

Agreement No. _____

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND CONCERN: EAP

This Agreement is entered into this 1st day of January, 2019, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and CONCERN: EAP, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of administering the County's Employee Assistance Program (EAP) for County employees and dependents.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Attachment I—§ 504 Compliance
- Attachment IP – Intellectual Property

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed two hundred and fifty thousand \$250,000. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from January 1, 2019 through December 31, 2019.

5. Termination

This Agreement may be terminated by Contractor or by the Human Resources Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at

issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

(a) Comprehensive General Liability... \$1,000,000

(b) Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor’s equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Rocio Kiryczun, Director of Human Resources
Address: 455 County Center, 5th Floor, Redwood City, CA 94063
Telephone: 650-363-4132
Email: rkiryczun@smcgov.org

In the case of Contractor, to:

Name/Title: Ann Wagner, Account Manager
Address: 1503 Grant Road, Suite 120, Mountain View, CA 94040
Telephone: (650) 988-7421
Facsimile: (650) 965-2849
Email: ann_wagner@concern-eap.com

18. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: CONCERN: EAP

DocuSigned by:

DFC544DF4FBA4FD...
Contractor Signature

11/15/2018
Date

Cecile Currier
Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

COVERED SERVICES

BENEFIT SCHEDULE

Contractor shall provide the following Covered Services:

- A. EAP Assessment, referral to community resources and Medical Emergency Care, and short- term counseling. Contractor offers counseling services for a wide range of personal problems and immediate response for Crisis situations. Each Member and his or her Covered Dependents shall be limited to a maximum of **Five (5) Visits** for each problem per twelve-month period, beginning with the date of the case opening. Sheriff's Department employee and his or her Covered Dependent shall be limited to a maximum of **Ten (10) Visits** with a provider from an Emergency Services Trained Specialty Panel for each problem per twelve-month period, beginning with the date of the case opening. For the purpose of this provision, the word "problem" means a specific type of matter, situation or issue of concern to a Member for which the Member requests EAP services for purposes of obtaining assistance in arriving at a solution. If a Member is referred for unsatisfactory work performance by means of a Supervisor Referral, or if a Member or Covered Dependent is assessed as having a chemical dependency problem, the maximum number of visits shall be ten (10). Supervisor Referrals will require the standard Contractor process is followed, including the completion of a Supervisor Referral Form, customized for the County, for each case. Only cases that meet Contractor's supervisor referral criteria will be eligible for the extended counseling visits. Contractor provides counseling for "problem" issues including but not limited to:
 - (i) marital and family problems,
 - (ii) difficulty with relationships,
 - (iii) emotional distress,
 - (iv) job stress,
 - (v) communications or conflict issues,
 - (vi) substance abuse issues and
 - (vii) loss and death issues.

- B. Contractor provides a problem-focused form of individual or family outpatient counseling that
 - (i) seeks resolution of problems in living rather than basic character changes;
 - (ii) emphasizes the Member's skills, strengths and resources;
 - (iii) involves setting and maintaining realistic goals that are achievable in a one to five month period; and

- (iv) encourages the Member to practice behavior outside the counseling Visits to promote therapeutic goals.
- C. Contractor's services will provide Members with confidential EAP Assessment, Crisis Intervention, short-term counseling and referral to community resources. Contractor can also refer Members to individuals who provide parenting and childcare resources, adult care resources, legal consultations, and financial services.
- D. Upon reaching the maximum number of Visits, a Member may continue to receive services by Contractor Provider, but at the Member's expense. Upon each case opening, Contractor shall inform the Member of the number of Visits he or she is entitled to receive.
- E. Contractor Provider will also refer a Member to community resources for assistance for non-Covered Services. In the event of such referral, the Member shall be advised by Contractor and the Provider that the Member is responsible for payment of costs and fees for services provided.
- F. Contractor Provider shall also obtain from a Member a consent form prior to the release of any information concerning said Member, except as required by law. Provider shall explain such form to each Member.
- G. Upon request, Contractor shall provide per contract year, twenty four (24) hours of on-site educational seminars and forty (40) hours crisis response per year. Seminars are to be selected from a list of topics provided by Contractor. Cancellations of educational seminars within three business days (72 business hours) of their scheduled time shall be counted as used on-site hours, or subject to a late cancellation billing of Three Hundred Fifty Dollars (\$350), whichever applies. Additional on-site hours may be purchased by The Group at current pricing of \$350. Modest customization of existing seminar content developed for requesting departments will be charged at a flat fee per customized presentation of \$500. There will be no additional charges incurred for these customized departmental outreach services, such as reimbursement for travel or incidental expenses.
- H. Contractor shall conduct management orientation sessions for County's management and supervisory personnel and employee orientation sessions for the County's personnel at such times and locations as are mutually agreed upon by Contractor and the County.
- I. Upon request, Contractor shall consult with the County's Human Resources staff and individual supervisors and managers regarding potential or actual supervisory referrals and Employee performance issues.
- J. Contractor shall provide quarterly and annual reports. Such reports shall include statistics on number of Employees using Contractor, demographics, referral sources, services used and problem types.
- K. Contractor shall provide members with access to the Luma Digital Experience, a digital guide to customized care recommendations that include; an online assessment, triage to appropriate level of care based on risk, a personalized dashboard, client-counselor matching for face-to-face or video counseling, work/life referrals and resources, self-guided content, and digital therapeutics.
- L. **Definitions**
 - 1. **"Covered Dependent"** means the Subscriber's spouse or domestic partner, Subscriber's biological child, Subscriber's adopted child or step-child, or domestic partner's biological or adopted child. (Coverage for adopted children of a Subscriber or domestic partner begins on the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health

facility minor release report, a medical authorization form, or a relinquishment form, granting the Subscriber, or the Subscriber's spouse or domestic partner the right to control health care for the adoptive child, or absent a written document, on the date there exists evidence of the Subscriber's or Subscriber's spouse's or domestic partner's right to control the health care of the child placed for adoption.) Contractor shall not deny enrollment of a Subscriber's child or a subscriber's domestic partner children on any of the following grounds: (1) the child was born out of wedlock; (2) the child is not claimed as an exemption on the Subscriber's federal income tax return; or (3) the child does not reside with the Subscriber or within Contractor's service area. Dependent children are covered under the age of twenty-six (26). Dependent children who are incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition, and who are chiefly dependent upon the Subscriber for support and maintenance, are eligible for continuing membership in Contractor.

2. **"Covered Services"** means those services, which are provided by Contractor to Members and set forth in Attachment A, section A to this Agreement.
3. **"Crisis"** means a situation wherein a reasonable person determines there is an immediate need to assess for the possibility of a Medical Emergency Condition, Psychiatric Medical Emergency Condition, or to request services from Contractor relating to an Urgent situation.
4. **"Crisis Intervention"** means the process of responding to a request for immediate services to determine whether or not a Medical Emergency Condition, Psychiatric Medical Emergency Condition, or Urgent situation exists, and to otherwise assess the need for short-term counseling, referrals to community resources, and/or referrals to Medical Emergency Care.
5. **"Effective Date"** means January 1, 2019.
6. **"Employee"** means a regular employee working 20 hours per week (in any non-terminated status) of the County.
7. **"Employee Assistance Program (EAP) Assessment"** means the process of determining, based upon information provided by a Member, the need for either:
 - a. Short-term counseling;
 - b. Referral(s) to community resources; or
 - c. Referral(s) to Medical Emergency Care services or treatment.
8. **"Employee Assistance Program (EAP) Benefits"** means a systematic program to help employees resolve personal problems, such as family conflict, drug or alcohol abuse, stress, marital discord, and other personal problems, and to provide training, consultation, and other management services relating to the effective utilization of this benefit by employers and their employees.
9. **"Grievance"** means a written or oral expression of dissatisfaction regarding the Plan and/or provider, including quality of care concerns, and shall include a complaint, dispute, request for reconsideration or appeal made by a Member or the Member's representative. Where the plan is unable to distinguish between a grievance and an inquiry, it shall be considered a grievance. Grievances may be communicated to Contractor via telephone, FAX, e-mail, on-line through the Contractor website, or submission of a written grievance form.

10. **“Medical Emergency Care”** means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if a Medical Emergency Condition or active birthing labor exists and, if it does, the care, treatment, and surgery by a physician necessary to relieve or eliminate the Medical Emergency Condition, within the capability of the facility. This definition also includes additional screening, examination, and evaluation by a physician, or other personnel to the extent permitted by applicable law and within the scope of their licensure and clinical privileges, to determine if a Psychiatric Medical Emergency Condition exists, and the care and treatment necessary to relieve or eliminate the Psychiatric Medical Emergency Condition, within the capability of the facility.
11. **“Medical Emergency Condition”** means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:
 - a. Placing the patient’s health in serious jeopardy.
 - b. Serious impairment to bodily functions.
 - c. Serious dysfunction of any bodily organ or part.
12. **“Member”** means a person who is enrolled in Contractor and eligible to receive Covered Services.
13. **“Plan Provider”** means a person who has entered into a Plan Provider contract with Contractor to provide Covered Services to Members, and who is licensed in California as a psychologist, clinical social worker, or marriage and family therapist.
14. **“Prepayment Fees”** means the periodic Prepayment Fees set forth in Attachment B, which the County agrees to pay Contractor for Covered Services.
15. **“Psychiatric Medical Emergency Condition”** means a mental disorder that manifests itself by acute symptoms of sufficient severity that it renders the patient as being either of the following:
 - a. An immediate danger to himself or herself or to others.
 - b. Immediately unable to provide for, or utilize, food, shelter, or clothing, due to the mental disorder.
16. **“Serious Personal Problem or Condition”** means circumstances wherein a Member believes he or she requires Covered Services to resolve a Crisis, important or complex matter.
17. **“Subscriber”** means an Employee of the County who: (a) meets all applicable eligibility requirements as established by the County; and (b) on whose behalf the County has paid, and Contractor has received, any applicable Prepayment Fees in accordance with section 3 of the Agreement.
18. **“Urgent”** means a situation in which it is determined that no Medical Emergency Condition or Psychiatric Medical Emergency Condition exists, however, the Member is in need of immediate telephone support and/or a face-to-face appointment with a Contractor Provider within 24-48 hours to resolve a Serious Personal Problem or

Condition.

19. **“Visit”** means a session between a Contractor Provider and Member of approximately one hour in length wherein the Member, individually or with others, discusses problems with a Contractor Provider in order to resolve the problem. The Member’s problems may consist of family conflict, drug or alcohol abuse, stress, marital discord and other personal problems.

M. **Exclusions:** The following services are specifically excluded from Covered Services provided under this Agreement. All denials, modifications, and delays of requested services are subject to Contractor’s grievance review process.

- a. Services not listed as Covered Services.
- b. Medical Emergency Care.
- c. Acupuncture.
- d. Aversion therapy.
- e. Biofeedback and hypnotherapy.
- f. Services required by court order, or as a condition of parole or probation, not, however, to the exclusion of services to which the Member would otherwise be entitled.
- g. Services for remedial education including evaluation or medical treatment of learning disabilities or minimal brain dysfunction; developmental and learning disorders; behavioral training; or cognitive rehabilitation.
- h. Medical treatment or diagnostic testing related to learning disabilities, developmental delays, or educational testing or training.
- i. Experimental or investigational procedures.
- j. Services for the medical treatment of mental retardation or defects and deficiencies of functional nervous disorders, including chronic mental illness.
- k. Services received from a non-Plan Provider, unless pre-approved by The Plan.
- l. Psychological testing. (psychological testing is not necessary to determine an appropriate referral to a Plan Provider to receive Covered Services, or alternatively, to determine appropriate referrals to community resources for non-covered services)
- m. Sleep therapy.
- n. Examinations and diagnostic services in connection with the following: obtaining or continuing employment; obtaining or maintaining any license issued by a municipality, state or federal government; securing insurance

coverage; foreign travel or school admissions.

- o. Medical treatment of congenital and/or organic disorders associated with permanent brain dysfunction, including without limitation, organic brain disease, Alzheimer's disease and autism.
- p. Medical treatment for speech and hearing impairments. (A speech or hearing impaired Member is entitled to Covered Services. Treatment for speech and hearing impairment is not necessary to determine an appropriate referral to a Plan Provider to receive Covered Services, or alternatively, to determine appropriate referral to community resources for non-covered services.)
- q. IQ testing. (IQ testing is not necessary to determine an appropriate referral to a Plan Provider to receive Covered Services, or alternatively, to determine appropriate referral to community resources for non-covered services.)
- r. Medical treatment for chronic pain.
- s. Services involving medication management or medication consultation with a psychiatrist.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

B.1 Compensation. County shall pay \$2.71 per employee per month. Additionally, County shall pay \$2,500 per case for each Sheriff's Office case opened with the Emergency Services Trained Specialty Panel.

B.2 Training Costs. Additional onsite-hours above the 24 hours included in this contract may be purchased at the price of \$350 per hour. Modest customization of existing seminar content developed for requesting departments will be charged at a flat fee per customized presentation of \$500. There will be no additional charges incurred for these customized departmental outreach services, such as reimbursement for travel or incidental expenses.

B.3 Invoices. Contractor will invoice the County monthly, based on an accurate headcount of all Employees covered by Contractor, to be provided by the County at the beginning of the month. All amounts due under the Agreement shall be paid to Contractor within 30 days of invoice date. Payments shall be remitted to:

CONCERN: EAP
Department 33079
P.O. Box 39000
San Francisco, CA 94139-3079

Tax I.D. number for Contractor is 77-0528349.

**Attachment IP
Intellectual Property Rights**

1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this **ATTACHMENT IP** to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person: Cecile Currier

Name of Contractor(s): CONCERN: Employee Assistance Program

Street Address or P.O. Box: 1503 Grant Road, Suite 120

City, State, Zip Code: Mountain View, CA 94040

I certify that the above information is complete and correct to the best of my knowledge

Signature:

DocuSigned by:
Cecile Currier
DFC544DF1FBA4FD...

Title of Authorized Official: CEO

Date: 11/15/2018

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."