

BEHAVIORAL HEALTH BENEFITS ADMINISTRATION SERVICES CONTRACT

THIS CONTRACT is made this 20th day of April, 2006 by and between APS Healthcare Bethesda, Inc. and the State of Maryland, acting through the Department of Budget and Management.

IN CONSIDERATION of the premises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 "Contract" means this Contract for Behavioral Health and EAP Services.
- 1.2 "Contractor" means APS Healthcare Bethesda, Inc., an Iowa corporation whose principal business address is 8403 Colesville Road, Suite 1600, Silver Spring, Maryland 20910.
- 1.3 "Department" means the Maryland Department of Budget and Management.
- 1.4 "Financial Proposal" means the Contractor's Best and Final Financial Proposal dated February 14, 2006.
- 1.5 "Procurement Officer" means the individual identified in Section 1.6 of the RFP or a successor designated by the Department.
- 1.6 "RFP" means the Request for Proposals for Behavioral Health and EAP Benefit Administration Services - RFP # F10R6200070, dated September 20, 2005, including all addendums and attachments issued by the Procurement Officer through February 28, 2006.
- 1.7 "State" means the State of Maryland.
- 1.8 "Technical Proposal" means the Contractor's Technical Proposal, dated November 17, 2005, including all attachments, addendums, clarifications, and subsequent correspondence submitted by the Contractor through January 30, 2006.

2. Scope of Work

- 2.1 The Contractor shall provide behavioral health benefit administration and employee assistance program administration services, including claims processing, network administration and other plan administration services, for State employees, State retirees, satellite account employees, and their respective dependents enrolled in certain group health plans in the State Employee and Retiree Health and Welfare Benefits Program, as more fully described in the RFP. The services shall be provided in accordance with this Contract and the following exhibits, which are incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A - The RFP, including all addendums and attachments.

Exhibit B - The Technical Proposal.

Exhibit C - The Financial Proposal.

Exhibit D – State Contract Affidavit Addendum.

- 2.2 If there are any inconsistencies between this Contract and Exhibits A, B, and C, the terms of this Contract shall control. If there is any conflict among the Exhibits, Exhibit A shall control.
- 2.3 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Article 13, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance

The Contractor shall begin providing services under this Contract upon the earlier of execution by the Department or July 1, 2006. Unless terminated earlier as provided in this Contract, the Contractor shall provide behavioral health benefits and employee assistance program benefits from July 1, 2006 through June 30, 2011. The Contractor shall provide run-out administration for claims for the eighteen (18) month period immediately following the termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of the RFP and the Contractor's Financial Proposal. The cost of the performance security required by Section 27 is not recoverable from the State.
- 4.2 Payments to the Contractor and any invoice from the Contractor will reflect the Contractor's federal tax identification number, which is [REDACTED]. The Contractor's e-MarylandMarketplace registration number is [REDACTED]. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor, consistent with the schedule identified in the RFP. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited. Invoices for the payment of services shall be submitted to the Department on the schedule provided in the RFP. The final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

- 4.3 Electronic funds transfer will be used in lieu of checks by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State's Comptroller's Office grants the Contractor an exemption.
- 4.4 In addition to any other available remedies if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer pursuant to this Contract

5. Personnel

Contractor agrees that all personnel identified in its proposal shall be assigned to the State account for the term of the Contract, including any extension, unless such personnel are no longer employed by the Contractor.

6. Rights to Records

- 6.1 The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 6.2 The Contractor agrees that at all times during the term of this Contract and thereafter, the works created and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created under this Contract are not works for hire for the Department, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 6.3 The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 6.4 The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 6.5 Upon termination of this Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.
- 6.6 Nothing in this Section 6 shall abrogate or transfer any intellectual property rights of the Contractor in its proprietary information related to its methodologies, methods of analysis, ideas, know how, methods, techniques, and skills possessed prior to this Contract.

7. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law and additional confidentiality provisions contained in the RFP. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

8. Non-Hiring of Employees

No official or employee of the State of Maryland as defined under State Government Article section 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

9. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

10. Maryland Law

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

11. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in

conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

12. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

13. Non-availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

14. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

15. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

16. Delays and Extensions of Time

The Contractor agrees to perform the work under this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

17. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

18. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

19. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, which requires that every business that enters into contracts, leases, or other agreement with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

20. Political Contribution Disclosure

The Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a)

February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

21. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section.

22. Compliance with Laws

The Contractor hereby represents and warrants that:

1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.
3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract.
4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

23. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon by the parties, was inaccurate, incomplete, or not current.

24. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State of Maryland, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of sections 8, and 10 through 23 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

25. Indemnification

- 25.1 The Contractor shall indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.
- 25.2 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 25.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 25.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

26. Administrative

- 26.1 **Procurement Officer.** The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.
- 26.2 **Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Director, Employee Benefit Division
 State of Maryland
 301 W. Preston St.
 Room 509
 Baltimore, MD 21201

If to the Contractor:	<u>President, Commercial Programs</u> <u>8403 Colesville Rd, Suite 1600</u> <u>Silver Spring, MD 20910</u> _____ _____	General Counsel 8403 Colesville Rd Suite 1600 Silver Spring, MD 20910
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27. Performance Security.

- 27.1 The Contractor shall maintain at all times throughout the duration of the contract a performance bond or other security in a form acceptable to the State securing its performance of its obligations under this Contract in the amount of Two Million Dollars (\$2,000,000) or as delineated in Section 27.3 of the Contract. Evidence of renewability of any one-year bond used by the Contractor to satisfy this requirement must be produced by March 31 of each year. If this evidence is not produced by this time, the State has the right to affirmatively characterize the failure to produce

the evidence as a default and to terminate the Contract within 180 days without liability to the State notwithstanding the provisions of Sections 14 and 15.

- 27.2** Each March 31 of each year of the Contract, or as soon as practicable thereafter, the Contractor shall provide to the Procurement Officer and to the Department copies of an audited financial statement of the Contractor's corporate parent APS Healthcare, Inc., and a financial statement, either audited or unaudited, of the Contractor, both for the year ending on the immediately preceding December 31. The financial statements shall be accompanied by a written statement of the Contractor notifying the State of its election pursuant to Section 27.3 if applicable.
- 27.3** (a) If both the financial statements required by Section 27.2 demonstrate positive net income for each corporate entity, the Contractor and its corporate parent, the Contractor may elect to provide substitute performance security for the term of the Contract remaining as of the immediately succeeding July 1 or the first of any month thereafter following delivery of the financial statements required by Section 27.2, whichever is later. Substitute performance security shall be in an amount that is Four Hundred Thousand Dollars (\$400,000) less than the performance security in place at the time of the election. If either financial statement demonstrates a net loss of income or zero income for either corporate entity, the Contractor shall continue the performance security in the higher amount then in place.
- (b) If all of the financial statements required by Section 27.2 during the term of the Contract consistently demonstrate that both the Contractor and its corporate parent have a positive net income for each year of the Contract, the Contractor shall provide performance security in the amount and duration provided by the following schedule:
- (i) \$2,000,000 five year performance bond (7/2006 – 6/2011)
 - (ii) \$1,600,000 four year performance bond (7/2007 – 6/2011)
 - (iii) \$1,200,000 three year performance bond (7/2008 – 6/2011)
 - (iv) \$ 800,000 two year performance bond (7/2009 – 6/2011)
 - (v) \$ 400,000 one year performance bond (7/2010 – 6/2011)
- 27.4** Substitute performance security permitted pursuant to Section 27.3 shall be provided to the State prior to the Contractor permitting any lapse, termination or cancellation in the performance security provided pursuant to Section 27.1 or successor performance security permitted pursuant to Section 27.3.
- 27.5** All performance security provided by the Contractor shall be in the form permitted by COMAR 21.06.07.01B.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND
DEPARTMENT OF BUDGET AND
MANAGEMENT

[Redacted Signature]

[Redacted Signature]

By: President & CEO

By: Cecilia Januszkiewicz, Secretary

March 24, 2006

April 20, 2006

Date

Date

[Redacted Signature]

[Redacted Signature]

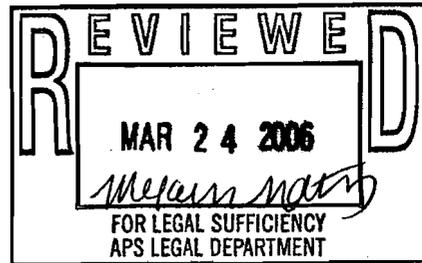
Witness

Witness

Approved for form and legal sufficiency
this 19 day of April 2006:

[Redacted Signature]

Assistant Attorney General



APPROVED BY BPW:

4/19/2006
(Date)

12-S
(BPW Item #)