered Employee Per Month for Third Option Term</i> | <i>Rate per Covered Employee Per Month for Fourth Option Term</i> |
|------------------------------------|--|---|--|---|
| 500 – 2,500                        | <b>\$TBD</b>   | <b>\$TBD</b>  | <b>\$TBD</b>   | <b>\$TBD</b>  |
| 2,501 – 5,000                      | <b>\$TBD</b>   | <b>\$TBD</b>  | <b>\$TBD</b>   | <b>\$TBD</b>  |
| 5,001 – 10,000                     | <b>\$TBD</b>   | <b>\$TBD</b>  | <b>\$TBD</b>   | <b>\$TBD</b>  |
| 10,001 +                           | <b>\$TBD</b>   | <b>\$TBD</b>  | <b>\$TBD</b>   | <b>\$TBD</b>  |

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- C. The rates set forth in Tables 1 and 2, above, are for Base Services, and are inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for Base Services rendered to the State.
- D. The total amount the State pays to the Contractor pursuant to this paragraph 2 shall be deducted from the Contract Amount as set forth in paragraph 1 of this Exhibit C.
- E. Assumptions used in setting the PEPM Rates in this paragraph 2 and the Compensation for Additional Services in paragraph 4, below, are as follows:
  - i. The State will not require payment of any commission or other fees by the Contractor to brokers or consultants;
  - ii. The State's medical plan coverage for benefits does not require access to the EAP in order to obtain an enhanced benefit;
  - iii. The State does not have an employee mandatory/random drug-testing program, and does not have a drug testing program that requires aftercare monitoring as required by DOT, DOE, DOD, or other federal or state regulation;
  - iv. Services are available to Participants only in the United States.
  - v. The State will follow the Contractor's Standard Services Practices, as set forth in Attachment 1 to Exhibit B.

3. Rate Renegotiation

- A. The rates set forth in paragraph 2, above, for the Base Services and paragraph 4, below, are subject to renegotiation upon written Notice by the State or the Contractor to the other party in the event of any of the following:
  - i. The Covered Employee Count drops below 500;
  - ii. A Force Majeure event or regulatory change occurs that increases or decreases the Contractor's operating costs for the Services to the State by more than four (4) percent for more than six (6) consecutive months; or
  - iii. Any of the assumptions set forth in paragraph 2(E) above are or become incorrect.
- B. The party giving Notice pursuant to this paragraph 3 shall provide such Notice to the other party not less than 30 days prior to the effective date of any change specified in such Notice.

4. Compensation for Additional Services

For performing Additional Services, when and as directed in writing in advance by the State's Project Manager during the term of this Agreement, the State shall compensate the Contractor as follows:

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- A. Seminars and Related Services. The State shall compensate the Contractor at the rate of **\$TBD** per hour of actual training time for each hour in excess of 1 per 250 Covered Employees (based on the average Covered Employee Count in each contract term), plus allowable expenses as set forth in paragraph 5, below, for each Contractor trainer providing such services. The State shall also reimburse Contractor, at Contractor's actual cost without markup, for all special instructional materials, if any, provided by Contractor in performing these services, provided the State's Project Manager has approved the use of such special instructional materials in writing in advance..
- B. CISM Services. The State shall compensate the Contractor at the rate of **\$TBD** per hour actually spent providing CISM Services, plus allowable expenses as set forth in paragraph 5, below, for each CISM provider performing these services.
- C. Run-Off Sessions. The State shall reimburse the Contractor at the firm fixed price of **\$TBD** per In-person Session for each Run-Off Session provided, inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for such services rendered to the State.
- D. The Contractor shall not charge nor shall the State pay any overtime rate.
- E. Except as expressly set forth herein, the Contractor shall not request, nor shall the State pay, any payment or reimbursement (i) for living expenses or (ii) for time spent doing anything other than providing the CISM Services and Seminars and Related Services. For example, the State shall not pay for time spent traveling to or from the worksite where such Additional Services are provided, even if the related travel expenses are eligible for reimbursement pursuant to paragraph 5, below.
- F. The total amount the State pays to the Contractor pursuant to this paragraph 4 shall be deducted from the Contract Amount as set forth in paragraph 1 of this Exhibit C.

5. Compensation for Allowable Expenses

The State shall reimburse the Contractor for allowable expenses only when Contractor provides CISM Services and Seminars and Related Services that are authorized in writing in advance by the State's Project Manager, and only when such Additional Services require one-way travel in excess of seventy-five (75) miles from the office of the Contractor representative to the State's designated worksite. When so authorized, the State shall reimburse the Contractor as follows:

- A. Transportation, Meals, and Lodging Expenses
  - i. The State shall reimburse the Contractor for actual expenses incurred for reasonable and necessary transportation, meals, lodging, and other travel-

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related expenses required to perform the Additional Services for which expenses are reimbursable pursuant to this Agreement.

- ii. The Contractor shall submit a written travel plan to the Project Manager *prior to incurring any travel expenses*, including the reason for the trip, number of persons traveling, types of expenses the Contractor expects to incur and the estimated costs. Prior approval of the travel plan is required.
- iii. For necessary air transportation, the State will reimburse the Contractor for the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) days prior to travel, unless the Project Manager agrees otherwise in writing.
- iv. For overnight travel, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the State will reimburse the Contractor for meal and lodging expenses in an amount not to exceed **\$150.00** per day, plus sales tax. Meals shall be reimbursed at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~**\$6.00**; lunch~**\$10.00**; dinner~**\$18.00**; and/or incidentals~**\$6.00**. Hotel room rental shall be reimbursed for the actual cost not to exceed **\$110.00** per Day plus tax and/or energy surcharge.
- v. For necessary private vehicle ground transportation usage, the State will reimburse the Contractor up to **\$0.55** cents per mile.
- vi. The Contractor shall provide original invoices.
- vii. Upon the Project Manager's request, the Contractor shall provide copies of receipts for reimbursement of transportation, lodging, and meal expenses.
- viii. The total amount which the State may reimburse the Contractor, pursuant to this provision, shall be deducted from the Contract Amount as set forth in paragraph 1 of this Exhibit C.

**B. Administrative and Operating Expenses**

Except as expressly stated herein, there will be no reimbursement of Contractor's administrative or operating expenses in connection with this Agreement.

**C.** The total amount the State pays to the Contractor pursuant to this paragraph 5 shall be deducted from the Contract Amount as set forth in paragraph 1 of this Exhibit C.

**D.** Notwithstanding anything to the contrary in this Agreement, reimbursement of expenses as set forth in this paragraph 5 shall be made only for expenses incurred in connection with Seminars and Related Services pursuant to paragraph 2.3.6 of Exhibit B, and CISM Services pursuant to paragraph 2.3.7 of Exhibit B.

**6. Direct Expenses**

Except where otherwise specifically identified in this Exhibit, all fees and charges noted in this Agreement are inclusive of any and all anticipated travel, lodging, transportation,

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clerical support, Materials, fees, overhead, profits, and other costs and/or expenses incidental to the performance of the specified requirements under this Agreement.

7. Other Expenses

The State shall not consider reimbursement for costs not defined as allowable in this Agreement, including but not limited to any administrative, operating, travel, meals, and lodging expenses incurred during the performance of this Agreement that are not expressly allowable pursuant to paragraph 5 of this Exhibit C.

8. Taxes

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

9. Method of Payment

- A. The Contractor shall submit an invoice no more often than once a month. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.
- B. The State will make payment in advance after receipt of the Contractor's properly completed invoice, except that all rates, fees and allowable expenses for Additional Services shall be paid in arrears. The State may make payments at its option through a third party service provider. Invoices shall clearly indicate
- i. The Contract number;
  - ii. A unique invoice number;
  - iii. The Contractor's name and address;
  - iv. Taxpayer identification number (the Contractor's federal employer identification number);
  - v. The Covered Employee Count that the invoiced amount is based upon;
  - vi. The appropriate PEPM Rate for the number of Covered Employees;
  - vii. The invoice amount to be paid for all Services, including a subtotal for the Additional Services itemized by type and a subtotal for allowable expenses;
  - viii. The appropriate receipts for reimbursement of allowable expenses and an itemized list of such expenses, including names, dates and locations of service, and the type of Additional Services to which each expense is related;
  - ix. For Seminars and Related Services and for CISM Services, the names, dates, locations and hours worked;
  - x. For Run-Off Sessions, the number of sessions provided;

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- xi. For each type of Additional Services, the contractual rate used to calculate the invoiced amount; and,
- xii. Preferred remittance address, if different from the mailing address.

C. The Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California  
Administrative Office of the Courts  
c/o Finance Division, Accounts Payable  
455 Golden Gate Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94102-3660

D. Please note that invoices or vouchers not on printed bill heads shall be signed by the Contractor or the person furnishing the supplies or services.

10. Disallowance

If the Contractor claims or receives payment from the State for a service or reimbursement that is later disallowed by the State, the Contractor shall promptly refund the disallowed amount to the State upon the State's request. At its option, the State may offset the amount disallowed from any payment due or that may become due to the Contractor under this Agreement or any other agreement.

*END OF EXHIBIT*

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**EXHIBIT D  
EMPLOYEE ASSISTANCE PROGRAM COMBINED EVIDENCE OF COVERAGE AND  
DISCLOSURE FORM**

**TBD**

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**EXHIBIT E**  
**DEFINITIONS**

**1. DEFINITIONS**

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

- A. "**Administrative Director**" refers to that individual, or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- B. "**Amendment**" means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (1) a change in the Work; (2) a change in Contract Amount; (3) a change in time allotted for performance; and/or (4) an adjustment to the Agreement terms.
- C. "**Confidential Information**" means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State's business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- D. The "**Contract**" or "**Contract Documents**" constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms "Contract" or "Contract Documents" may be used interchangeably with the term "**Agreement.**"
- E. "**Contract Amount**" means the not to exceed total amount specified on the State of California Standard Agreement (form STD. 2) that forms the cover sheet of this Agreement, for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents. The Contract Amount includes the amount encumbered by the State under this Agreement, in addition to the amount, if any, that may be paid to Contractor by the State's third party service provider.
- F. The "**Contractor**" means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.

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- G. **“Data”** means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- H. **“Day”** means calendar day, unless otherwise specified.
- I. **“Deliverable(s)”** or **“Submittal(s)”** means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- J. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God or the public enemy;
  - ii. Acts or omissions of any government entity;
  - iii. Fire or other casualty for which a party is not responsible;
  - iv. Quarantine or epidemic;
  - v. Strike or defensive lockout; and,
  - vi. Unusually severe weather conditions.
- K. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- L. **“Notice”** means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
  - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- M. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- N. The **“State”** refers to the Judicial Council of California / Administrative Office of the Courts (**“AOC”**). The State is one of the parties to this Agreement. The term **“State”** shall also include any individual designated to perform technical and/or administrative functions, as set forth herein.
- O. **“State Standard Agreement”** means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the

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State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual “**Contract Counterpart.**”

- P. “**Stop Work Order**” means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit A.
- Q. “**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement, with the exception of any such individual or entity that has been engaged by Contractor pursuant to a contract that has been approved by the California Department of Managed Health.
- R. “**Task(s)**” means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- S. “**Third Party**” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.
- T. “**Transition Period**” means a period of time commencing (i) three months prior to the expiration of this Agreement or on an earlier date as the State may request and Contractor may agree, (ii) upon any notice of termination or non-renewal of this Agreement, or (iii) three months prior to any other ceasing of services under this Agreement, as applicable, and continuing through the effective date of expiration, termination or cessation, but for no less than three months. Notwithstanding the foregoing, in no event shall the Transition Period extend more than 60 days beyond the effective date of termination, regardless of the reason for the termination.
- U. “**Transition Plan**” refers to the plan set forth in this Agreement as necessary to allow the Work to continue without interruption or adverse effect and facilitate the orderly transfer of the Work to the State or the State’s designee.
- V. “**Work**” or “**Work to be Performed**” or “**Contract Work**” may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.