

**ATTACHMENT 2
AOC STANDARD TERMS AND CONDITIONS**

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**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

The State may terminate this Agreement and be relieved of the payment of any consideration to the Contractor if the Contractor fails to perform the provisions of this Agreement at the time and in the manner provided. If the Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost to the State to perform this Agreement shall be deducted from any sum due the Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to the Contractor upon demand.

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 Contractor’s performance of this Agreement.

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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.

End of Exhibit A

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EXHIBIT B SPECIAL PROVISIONS

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: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) 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 total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- 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 for 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”**).

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- 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 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 B.

- 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. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term **“Subcontractor”** includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.

- R. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.

- S. **“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.

- T. **“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.

- U. **“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.

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- 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.
2. Termination Other Than for Cause
- A. In addition to termination for cause under Exhibit A, Standard Provisions 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.
3. 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

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Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

4. Stop Work

- A. The State may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree (“**Stop Work Order**”). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i. Cancel the Stop Work Order; or
 - ii. Terminate the Work covered by the Stop Work Order as provided for in either of the termination provisions of this Agreement.
- B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in the Contractor’s cost properly allocable to the performance of any part of this Agreement; and
 - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State’s Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

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D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

5. Agreement Administration / Communication

A. Under this Agreement, the Project Manager, TBD, 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:

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

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

6. 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 B.

7. Subcontracting

The Contractor shall not subcontract this Agreement or services provided under this Agreement, unless the State agrees to the subcontracting in writing. Any authorized subcontract(s) shall be executed in the same manner as this Agreement. No party to this

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Agreement shall in any way contract on behalf of or in the name of another party to this Agreement.

8. Changes and Amendments

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.

9. Accounting System Requirement

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

10. 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.

11. 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 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.

12. 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

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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 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,

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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, Fiscal Services Office, Business Services, 455 Golden Gate Ave., San Francisco, CA 94102-3688.

13. Confidentiality

- 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.

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- 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.

14. 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) 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.

15. 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.

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16. 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.

17. 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.

18. California Law

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

19. 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.

20. 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 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.

21. Signature Authority

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

22. 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.

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23. 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.

24. 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.

25. Evaluation of Contractor

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

26. 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.

27. Compliance with Laws, Regulations and Permits

The Contractor shall comply with and give Notices required by all laws, ordinances, codes, rules, regulations including but not limited to those relating to environmental pollution prevention and preservation of historic sites and public natural resources, and permits relating to the conduct of the Work. The cost of such compliance will be included in the amount encumbered under this Agreement. Except as specifically otherwise provided herein, the Contractor shall obtain and pay for all permits and licenses necessary for the conduct of the Work.

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28. 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.

29. Agreement Term and Options to Renew

A. The Agreement shall commence on **January 1, 2013** [estimated] and expire on **December 31, 2013** (“**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, 2014 – December 31, 2014

Second Option Term: January 1, 2015 – December 31, 2015

Third Option Term: January 1, 2016 – December 31, 2016

Fourth Option Term: January 1, 2017 – December 31, 2017

B. In the event the State elects to extend the Agreement for any 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.

30. 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.

31. 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.

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END OF EXHIBIT

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**EXHIBIT C
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 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. Per Employee Per Month Rate for Services

A. For performing the Services during the Initial Term or any subsequent 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 by the appropriate rate per Covered Employee.

Table 1: Rate per Covered Employee Per Month for Services during Initial and Subsequent Option Terms

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

B. The rates set forth in Table 1, above, is for Services, and are inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for Services rendered to the State.

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- C. 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.
- D. 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.

3. Rate Renegotiation

- A. The rates set forth in paragraph 2, above, for the 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;
 - iii. A 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
 - iv. Any of the assumptions set forth in paragraph 2(D) 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 60 days prior to the effective date of any change specified in such Notice.

4. Compensation for 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.

5. Direct Expenses

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

NOTE: As set forth in Section 5 of the RFP: The provisions marked with an (*) are minimum contract terms and conditions (“Minimum Terms”). A material exception to a Minimum Term may render a proposal non-responsive.

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

6. 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.

7. 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.

8. 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 Per Employee Per Month Rate for the number of Covered Employees;
 - vii. The invoice amount to be paid for all Services;

**ATTACHMENT 2
AOC STANDARD TERMS AND CONDITIONS**

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- viii. For Run-Off Sessions, the number of sessions provided and the Run-Off Fees;
- ix. 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 Fiscal Services Office, Accounts Payable
455 Golden Gate Avenue, 7th 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.

9. 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

**ATTACHMENT 2
AOC STANDARD TERMS AND CONDITIONS**

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**EXHIBIT D
WORK TO BE PERFORMED**

1. Definitions

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

- A. Base Fee: the PEPM Rate multiplied by the applicable Covered Employee Count.
- B. Services: all Services described in paragraphs 2.C.i through 2.C.v of this Exhibit B.
- C. 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.
- D. 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.
- E. 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.
- F. Covered Employee Count: the number of Covered Employees eligible for EAP services at any point in time. For purposes of calculating Base 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.

**ATTACHMENT 2
AOC STANDARD TERMS AND CONDITIONS**

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- G. 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 or persons 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.
- H. Critical Need Consultation. Respond to and consult 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.C.i.b. of this Exhibit.
- M. 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.

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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- N. 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.
 - O. Participant: a Covered Employee or a Household Member.
 - P. 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.
 - Q. Run-Off Fee: The fee the AOC will pay Contractor for Run-Off Services.
 - R. Run-Off Services: the Services described in paragraph 2.C.iii of this Exhibit D.
 - S. Services: all of the services described in paragraphs 2.C.i. to 2.C.v. of this Exhibit D, including the Base Services and the Run-Off Services.
2. Principal Services and Coverage
- A. General

The Contractor shall, upon the request of Participants, directly provide or arrange for the provision of all Services described in paragraphs 2.C.i. to 2.C.v. of this Exhibit D.
 - B. 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.
 - C. EAP Services
 - i. Personal Consultation Services:
 - a. 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.

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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- b. 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.
 - c. 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.
 - d. 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.
 - e. Participants will have access to clinical EAP services through self-referral, supervisor referral, and human resources referral.
- ii. Treatment Compliance Monitoring:

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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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.

iii. Run-Off Services:

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 Run-Off Fees at the rate specified for Run-Off Sessions in paragraph 4 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.

iv. Management Consultation:

Upon request, the Contractor will provide consultation to any manager or supervisor considering the referral of an Employee or Employees 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, at no additional charge, Crisis Counseling or Critical Need Consultation in San Francisco or the affected location 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.

v. Employee Communications Program

The Contractor will, together with the State, develop a communications program to promote the EAP. The Contractor will work closely with the State

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in designing all EAP communications to be consistent with both the needs of employees and the timing of benefit announcements. The AOC 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 AOC 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 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

vi. 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.

vii. User Evaluation

Participants utilizing the Contractor's personal consultation and selected other services will be afforded an opportunity to anonymously evaluate those services. Human Resources (HR) representatives making referrals to the EAP will also have an opportunity to anonymously evaluate the effectiveness of the EAP as an HR tool. Results will be included in the quarterly standard utilization reports provided to the State pursuant to paragraph 2.C.vi. of this Exhibit D.

**ATTACHMENT 2
AOC STANDARD TERMS AND CONDITIONS**

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D. Participant Coverage

i. Commencement and Termination of Coverage

- a. 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.
- b. 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.M. 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.C.i.b. 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.

ii. Individual Continuation of Eligibility

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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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

A. 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.

B. 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.

C. 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.

D. 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

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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

A. Choice of Providers

Participants may select an EAP Counselor identified by an EAP Consultant. The Contractor has no obligation to provide or arrange for EAP services by any person who is not an EAP Consultant or EAP Counselor.

B. Liability of Participants for Payment

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.

C. Exclusions

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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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.C.i. – 2.C.iii. of this Exhibit or any of the following:

- i. Evaluations required by any state or federal judicial officer or other governmental official or agency mandating that a Participant undergo counseling;
- ii. 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;
- iii. Evaluations for fitness for duty determinations or excuses for leaves of absence or time off;
- iv. Medical care, including services for a condition that requires psychiatric treatment (for example, a psychosis);
- v. Inpatient treatment;
- vi. Services by providers who are not part of the Contractor’s EAP Counselor network;
- vii. 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;
- viii. Psychological, psychiatric, neurological, educational, or IQ testing;
- ix. 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;
- x. Medication or medication management;
- xi. 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;

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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- xii. Testimony in legal proceedings or creation of records for legal proceedings or other preparation for legal proceedings;
- xiii. Guidance on workplace issues when the Participant sues, or threatens to sue, the State;
- xiv. Acupuncture;
- xv. Biofeedback or hypnotherapy.

5. Confidentiality of Counseling Records

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. Disruption of Service by EAP Counselors

A. 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.

B. 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.

7. 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

**ATTACHMENT 2
AOC STANDARD TERMS AND CONDITIONS**

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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.

END OF EXHIBIT

**ATTACHMENT 2
AOC STANDARD TERMS AND CONDITIONS**

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

TBD

END OF ATTACHMENT

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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JBCL APPENDIX

This JBCL Appendix contains the provisions required for compliance with Public Contract Code (“PCC”), part 2.5, enacted under Senate Bill 78 (Stats. 2011, ch. 10), and the Judicial Branch Contracting Manual (“JBCM”) adopted pursuant to that law. In this appendix, (i) “Agreement” refers to the agreement into which this appendix is incorporated, (ii) “JBE” refers to the California judicial branch entity that is a party to the Agreement, (iii) “Contractor” refers to the other party to the Agreement, and (iv) “Consulting Services” refers to those services described in chapter 8, appendix C, section 1 of the JBCM.

1. Contractor Certification Clauses. Contractor certifies that the following representations and warranties are true. Contractor shall cause these representations and warranties to remain true during the term of this Agreement, and Contractor shall promptly notify the JBE if any representation and warranty becomes untrue.

1.1. Non-discrimination. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination. (*)

1.2. National Labor Relations Board. No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true. (*)

1.3. Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBE.

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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- 1.4. Iran Contracting Act.** Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“Iran List”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the JBE to enter into this Agreement pursuant to PCC 2203(c).
- 2. Independent Contractor Status.** Contractor is an independent contractor to the JBE. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor or its personnel and the JBE. Nothing Contractor does, or fails to do, in the performance of this Agreement will make Contractor or its personnel an employee of the JBE. The JBE will not provide to Contractor or its personnel the benefits that the JBE provides its employees.
- 3. Provisions Applicable Only to Certain Agreements.** The provisions in this section are *applicable only to the types of agreements specified in the title of each subsection*. If the Agreement is not of the type described in the title of a subsection, then that subsection does not apply to the Agreement.
- 3.1. Agreements over \$10,000.** This Agreement is subject to examinations and audit by the State Auditor for a period of three years after final payment.
- 3.2. Agreements over \$50,000.** No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).
- 3.3. Agreements of \$100,000 or More.** Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with PCC 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section

ATTACHMENT 2 AOC STANDARD TERMS AND CONDITIONS

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5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

3.4. Agreements for Services over \$200,000 (Excluding Consulting Services).

Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

3.5. Agreements for the Purchase of Goods. Contractor shall not sell or use any article or product as a “loss leader” as defined in Business and Professions Code section 17030. If this Agreement provides for the purchase of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), with respect to these goods, Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible.

3.6. Agreements for Printing, Parts Cleaning, Janitorial, and Building Maintenance Services, or for the Purchase of Goods. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in products, materials, goods, or supplies offered or sold to the JBE regardless of whether the product meets the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

3.7. Agreements for Furnishing Equipment, Materials, Supplies, or for Laundering Services. Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor’s records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor’s compliance

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with the requirements under this section and shall provide the same rights of access to the JBE.

3.8. Agreements that are Federally Funded. It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the JBE by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The parties may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than 30 days’ notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds. Exemptions from the above requirements may be granted if the JBE can certify in writing that federal funds are available for the term of this Agreement.

3.9. Agreements for which Contractor Has Committed to Achieve DVBE Participation. Contractor shall within 60 days of receiving final payment under this Agreement certify in a report to the JBE: (i) the total amount the prime Contractor received under this Agreement; (ii) the name and address of any disabled veterans business enterprise (“DVBE”) that participated in the performance of this Agreement; (iii) the amount each DVBE received from the Contractor; (iv) that all payments under this Agreement have been made to the DVBE; and (v) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

3.10. Agreements Resulting from Competitive Solicitations. Contractor shall assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Contractor. If the JBE receives, either through judgment or

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settlement, a monetary recovery for a cause of action assigned under this section, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the Contractor, the JBE shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action. (*)

3.11. Agreements for Legal Services. Contractor shall: (i) adhere to legal cost and billing guidelines designated by the JBE; (ii) adhere to litigation plans designated by the JBE, if applicable; (iii) adhere to case phasing of activities designated by the JBE, if applicable; (iv) submit and adhere to legal budgets as designated by the JBE; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the JBE; and (vi) submit to legal bill audits and law firm audits if so requested by the JBE, whether conducted by employees or designees of the JBE or by any legal cost-control provider retained by the JBE for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the JBE. If (a) the value of this Agreement is greater than \$50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the Agreement equal to the lesser of either (A) 30 multiplied by the number of full time attorneys in the firm’s offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours equal to 10 percent of the contract amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for non-renewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a judicial branch entity for legal services.

3.12. Agreements Allowing for Reimbursement of Contractor’s Costs. Contractor must include with any request for reimbursement from the JBE a certification that the Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no

**ATTACHMENT 2
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reimbursement from the JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

3.13. Agreements Performed in California by Contractors that are Corporations, LLCs, or LPs. Contractor is, and will remain for the term of the Agreement, qualified to do business and in good standing in California.

3.14. Agreements with Contractors that Have Employees. Contractor must maintain during the term of this Agreement workers’ compensation coverage to meet minimum requirements of the California Labor Code, and it must provide coverage for employer’s liability bodily injury at minimum limits of \$1 million per accident or disease.

3.15. Agreements that the JBE Cannot Terminate for Convenience. The JBE's obligations under this Agreement are subject to the availability of applicable funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the initial appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the JBE may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the JBE, for lack of appropriation of funds. Upon termination, the JBE will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.