



## CUSTOMER SERVICES AGREEMENT

This **CUSTOMER SERVICES AGREEMENT** has been entered into and is effective as of the effective date set forth on the signature page attached hereto (the “Agreement”) by and between **FEI Behavioral Health, Inc.** (“Company”) and Milwaukee Board of School Directors (“Customer”).

### **ARTICLE I. PREAMBLE**

**WHEREAS**, Customer wishes to engage the Company to provide employee assistance services and the Company wishes to provide Customer with such services; and

**WHEREAS**, Customer desires to engage the Company to render services upon certain terms and conditions.

**NOW, THEREFORE**, in consideration of the recitals listed above and the mutual promises, covenants, agreements and undertakings of the parties set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties, intending to be legally bound, agree as follows:

### **ARTICLE II. FEI BEHAVIORAL HEALTH RESPONSIBILITIES**

**2.01 Description of Services.** As requested by the Customer and in accordance with the Scope of Service of RFP 1056 (including all exhibits, addenda and clarification), which is hereby incorporated by reference, Company will provide the EAP to serve as the primary response to addressing the mental/emotional well-being of employees and their families. The Company is equipped to provide clinical and non-clinical services aimed toward improving the mental/emotional well-being of staff or their dependents. This includes, but is not limited to, a variety of concerns such as divorce, financial pressure, relationship issues, anxiety/depression, substance abuse, referrals for care (elder or child) workplace stress, etc. Clinical, non-clinical (trainings and resource referrals) and management/leadership support (i.e. employee referrals) services is included in the EAP provider’s services. All services are accessible via online (modules using a web-based portal), mobile apps, telephonically (24/7 call line for crisis counseling) and in person. The Customer will rely on the Company to provide all necessary marketing materials, including flyers, brochures, monthly (and service-specific) flyers, and electronic marketing to the Customer for distribution. In addition to providing services, the Customer will provide quarterly utilization reports as well as other applicable data as requested.

The Company has a dedicated account manager to provide assistance in coordinating workplace related trainings and critical incident and grief response at any of the Customer 150+ worksites as needed.

The Company will support and address the needs of Customer’s Human Resources departments, including Employee Rights Administration, Benefits and Wellness and Employment Relations. The Company will support and address the needs of each of these three departments.

Primary needs of each department are listed below:

#### **Benefits & Wellness:**

- Complete menu of worksite trainings (quote a per training fee – no maximums)
- Clinical services
- Non-clinical services
- Demonstrate a return of investment for programs/services provided and satisfaction surveys for services provided
- Provide input guidance and feedback regarding the measurement and assessment of employee mental/emotional well-being

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**Employee Rights Administration / Employment Relations:**

- Supervisory referral for leaders and employees to the following awareness and prevention modules following finding of policy violation (clinical and/or web-based model)
  - Disrespectful Behaviors/Communication
  - Anger Management (assessment and treatment plan)
  - Workplace violence prevention
  - Anti-Sexual Harassment
  - Conflict Management
  - Diversity and Inclusion
  - Healthy Boundaries
  - Drugs/Alcohol
- Voluntary/Self-referral for Employee and Leadership Development (clinical, on-site and/or web-based)
  - Team Dynamics
  - Workplace Etiquette, Humor, Stress Reduction
  - Workplace values and ethics
  - Stress and Anxiety
  - Drugs/Alcohol
- Managerial/Supervisory consultation (24/7) for workplace issues
- Critical incident support on-site
- Grief counseling/support on-site
- Work-life Services

The Company will provide clinical consultation services as a solution focused model of 6 visits and will be responsible for, but not limited to, the following:

- EAP coverage for the proposed plan design
- Member services
- 800 phone number with phone tree
- Dedicated account management and implementation support
- Network management

The Company shall provide services to Customer pursuant to the RFP 1056 Response (including all exhibits, addenda and clarification) attached Statement of Work/Fee Schedule/Service Fees (**Exhibit A**), which is incorporated herein by reference, (sometimes collectively referred to as “Services”). All Company qualifications of the RFP are material terms of this Contract with which Company will comply. The Company will deliver the Services in any country, territory, city or area specified by Customer, unless the delivery of Services would be prohibited or limited by the U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”) or other applicable trade sanctions.

**2.02 The Company’s Intellectual Property.** The Agreement is not a work-for-hire agreement. The Company retains exclusive right, title and interest in intellectual property developed, delivered or used in the performance of the Agreement. Neither the Agreement nor any Statement of Work changes the ownership of any pre-existing materials. Customer shall have no ownership interest in software used by the Company. All work product generated or acquired by the Company shall be the exclusive property of the Company. Work product shall include all physician notes, clinical data and supporting records and other information. All such work product is confidential pursuant to **Article 3** of the Agreement.

**ARTICLE III. CONFIDENTIALITY**

**3.01 Confidential Information.** “Confidential Information” means information or data of a Disclosing Party concerning its business operations, methods and strategies, financial condition, technology or prospects, in any form or medium (including writings, drawings and electronically stored information and data), whether or not marked or labeled as “confidential.” In addition, a Disclosing Party’s Confidential Information also includes: (i) protected health information; (ii) Business information and data and; (iii) technical information and data or trade secrets; (iv) Intellectual property (“IP”) (for example, inventions, discoveries, designs, methods, processes and ideas (whether or

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not patented or patentable)), logos, trade names, trademarks, and service marks (whether or not registered), mask works, works of authorship (whether copyrighted or copyrightable); and (v) all tangible manifestations (however embodied) of information or data referred to in clauses (i), (ii), (iii) and (iv) above (for example, computer software, firmware, scripts or objects, hardware, programmer's notes, databases, manuals, training manuals and materials, memoranda, reports, drawings, sketches, flowcharts, models, prototypes, files, films, records or forms).

**3.02 Receiving Party.** A party that acquires knowledge of the other party's (a "Disclosing Party") Confidential Information is considered the "Receiving Party." The Receiving Party shall keep Confidential Information in confidence using the same degree of care as the Receiving Party uses with its own Confidential Information or a reasonable degree of care, whichever is greater. The Receiving Party will not use, exploit, disseminate, disclose or divulge Confidential Information to any person, firm, corporation, partnership, association or other entity, without the prior written consent of the Disclosing Party.

**3.03 Applicability of Confidentiality.** A Receiving Party's is not required to hold a Disclosing Party's information or data "confidential" if the information or data: (i) becomes public through no act or omission of the Receiving Party; (ii) was known to the Receiving Party prior to disclosure by the Disclosing Party; (iii) becomes known to the Receiving Party through a third party without the Disclosing Party's Confidential Information; (iv) is required to be disclose pursuant to judicial or governmental judgment, writ, decree, or order; or (v) becomes relevant to the Receiving Party in any claim, demand, suit, action or proceeding instituted or defended by it in connection with the enforcement of its right or obligations. If the Receiving Party is required to disclose Confidential Information as contemplated in **Article III, Section 3.03(iv)**, the Receiving Party may disclose only such information as, in the opinion of counsel, is legally required. The Receiving Party shall provide Disclosing Party, to the extent reasonably possible, advance notice to allow the Disclosing Party to seek, at its own expense, a protective order. The Receiving Party shall, at the Disclosing Party's expense, reasonably cooperate with the Disclosing Party's efforts to seek such a protective order.

**3.04 Additional Confidentiality Terms.** The Company agrees to maintain the confidentiality of all medical, financial, and other patient specific data pertaining to Members, as required by state and federal law. The Company agrees that, except as otherwise provided herein, such data will not be released to individuals or entities other than the Member to which the data relate or such Member's authorized representative, except as required by law or as may be required by order of a court having jurisdiction over the Member. The Company also agrees that Customer has the right to use and disclose all medical, financial and other patient-specific data pertaining to members and the health plan as defined by law and upon providing appropriate assurances as to compliance with HIPAA and other privacy standards.

**3.05 Student Data.** The Company acknowledges that student data is protected by both federal and state law. See Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If Customer determines that Company has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the Customer may have, Customer shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, Customer may bar Company from future contracts for varying periods up to and including permanent debarment.

**3.06 Retention.** The Company shall retain, for its own general analytic purposes, after termination of the Agreement, de-identified aggregate data that is: (i) compiled from the raw data disclosed by Customer to the Company; or (ii) compiled from raw data collected from Customer's employees or their health care providers.

**3.07 Information Security Program.** The Company maintains an information security program to protect personally identifiable information. The information security program includes administrative, technical and physical safeguards: (a) to ensure security and confidentiality; (b) to protect information against any anticipated threats or hazards to security and integrity; and (c) to protect information against unauthorized access to or use that could result in harm, liability or inconvenience to Customer or to its employees. The Company will report breaches of security to Customer.

**ARTICLE IV. TERM, PAYMENT AND TERMINATION**

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**4.01 Term.** The Agreement begins on April 1, 2022 through March 31, 2025, with the option to extend for two additional one-year terms, mutually written and signed between the parties, or until terminated sooner pursuant to **Article IV, Section 4.03** of the Agreement (the "Term").

**4.02 Payment.** In consideration for the Company rendering the Services, Customer agrees to pay the Company such amounts as set forth in **Exhibit A** ("Service Fees"). These fees will be fixed for the duration of the entire Agreement, including extensions. The Company will send Customer a monthly itemized invoice for services rendered to Customer. Customer shall make payment upon receipt of the properly submitted invoice. If the invoice is not paid within forty-five (45) days following the invoice date, the invoice amount accrues interest at a rate of 1% per month. However, Customer's total interest liability will not exceed the limits imposed by law. If the Company charges Customer for interest in excess of the limits imposed by law, the Company will credit Customer the excess interest on the Company's next invoice. If the excess interest is greater than the amount of the Company's next invoice, the Company will refund the Customer the amount of excess interest owed above the next invoice amount.

Customer reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Customer does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools  
ATTN: Carol Eady – Sr. Director of Benefits, Pension & Compensation  
5225 W. Vliet Street – Rm. 124  
Milwaukee, WI 53208

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed.

Unless otherwise specified, Company shall not submit invoices more than 60 days after actual work.

**4.03 Termination.** Either party may terminate the Agreement if the other party materially breaches the Agreement and fails to cure such breach within sixty (60) days after receipt of written notice of such breach from the other party. Termination shall not prejudice any other remedy to which the terminating party may be entitled at law, in equity or under the Agreement. The Company may terminate the Agreement with sixty (60) days prior written notice, if the Company is unable to provide the Services.

**4.04 Effect of Termination.** The Company is entitled to full compensation for work performed prior to termination.

**By Company.** Company may, at its option, terminate this Agreement upon the failure of Customer to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Company shall be paid the compensation due for all services rendered through the date of termination including any retainage.

**By Customer - Breach by Company.** If Company fails to fulfill its obligations under this Agreement in a timely or proper manner, or violates any of its provisions, Customer shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the Agreement, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Company promptly cures the alleged violation with five (5) days. In the event of termination, Customer will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Company for use in completing the Agreement.

**By Customer.** Customer further reserves the right to terminate this Agreement for no cause, by giving Company written notice by Registered or Certified Mail of such termination. Customer will attempt to give Company 20 days' notice, but reserves the right to give immediate notice. In the event of said termination, Company shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Company shall be paid for all services rendered through the date of termination, including any retainage. This section also applies

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should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Agreement.

**4.05 Indebtedness.** If Customer is unable to pay its debts as they become due, the Company may terminate the Agreement at its discretion and proceed to enforce Customer's performance, pursuant to section 4.04 above. This section supersedes all prior contract terms and conditions.

This Agreement is contingent upon the appropriation of sufficient funds by appropriate Customer's leadership. If funds are not appropriated, Company agrees to take back any commodities furnished under the Agreement, terminate any services supplied to Customer under the Agreement, and relieve Customer of any further obligations under the Contract.

**4.06 Bankruptcy.** The Company may terminate the Agreement and proceed to enforce performance by Customer if Customer: (i) ceases doing business as a going concern; (ii) makes an assignment for the benefit of creditors; (iii) admits in writing its inability to pay its debts as they become due; (iv) files a voluntary petition in bankruptcy; or (v) files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangements under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consents to or acquiesces in the appointment of a custodian, trustee, receiver, liquidator of it or of all or any substantial part of its asset or properties, or if within 45 days after the commencement of any proceeding against Customer seeking reorganization, similar arrangements, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within 45 days after appointment of any custodian, trustee, receiver or liquidator of it or all or any substantial part of its assets and properties without Customer's consent or acquiescence, and the appointment has not been vacated.

**ARTICLE V. HOLD HARMLESS & INDEMNIFICATION**

**5.01**

The Company will not charge against experience those claim payments not authorized under the benefit plan (except when authorized by Milwaukee Public Schools in writing) if such payments were the result of error, negligence, reckless or willful acts or omissions by the administrator, its agents, officers or employees.

The Company will reimburse on an immediate basis any overpayments that were the result of error, negligence, reckless or willful acts or omissions by the administrator, its agents, officers or employees.

The Company will indemnify, hold harmless and save Milwaukee Public Schools, its agents, officers and employees from liability of any kind or nature (including costs, expenses or attorney's fees) for damages suffered by any entity or person as a result of error, negligence, reckless or willful acts or omissions of the administrator, its agents, officers or employees.

The above three paragraphs shall hold for the term of the Agreement, and any extensions, with Company even if not expressly provided for in the Agreement.

Notwithstanding any references to the contrary, Company assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

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In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS's negligence for acts, policies, or directives that affect the activities covered by this Agreement.

**ARTICLE VI. WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY**

**6.01 Warranty.** The Company will use commercially reasonable efforts to perform the Services in a professional manner, consistent with industry standards. Except as described in the RFP 1056 Response (Exhibit 1), the Agreement, or a Statement of Work, the Company makes no other warranties. The Company warranties extend solely to Customer. This warranty gives Customer specific legal rights, and Customer may also have other rights, which vary from state to state. Except for non-payment, neither party will bring a legal action under the Agreement more than two (2) years after the cause of action arose.

**6.02 Disclaimer.** TO THE EXTENT PERMITTED BY LAW AND AS PROVIDED HEREIN, FEI BEHAVIORAL HEALTH DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR PRODUCTS AND SERVICES.

**6.03 Limitation of Liability.** IN NO EVENT SHALL FEI BEHAVIORAL HEALTH BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FEI BEHAVIORAL HEALTH'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER, FOR THE PERIOD OF 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO SUCH DAMAGES, UNDER THE AGREEMENT FOR THE RELEVANT SERVICES.

**ARTICLE VII. THIRD PARTY INFORMATION/LIMITATIONS OF RESPONSIBILITY**

**7.01 Responsibility and Liability for Third Parties.** It is specifically understood and agreed by the parties that neither party assumes responsibility or liability for the accuracy, completeness, propriety, necessity or advisability of the medical information which is provided to the Company or Customer by or from third parties. "Third Parties" as used herein shall include, but not be limited to, the following sources: treating physicians, hospitals, attending doctors, nurses, counselors, affiliates, clinics or any other medical entities providing information to the Company or Customer.

**7.02 Limitations of Responsibility.** The parties understand and agree that the Company shall have no responsibility of any kind to Customer and any individual employee of Customer or any other person, firm, corporation, or entity for any of the following: (1) Verification of any individual's eligibility, or entitlement to group medical/health plan coverage, or coverage contained within or excluded from said group health plan; (2) Verification for any participant's provider's network status; (3) Payment of any individual's medical, hospital, or other bills, debts, obligations, or other liabilities of any kind relating to medical or surgical treatment of confinement; (4) Benefit decisions – the role of the Company being limited to making clinical recommendations to a health benefit plan's named fiduciary; and (5) Notification to any individual of an adverse benefit determination based upon, or related to, a clinical recommendation by the Company.

**7.03 Customer Obligations.** The Company shall not be liable for any obligation, indebtedness or liability of Customer, whether now existing or hereafter arising, and the Company shall not, by entering into the Agreement, assume or become liable for any of such obligations, indebtedness or liabilities.

7.04 Company Obligation.

A. Background Checks. Contractor will conduct, at Contractor's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students in the performance of this Contract.

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An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

Contractor will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at [564@milwaukee.k12.wi.us](mailto:564@milwaukee.k12.wi.us)), all completed background checks. Such records will be reviewed and Customer will notify Company of any individual(s) who, based on Customer's standards, are unfit and should not have contact with MPS students. All determinations made by Customer with regards to whether an individual is fit to provide services pursuant to this Contract are made in Customer's sole discretion.

The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract by Customer: failure to perform background checks as outlined in this Section 7; failure to submit background checks to Customer as outlined in this Section 7; allowing services to be provided by an individual who has not be subjected to a background check; and allowing services to be performed by an individual who has been determined to be unfit by Customer as outlined in this Section 7.

B. Insurance and Proof of Financial Responsibility. Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Company's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Company shall be submitted electronically to MPS via its third-party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of Customer and shall be recorded in the EXIGIS system, which records are incorporated into this Contract by reference. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that Customer shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Company's insurers providing the coverages required by Customer for the duration of this Contract.

To protect the Customer or any of its affiliates or Members from incurring liability for payment of any fees which are the legal obligation of the Company, the Company agrees to maintain and demonstrate the maintenance of all of the following protections:

- i) Insolvency insurance at an amount, which is sufficient, based on relevant industry standards, to cover obligations of providers for services provided to members.
- ii) Liability insurance at an amount, which is sufficient, based on relevant industry standards, to cover obligations of providers for services provided to members.
- iii) Contractual arrangements with health care providers affiliated with the Company prohibiting such providers from holding any Member liable for the payment of any fees, other than co-pays and deductibles as set forth in the Plan.
- iv) Other protections for its Members from liability as provided by applicable state or federal laws.

**ARTICLE VIII. AUTHORIZATION FOR COMMUNICATIONS**

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**8.01 Communications.** Customer shall not distribute descriptive materials of any type which reference the various components of the services provided by the Company without first submitting such proposed materials to the Company for review and obtaining prior written authorization from the Company. Customer further expressly acknowledges that any and all intellectual property rights of the Company, its successors and/or assigns, shall remain the sole and exclusive property of the Company, its successors and/or assigns consistent and in accordance with the prior approval obtained by the Company from the United States Patent and Trademark Office and any other available remedies or protection(s) available unto the Company.

**8.02 Irreparable Harm to the Company.** It is mutually agreed the breach of this Agreement by either party shall result in irreparable and continuing damage to the non-breaching party, for which money damages may not provide adequate relief. Therefore, the breach of this Agreement by either party may entitle the non-breaching party to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances, in addition to any other remedies available at law or in equity now or hereinafter in force.

**8.03 Non-Disclosure** Absent prior written consent of the person listed in Section 4 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

**ARTICLE IX. GENERAL PROVISIONS**

**9.01 Notice.** All notices and other communications required or permitted hereunder or in connection herewith, shall be deemed to have been duly given if they are in writing and delivered personally or sent by registered or certified mail, return receipt requested and postage prepaid. They shall be addressed as follows:

FEI Behavioral Health, Inc.  
Attn: Legal Department  
100 North Pennsylvania Avenue  
Wilkes-Barre PA 18701-3503  
Customer:  
Milwaukee Board of School Directors  
Office of Board of Governors  
5225 W. Vliet Street  
Milwaukee, WI 53208

Copied to:  
Milwaukee Board of School Directors  
ATTN: Director of Risk Management  
5225 W. Vliet Street, Room 160  
Milwaukee, WI 53208

Provided, however, that either party may change such party's address by written notice of such change in accordance with this Section to the other party.

**9.02 Governing Law.** The Agreement shall be governed by and construed under the laws of the State of Wisconsin, without giving effect to the principles of conflict of laws thereof. If the Agreement includes the sale of goods, the rights and obligations of the parties shall not be governed by the United Nations Convention on Contracts for the International Sales of Goods (CISG) and its application is excluded. Additionally, the parties agree that any legal action or proceeding brought by or against them under this agreement shall be exclusively brought in the courts in and for Milwaukee County, Wisconsin, or the Eastern District of Wisconsin, and that the parties submit to such jurisdiction and waive any and all objections which they may have with respect to the venue of the above courts.

**9.03 Integration/Severability** This Agreement and its exhibits and addenda, if any, RFP 1056 and Company's



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Response to RFP 1056, constitute the entire Agreement among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

Customer shall not be bound by any terms and conditions included in of the Company's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Agreement should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Agreement shall be interpreted as if such invalid Agreement or covenants were not contained herein.

**9.04 Modifications and Amendments.** No modification, alteration, change or waiver of any provision of the Agreement shall be valid unless it is in writing and signed by the party against whom it is sought to be enforced. No waiver at any time of any provision of the Agreement shall be deemed a waiver of any other provision of the Agreement at that time or a waiver of that or any other provision at any other time.

**9.05 Statement of Work/Fee Schedule Amendments.** Notwithstanding **Article IX, Section 9.04**, Customer may request the Company to make changes to its Statement of Work/Fee Schedule or to perform additional Services ("Modified Services"). Upon such request by Customer, the Company shall submit in writing a proposal for accomplishing the Modified Services and any associated increase or decrease in the Service Fees. If Customer elects to have the Company perform the Modified Services, the Company shall prepare an amended Statement of Work/Fee Schedule that describes and outlines the terms of the Modified Services to be performed. Such amended Statement of Work/Fee Schedule shall be mutually agreed upon, signed and dated by both parties. The Company shall not be obligated to perform the Modified Services prior to the execution of the amended Statement of Work/Fee Schedule.

**9.06 Assignment and Third-Party Beneficiaries.** Neither party may assign the Agreement without the expressed written consent of the other party, which consent shall not be unreasonably conditioned, withheld or delayed. Notwithstanding the foregoing, either party may assign the Agreement to its parent, a subsidiary or an affiliated company without the expressed written consent of the other party. Furthermore, either party may assign the Agreement to a third party solely in connection with a sale or other disposition of substantially all the assets of the assigning party's business without the expressed written consent of the other party. The Agreement does not, nor is it intended to, create any rights, benefits or interests in any third party, person or organization.

**9.07 Captions and Headings.** Captions and headings contained herein are solely for convenience of reference and shall not constitute a part of, or affect the interpretation or construction of, the Agreement.

**9.08 Waiver and Severability.** The waiver by either party of any default or breach of the Agreement shall not constitute a waiver of any other or subsequent default or breach. If any provision of the Agreement shall be deemed partially or wholly unenforceable, such unenforceability shall not affect the remaining provisions hereof and such affected provision shall be enforced to the fullest extent permitted by law.

**9.09 Attorney's Fees, Costs and Expenses.** If any action at law or in equity is necessary to enforce or interpret the terms of the Agreement, each party shall bear its own attorneys' fees, costs and expenses incurred in maintaining such action in addition to any other relief that may be deemed proper.

**9.10 Counterparts and Facsimile Signatures or PDF Signatures.** The Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Customer and the Company agree that transmission to each other of the Agreement with the transmitting party's facsimile signature or portable document format ("PDF") signature shall suffice to bind the party signing and transmitting same to the Agreement in the same manner as if the Agreement with an original signature had been delivered.

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**9.11 Independent Contractor Status.** Company agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Company has exclusive control over work hours, location, and other details of such services, and MPS's sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Company has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Company specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against Customer on Company's behalf, Company will request such agency or court to dismiss such matter. Customer shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to Customer employees, including any insurance, or pension plans.

Company further agrees that Customer is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of Customer from time-to-time and further agree to indemnify and hold harmless Customer and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

**9.12 Solicitation of Employees.** Customer and Company agree that during the term of the Agreement and for a period of twenty-four (24) months commencing on the date that such term expires or is terminated, Customer or Company shall not for any reason, either directly or indirectly, on either Customer's or Company's own behalf or in the service or on behalf of others, solicit, recruit or attempt to persuade any person to terminate such person's employment or consulting arrangement with either Customer or Company, or an affiliated company, whether or not such person is a full-time employee or whether or not such employment is pursuant to a written agreement or is at-will. However, employees who apply or seek employment with Company or Customer through their own methods, shall not be deemed a hire pursuant to this section.

Company shall not hire, retain or use for compensation any member, officer, or employee of Customer to perform services under this Contract, or any other person who, to the knowledge of Company, has a conflict of interest.

Company hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."

No person may enter into this Contract for services that the Customer's employee would otherwise perform as an employee.

**9.13 Survival.** The provisions of **Articles III, IV, V, VI, VII, VIII and IX** shall survive the expiration or sooner termination of the term of the Agreement.

**9.14 Order of Priority.** In the event of a conflict among the documents constituting this Contract, the order of priority to resolve the conflict shall be: 1) this Agreement; 2) RFP 1056 (including all exhibits and addenda); and 3) Contractor's Response to RFP 1056.

**9.15 Force Majeure.** The Company shall not be considered in default of the performance of its obligations under the Agreement to the extent that performance of its obligations is prevented or delayed by any cause beyond its reasonable control, including, but not limited to, acts of God, acts or omissions of governmental authorities, strikes, lockouts or other industrial disturbances, acts of public enemies, wars, blockades, riots, civil disturbances, epidemics, floods, hurricanes, tornadoes and any other similar acts, events or omissions.

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Customer will not be liable to pay Company for any work that the Company is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond Customer's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

**9.16 Advertising and Public Announcement.** Company shall not use the Customer's Logo in its literature, advertisement, or issue a press release about the subject of this Contract without prior written notice to and written approval of Customer's Executive Director of Communications & Outreach.

**9.17 Subcontracting.** The Company may in its sole discretion, from time to time, outsource services when such outsourcing is deemed to enhance the quality of the service provided.

**9.18 ERISA Disclaimer.** The parties acknowledge and agree that the Company will provide services to Customer under the Agreement. In providing such service, the parties agree that the Company will not exercise any discretionary authority over the management or disposition of assets of any welfare benefit plan (as such term is defined in the Employee Retirement Income Security Act of 1974 ("ERISA")). The Company's duties will be limited to providing certain contractually agreed upon services as herein set forth. Therefore, the parties agree that the Company is not a fiduciary (as such term is defined by ERISA Section 3(21)) with regard to Customer's Health Benefits or any Health and Welfare Benefit Plan. The Company will provide services by using its employees who are unfamiliar with and have no responsibility to determine or verify the coverage requirements of any specific benefit plan. In the event that knowledge of the Company shall be a prerequisite to imposing a duty upon or to determine the liability of the Company under the Agreement or under any statute regulating the conduct of the Company, the Company will not be deemed to have participated in any act or omission of any fiduciary (as such term is defined under ERISA) with regard to the coverage requirements of any welfare benefit plan as a result of performing its contractually agreed upon duties hereunder.

**9.19 Privacy Protection Standard.** With regard to private health information and other personal information, the parties shall comply, to the extent applicable, with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH") and any all applicable laws and regulations including the European Commission Data Protection Directive (95/46/EC), and the European Commission Data Protection in the Electronic Communications Sector Directive (2002/58/EC). The parties shall adhere to adequate safeguards required for the international transfers of personal data outside of the European Economic Area. The customer hereby agrees that (i) the Company and its subcontractors will transfer data outside of European Union in accordance with standards set forth by the European Union laws, the EU model clauses and/or the EU-US Privacy Shield framework for transatlantic data transmission as adopted; (ii) the Company is authorized to process and transfer data between its offices constituting the Company's Group of Companies, and between any sub-contractor(s), partners and affiliates engaged by the Company to perform part or all of the Services thereby allowing global access to the data on a 'need-to-know' basis in order to perform Services under the Agreement in the countries and territories specified by Customer; and (iii) the Company shall not disclose to anyone private information of data subjects as defined in HIPAA other than in the aggregate reports or in de-identified form without the written consent of data subject unless otherwise required or permitted by law.

**9.20 Anti-Corruption Compliance.** When international services are contemplated by the Agreement, the parties shall conduct themselves in an ethical, lawful, businesslike and professional manner in performance of the Agreement and shall comply with all applicable laws, regulations and directives that may apply to them. Each party shall reasonably assist the other party to assure such compliance at all times during the term of the Agreement. Without limiting the foregoing and for avoidance of doubt, Customer shall obey all applicable laws or regulations in the relevant jurisdiction and shall also obey the U.S. Foreign Corrupt Practices Act ("FCPA") (15 USC §§ 78dd-1, et seq.) and any similar anti-bribery provisions or regulations including the UK Bribery Act 2010.

**9.21 Trade Sanctions and Export Control.** When international services are contemplated by the Agreement, the parties agree not to use or otherwise export or re-export anything exchanged or transferred between them pursuant to the Agreement except as authorized by laws of the United States. In particular, but without limitation, items or services exchanged may not be exported or re-exported (a) into any U.S. sanctioned countries or (b) to anyone on

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the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. If the Agreement involves provision of Services outside of the United States, the parties shall comply with all applicable laws (e.g. United Kingdom, Canadian, European Union trade sanctions and export control laws and regulations).

**9.22 Record Storage and Delivery.** Upon termination of the Agreement and to the extent that such records exist, the Company, at the request of Customer, shall compile, collect and deliver to Customer all Customer records subject to the Agreement as soon as is practicable after such termination. Customer agrees to accept delivery upon receipt of such Customer records and pay the Company any and all reasonable and customary storage, shipping and handling fees and expenses upon receipt of such record delivery and invoicing. Customer understands that any federal and/or state law, rule, regulation or policy requiring the safekeeping of records for a prescribed period of time, after termination of the Agreement, is the sole responsibility of Customer and not an obligation of the Company.

**9.23 Public Records.** Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Company acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Company must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

**9.24 Right to Audit.** Customer reserves the right to audit, including but not limited to a claims audit, either directly or through its authorized agent(s), the Company's compliance with the terms of the Agreement. Customer further reserves the right, either directly or through its authorized agent(s), to conduct an audit or other appropriate review to assess the quality of any services performed by the Company or its affiliated health care providers upon reasonable advance notice to the Company. Upon providing appropriate assurances as to confidentiality and proper use of medical information, the Company agrees to provide Customer or its authorized agent(s) with the medical records maintained by the Company as well as any data needed to perform audits or other reviews. Any audits will be completed with no additional cost to Customer for the services provided relative to the audit.

**9.25 Member Complaints.** The Company agrees to act promptly in response to complaints received from Customer's Members. The Company will maintain electronic and written records of all complaints. The records will include, but not be limited to, the date and nature of the complaint filed and the date and manner by which the Company responded. The Company shall have a grievance and appeal procedures for addressing complaints and shall make such process available when addressing complaints. Customer shall have the right to inspect such written records, including transcripts of member telephone calls, during normal business hours by providing advance written notice to the Company.

**9.26 Compliance.** The Company must be prepared to assist Customer with all state and federal compliance issues, including negotiating, in good faith, appropriate Business Associate and similar "chain-of-trust" agreements and contractual provisions ("Agreements") in order to comply with the HHS final health care privacy and security regulations and, if necessary, any applicable state law. These Agreements may include (i) addenda to the vendor contract to provide the required Business Associate contractual provisions under the HHS privacy and security regulations and (ii) similar Business Associate agreements with any subcontractors (as approved by Customer) of the Company and other service vendors to Customer and Customer's health plans, as necessary.

Company must demonstrate their capability and plan for coming into timely compliance with all federal regulations governing employer-sponsored health plans that take effect during the contractual period, including:

- Insolvency insurance at an amount, which is sufficient, based on relevant industry standards, to cover obligations of providers for services provided to members.
- US Department of Labor (DOL) final regulations on claims [and appeals] procedures;
- US Department of Health and Human Services (HHS) final regulations on electronic health data transaction and coding standards; and
- HHS final regulations on health care data privacy and security.

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- Patient Protection and Affordable Care Act (PPACA)

**9.27 Non-Discrimination.** In the performance of work under this Agreement, Company shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Company is required to include a similar provision in all subcontracts to this Agreement.

If Customer determines Company has violated this non-discrimination policy, Customer may terminate this Contract without liability for undelivered services or materials. Customer may also deem the Company ineligible to participate in future contracts with Customer.

**9.28 Contract Compliance Requirement.** The HUB requirement on this Contract is 0%. The student engagement requirement of this Agreement is 300 hours. The Career Education requirement for this Agreement is 10 hours per 12-month term. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

*[Remainder of page intentionally left blank]*

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties hereto have each duly executed the Agreement, in duplicate if necessary, as of the effective date written below.

**FEI BEHAVIORAL HEALTH, INC.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Keith Wasley  
President and Chief Executive Officer

**MILWAUKEE BOARD OF SCHOOL DIRECTORS**

April 1, 2022  
Effective Date

\_\_\_\_\_  
Authorized Customer Signature

Name: Janine M. Adamczyk  
Director of Procurement & Risk Management

5225 W. Vliet Street  
Milwaukee, WI 53208  
414-475-8609  
adamczj@milwaukee.k12.wi.us

Date: \_\_\_\_\_

April 1, 2022  
Effective Date

\_\_\_\_\_  
Authorized Customer Signature

Name: Keith P. Posley, Ed.D.  
Superintendent of Schools

Date: \_\_\_\_\_

April 1, 2022  
Effective Date

\_\_\_\_\_  
Authorized Customer Signature

Name: Robert E. Peterson  
President, Milwaukee Board of School Directors

Date: \_\_\_\_\_

## EXHIBIT A

### STATEMENT OF WORK

### MILWAUKEE PUBLIC SCHOOLS

### EMPLOYEE ASSISTANCE PROGRAM/WORK-LIFE SERVICES

#### SERVICES DESCRIPTION

I. Employee Assistance Program (EAP)	Components
<b>A. EAP Assessment &amp; Consultation.</b> 24-Hour, toll-free telephonic access to live counselors. (Interpreter and TDD services.)	Included.
<b>B. Short-Term, Solution-Focused Counseling.</b> In-person sessions at offices of local counselors within 20 minutes or 20 miles from the work site or home. Tele-Behavioral Health on appointment basis also available.	Up to six (6) sessions per incident* per eligible individual per year.
II. Work-Life Services	Components
<b>A. Work-Life Consultation.</b> Telephonic access to Work-Life Specialists (e.g., <b>Child Care, Adoption, Educational Resource, Elder Care, Dependent Care, etc.</b> ).	Included.
<b>B. Personalized Searches &amp; Referrals.</b> Work-Life Specialists work with individuals to provide verified referrals to resources/facilities.	Included.
<b>C. Family and Individual Information Packets.</b>	Included.
<b>D. Personal Assistant Services.</b>	Included.
<b>E. Legal Consultation.</b> One telephonic and/or 30-minute in-person consultation with an attorney per legal matter. Beyond the initial consultation, individuals will receive a 25% discount from the attorney's usual and customary fees.	Included.
<b>F. Financial Consultation.</b> One telephonic consultation per financial matter.	Included.
<b>G. Identity Theft.</b> Online information education materials and Consultation with identity theft experts.	Resources/Support included as part of E and F.
<b>H. Life Coaching</b>	Included.
<b>I. Medical Advocacy</b>	Included.
<b>J. Shopping Discounts Platform.</b>	Included within III. B (below).
III. Education & Promotion	Components
<b>A. Program Orientation.</b> Informational presentations for employees or managers about EAP and Work-Life services.	Included upon request.  Program orientation also included via the Member Portal and App.
<b>B. Member Portal and App</b>	Included.
<b>C. Online Skill Training.</b>	Included with B (above).
<b>D. Monthly Emails.</b> Brief topical emails sent to designated program contact(s).	Included.

**Customer Services Agreement**

<p><b>E. Marketing Materials.</b></p>	<p>Necessary brochures will be provided annually via an electronic communication, along with up to 3,000 printed documents. Initial implementation posters will be provided as electronic communication along with up to 400 printed posters. Monthly communications and posters will be provided via electronic communication. <b>MPS</b> may request the necessary amount annually thereafter, with same quantity limits. There may an added charge for materials needing language translation.</p>
<p><b>F. Monthly Wellbeing Webinars.</b> For employees on a variety of EAP and work-life topics.</p>	<p>Included.</p>
<p><b>IV. Organizational Services</b></p>	<p><b>Components</b></p>
<p><b>A. Account Management.</b> Your Account Manager works with <b>MPS</b> to help obtain maximum value of FEI's services.</p>	<p>Included.</p>
<p><b>B. Manager Consultation</b> on employee and workplace issues.</p>	<p>Included.</p>
<p><b>C. Case Management for Job Performance Referrals</b></p>	<p>Included.</p>
<p><b>D. Activity Reports</b> including statistics and analysis of data.</p>	<p>Included.</p>
<p><b>E. Critical Incident Response (CIR).</b></p>	<p>CIR events are included. A CIR event is assumed to be an event not to exceed four (4) hours. If the CIR event were to exceed four (4) hours, additional hours can be provided on a fee-for-service basis.</p>
<p><b>F. Training.</b> Educational programs on workplace and family topics such as Communicating Effectively, Managing Work-Life Balance, Coping with Worries About Money, etc.</p>	<p>Included and provided after request for FEI standard EAP trainings.</p>

\* A "Per Incident" EAP benefit is defined as up to six (6) authorized short-term/solution focused EAP counseling sessions per episode provided by a professional EAP generalist to assist employees and dependents to address life problems. Each episode represents a distinct and unique presenting problem as determined by the EAP Service Center Counselor ("Counselor") or delegate with a separation of at least thirty (30) days from the end of the last authorized EAP session. An incident model is not a substitute for mental health treatment provided by a behavioral healthcare provider. If the presenting problem or precipitating incident is exceptionally serious, the Counselor may refer the employee or his/her dependent to their health insurer's mental health benefit for a specialist in a special field of expertise. The thirty (30) day separation does not apply to sworn police and fire employees, official search and rescue workers, safety dispatchers, and their respective dependents.



***FEE SCHEDULE/SERVICE FEES***  
***MILWAUKEE PUBLIC SCHOOLS***  
***EMPLOYEE ASSISTANCE PROGRAM/WORK-LIFE SERVICES***

<b>1. Capitated Terms:</b>	\$1.08 per employee per month.
<b>2. Employee Count:</b>	At contract initiation, 11,130 employees. Updated employee census to be provided quarterly as defined in #3 below.
<b>3. Benefit Eligible Participants:</b>	Full-time and part-time U.S. and Canada employees and dependents. Dependent to include; spouse, dependent children, and domestic partner.  The Client will provide an eligible employee count (the “Eligible Employees”) as of the date hereof. Such Eligible Employee count to be updated quarterly.
<b>4. Contract Period:</b>	Pursuant to Section 4.01 in the Agreement
<b>5. Capitated Contract Billing Terms:</b>	Pursuant to Section 4.02 in the Agreement
<b>6. Additional Services:</b>	Fee-for-service (see below)

<b>ADDITIONAL SERVICES: FEE-FOR-SERVICE</b>	
<b>A. Critical Incident Response.**</b>	Additional hours beyond what is included per event \$250.00 hour.
<b>B. Additional Marketing Materials (Hardcopy).</b> FEI can arrange to print and ship hardcopies of materials.	Cost to be determined on per case basis (paid by <b>MPS</b> with prior written approval by <b>MPS</b> ).
<b>C. Customized Training.*</b> A consultancy-based approach driven by initial needs assessment to provide targeted, solution-oriented programs.	Available for an additional fee based on client need.
<b>D. Substance Abuse Professional Referral (Mandatory Positive Drug Screen Referral for DOT and Non-DOT Employees).</b>	\$650.00 per case
<b>E. Benefit/Health Fairs.*</b>	\$125.00 per staffing hour plus travel charge. Four-week notice is required.

\* Cancellations: FEI requires a 5-business day notice for the cancellation of any requested on-site or webinar service, such as seminars/education program, customized training and benefit/wellness fairs, etc. Should the Client cancel with less than the required notice, the client will be subject to payment of reasonable fees associated with the on-site or webinar service inclusive of program development fees and travel expense and penalties.

\*\* EAP Critical Incident Response Service cancellation: Regardless of a cancellation notice of an EAP Critical Incident Response Service (on-site), once the Client company makes such a request and subsequently cancels the request, the Client will be charged a flat fee of \$300.00 plus travel fees (should such travel fees have been incurred) related to the Services requested. Should the Client schedule an EAP Critical Incident Response Service (on-site) and then postpone the Service to be rescheduled within 20 business days of the original request, the Client will be responsible for any incurred travel costs associated with any of the scheduled date(s).

Performance Guarantees reviewed annually and utilized in review of contract extensions.

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Performance Guarantees (based on annual results)	Target
Call Abandonment Rate	Less than 5%
Speed to Answer	Within 12 seconds
Hold Times	95% of calls answered within 30 seconds
Average Response Time to Plan Sponsor Inquiry	Within one business hour
Reporting	Reports delivered quarterly
Response time for Critical Incident Response (CIR) event	24 – 48 hours response after event