


COUNTY OF MONTEREY AGREEMENT FOR SERVICES
(MORE THAN \$100,000)

This Agreement for Services (hereinafter “Agreement”) is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter, “the County”), on behalf of Natividad Medical Center (“NMC”), a general acute care teaching hospital wholly owned and operated by the County, and BetterUp, Inc. (hereinafter “CONTRACTOR”).

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED.** NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A and Exhibit B** in conformity with the terms of the Agreement. The services are generally described as follows: Annual subscriptions for unlimited coaching sessions and full access to BetterUp Platform features.

2. **PAYMENTS BY NMC.** NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of **\$ 312,000**.

3. **TERM OF AGREEMENT.**

3.1. The term of this Agreement is from August 1, 2022 through July 31, 2023 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.

3.2. Any additional one-year subscriptions commenced after August 1, 2023 will extend the term of this Agreement only for the purpose of fulfilling CONTRACTOR’s obligations under the additional one-year subscriptions.

3.3. NMC reserves the right to cancel this Agreement in accordance to the rights bestowed upon it in Exhibit B.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A:** Order Form
- Exhibit B:** BetterUp Enterprise Agreement
- Exhibit C:** SLA and Support

5. PERFORMANCE STANDARDS.

- 5.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
- 5.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. PAYMENT CONDITIONS.

- 6.1. Prices and payment terms shall be governed by Exhibit A and Exhibit B.
- 6.2. Negotiations for rate changes shall be governed by Exhibit B.
- 6.3. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement, and then only in accordance with any applicable County policies.
- 6.4. Invoice amounts shall be billed directly to the ordering department.
- 6.5. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. NMC shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7. TERMINATION.

- 7.1. The term of this Agreement shall be governed by Exhibit B
- 7.2. NMC may cancel and terminate this Agreement in accordance with Exhibit B.
- 7.3 NMC's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and

continued at a level sufficient to allow for NMC's purchase of the indicated quantity of services, then NMC may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8. INDEMNIFICATION.

8.1 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any and all claims, liability and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors. The extent of liability deriving from this Agreement shall be governed by Exhibit B.

9. INSURANCE.

9.1 Evidence of Coverage:

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

9.3 Insurance Coverage Requirements: Without limiting Contractor's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed

Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

- Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, If CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

- Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

- Exemption/Modification (Justification attached; subject to approval).

9.4 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement from for

Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

10.1 Confidentiality. Confidentiality shall be governed by the terms of Exhibit B.

10.2 NMC Records. When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.

10.3 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.

10.4 Access to and Audit of Records. Audit rights shall be governed by the terms of Exhibit B.

10.5 Royalties and Inventions. NMC's rights to access, preproduct, and use the services shall be governed by Exhibit B.

11. **NON-DISCRIMINATION**. During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the

performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.

13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below

NATIVIDAD MEDICAL CENTER:

Natividad Medical Center
Attn: Contracts Division
Natividad Medical Center
1441 Constitution Blvd, Bldg 860
Salinas, CA. 93906
FAX: 831-757-2592

CONTRACTOR:

Name: BetterUp, Inc.

Attn: Legal Department

Address: 1200 Folsom Street

City, State, Zip: San Francisco CA 94103

Email: contracts@betterup.co

15. MISCELLANEOUS PROVISIONS.

- 15.1 Conflict of Interest: CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.2 Amendment: This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 15.3 Waiver: Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.4 Contractor: The term “Contractor” as used in this Agreement includes Contractor’s officers, agents, and employees acting on Contractor’s behalf in the performance of this Agreement.
- 15.5 Disputes: CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.6 Assignment and Subcontracting: Assignment shall be governed by the terms of Exhibit B.
- 15.7 Successors and Assigns: This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.8 Compliance with Applicable Law: The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.9 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence: Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law: This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement: This Agreement is non-exclusive and each of NMC and CONTRACTOR expressly reserves the right to contract with other entities for the same or similar services.

- 15.13 Construction of Agreement: NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Integration: This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 15.16 Interpretation of Conflicting Provisions: In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of Exhibit B shall prevail and control.

COUNTY OF MONTEREY, ON BEHALF OF NATIVIDAD MEDICAL CENTER

By: _____
Charles R. Harris, CEO

Date: _____

APPROVED AS TO LEGAL PROVISIONS

By: *Stacy L. Saelle*
Monterey County Deputy County Counsel

Date: 7/14/2022

APPROVED AS TO FISCAL PROVISIONS

By: *Gary Giboney*
Monterey County Deputy Auditor/Controller

Date: 7/14/2022

CONTRACTOR

BetterUp, Inc.

Contractor's Business Name*** (see instructions)

DocuSigned by:
Vinh Le
By: 04A116AFFD91453
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Vinh Le CFO
Name and Title

Date: 7/13/2022



*****Instructions:**

If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required). If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required). If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).

EXHIBIT A – Order Form

To Agreement by and between

The COUNTY OF MONTEREY hereinafter referred to as “COUNTY”

and

BetterUP, Inc., hereinafter referred to as “CONTRACTOR”

This Order Form is subject to the terms and conditions contained in the County of Monterey Agreement effective August 1, 2022 by and between County of Monterey (“County”) and BetterUp, Inc. (“CONTRACTOR”) (the “Agreement”), which is incorporated into this Order Form by this reference. In the event of any conflict between the Agreement and this Order Form, the Agreement shall prevail.

Description and Terms					
Services	BetterUp offers leadership, development, and performance coaching through a variety of behavioral techniques and methods on the BetterUp Platform. This consists of one-on-one videoconferencing with BetterUp Coaches on the BetterUp Platform and may also include other services such as access to on-demand coaching, extended network, assessment and performance tools, BetterUp Analytics, and other learning content. BetterUp provides the County with the right to access BetterUp Platform and to enable its Users with BetterUp Services during the Subscription Term.				
Subscription	The subscription provides the County with the rights to provide access during the Subscription Term with the following User limits:				
	Item	Covered Lives	Per Employee Per Engaged Month Fee	Minimum Annual Commitment	Estimated Annual Cost (based on 25% Utilization)
	BetterUp Care (Utilization)	1300	\$400	\$104,000	\$260,000
	The County may provide access to BetterUp Care for any number of employees (each an “Eligible”). Once an Eligible creates and account on the BetterUp Platform they are considered a BetterUp Care User. Each BetterUp Care User may schedule and receive one-to-one coaching sessions (typically 30 minutes), schedule and receive group coaching sessions and access to all BetterUp Platform features. These Users have access to specialist coaching and behavioral health coaching. <u>These Users may not be swapped.</u>				
Subscription Term	Start Date: August 1, 2022 End Date: July 31, 2023				
Total Subscription Fee to Not Exceed	U.S. \$312,000.00 for one (1) year				
Additional Terms					
<u>Coaching Sessions and Users:</u> Purchases of BetterUp Services are committed as of the Order Form Effective Date, regardless of whether accounts are activated by Users or Coaching time is used. Coaching sessions/time cannot be banked or rolled over to renewals. County shall not be entitled to receive any refund or credit if the total Concurrent Users is fewer than specified herein.					

Eligibility List (Utilization). The County will provide a list of Eligibles prior to the BetterUp Care Start Date (“Eligibility List”). The County may add Eligibles to the Eligibility List each month by providing an updated list.

Utilization Fees (Utilization). The County will be charged the Per Employee Per Engaged Month fee for each Engaged BetterUp Care User each month. A BetterUp Care User is considered “Engaged” if they log into the BetterUp Platform and interact with any BetterUp Platform features or coaching session during a billable month. On each anniversary of the Start Date, or End Date if it occurs earlier, if the aggregate Per Employee Per Engaged Month fees payable during the contract year are less than the Minimum Annual Commitment, County will be invoiced for the difference.

Flat Fee Cross-Over: At any point during the Subscription Term, County will have the option to switch to a Flat Fee price model for the remainder of the Subscription Term by providing notice of such intent in writing (email shall suffice). The Flat Fee amount to be invoiced on each anniversary of the Subscription Start Date that occurs after the election to crossover to a Flat Fee price model will be based on the amount Covered Lives at the time of invoicing multiplied by the Price per Employee Per Month (PERM) fee of \$20 USD multiplied by twelve (“Current Flat Fee Amount”). Should County choose to cross over to this Flat Fee pricing model in the middle of a Subscription Term, County will be invoiced for the difference between the Flat Fee Amount and any fees invoiced as of that date during that 12 month term. Under the Flat Fee pricing model, Company may elect to exceed the quantity of BetterUp Care Lives Covered purchased. If the Eligibility List exceeds the Lives Covered by more than 5% Company will be charged a Platform Fee for each additional Eligible equal to the PEPM fee of \$20 USD multiplied by twelve. BetterUp will invoice these additional fees on a quarterly basis.

Payment: CONTRACTOR shall submit the first annual invoice to County within ten (10) days after the effective date of this Agreement. Thereafter, CONTRACTOR shall submit invoices to County no later than (10) days after the effective date of any new Order Form. Invoices shall be emailed to Natividad’s Accounts Payable Department at AccountsPayableEmail@natividad.com. Natividad’s Accounts Payable Department shall certify the invoices and promptly submit them to the County Auditor-Controller for payment. The Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

County agrees and acknowledges that it has not relied on the future availability of any feature, functionality, or product.

EXHIBIT B:

BETTERUP ENTERPRISE AGREEMENT

This BetterUp Enterprise Agreement (this “**Agreement**”) is made and entered into as of August 1, 2022 (the “**Effective Date**”) by and between the County of Monterey, a political subdivision of the State of California (hereinafter “**County**”) and BetterUp, Inc. (“**BetterUp**”) (each a “**Party**” and collectively “**Parties**”). In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. BetterUp Services. BetterUp offers leadership, development and performance coaching through a variety of behavioral techniques and methods on its mobile application and online platform (“**BetterUp Platform**”). Pursuant to the applicable Order (defined below), this may consist of one-on-one videoconferencing with BetterUp coaches on the BetterUp Platform and may also include other services such as access to on-demand coaching, extended network, assessment and performance tools, BetterUp Analytics (defined in Section 7), and other learning content (“**BetterUp Services**”). BetterUp provides the County with the right to access BetterUp Platform and to enable its employees (each, a “**User**” and collectively, “**Users**”) with BetterUp Services for specified periods (each, a “**Subscription Term**”, together). BetterUp will provide the BetterUp Services pursuant to mutually agreed upon orders (each, an “**Order**”). Each Order will include a description of the Subscription, the applicable Subscription Term, and the associated fees and payment terms for the BetterUp Services. Each Order will be deemed incorporated into this Agreement by reference and made an integral part of this Agreement when each such Order has been signed by both Parties. The first Order will be denoted as Exhibit A-1, and subsequent Orders will be consecutively numbered in increasing order. All capitalized but undefined terms herein shall have the meaning set forth in the applicable Order. To the extent that a conflict arises between the terms and conditions of an Order and the terms and conditions of this Agreement, the terms of this Agreement will govern.

2. Subscriptions. Unless otherwise provided in the applicable Order, purchased BetterUp Services and access to the BetterUp Platform are purchased as subscriptions for the Subscription Term stated in the applicable Order. County agrees that its purchases are not contingent on the delivery of any future functionality, feature or products, or dependent on any oral or written public comments made by BetterUp regarding future functionality, feature or products.

3. User Limits. BetterUp Services and BetterUp Platform are subject to User limits specified in the Order, and County is not allowed to exceed the User limits. In the event County exceeds a contractual User limit, County will inform BetterUp in writing, and execute a new Order for the additional Users for applicable BetterUp Services or BetterUp Platform promptly upon BetterUp’s request, and pay any invoice associated with the new Order for excess Users in accordance with the “Invoicing and Payment” section below.

4. Support. BetterUp will provide the County with reasonable technical support regarding use of the BetterUp Services. In addition, BetterUp may provide implementation and/or other professional services upon County’s request and mutually agreed upon terms. BetterUp is not responsible for issues resulting from misuse, non-BetterUp systems or equipment, Third- Party tools, general internet problems, or force majeure events.

5. License and Restrictions. Subject to the terms of this Agreement, BetterUp grants to County a limited, non-exclusive, non-transferable right to access the BetterUp Platform solely for County’s internal business purposes and not for resale or further distribution. County’s right to use the BetterUp Platform is limited by all terms and conditions herein. Except for this license granted to County, BetterUp and its licensors retain all right, title and interest in and to the BetterUp Platform and BetterUp Services, including all related intellectual property rights. The BetterUp Platform is protected by applicable intellectual property laws, including U.S. copyright law and international treaties. County is responsible for establishing its own policies (if any) with Users as to what information is appropriate to share as part of the BetterUp Services. County will not (and will not allow anyone else to) (a) rent, lease, copy, disclose, provide access to or sublicense the BetterUp Platform, (b) use the BetterUp Platform for the benefit of, or to provide any service to, a third party, or (c) publicly disseminate information regarding the performance of the BetterUp Platform without BetterUp’s prior written consent.

6. User Interactions. User interactions with BetterUp in connection with the BetterUp Services are subject to the BetterUp Terms of Service (found at <https://www.betterup.co/en-us/terms/>) and Privacy Policy (found at

<https://www.betterup.co/en-us/privacy-policy/>) (collectively “**BetterUp User Terms**”). The following sections of the BetterUp Terms of Service shall not apply to Users and the topics included therein shall be governed by this Agreement: 5 (Fees and Payment Terms), 15 (Indemnification), 16 (Limitation of Liability), 17 (Arbitration), Governing Law and Dispute Resolution in Section 18 (Miscellaneous), and Assignment in Section 18 (Miscellaneous). BetterUp may use any data, information or materials collected or received from Users through these interactions, in accordance with the BetterUp User Terms and for its internal business purposes. BetterUp shall allow County’s employees to access the BetterUp Services pursuant to the terms of this Agreement and the applicable Order, however County is responsible for establishing, to the extent applicable, its own policies (if any) with Users as to what information is appropriate to share as part of the BetterUp Services.

7. BetterUp Analytics. As part of the services provided on the BetterUp Platform, BetterUp will, during the term of this Agreement, provide County with access to reports outlining (a) which Users have activated with BetterUp, (b) sessions completed, (c) coaching start and end dates, and (d) aggregated and anonymous statistics regarding the BetterUp Services the Users received, such as i) metadata and data related to usage (e.g., average session length, frequency of use), ii) composition of development plans (e.g., top skills chosen by Users, popular learning activities), and iii) User-generated data from learning activities (e.g., results from psychometric assessments) (collectively, “**BetterUp Analytics**”). County may only use the BetterUp Analytics for its internal business purposes, in compliance with all applicable laws. Consistent with the BetterUp User Terms and its confidentiality policies, BetterUp will not disclose User-specific coaching content or results to County.

8. Fees and Payment Terms.

8.1. Fees. The fees and payment terms applicable to the BetterUp Services are set forth in the applicable Order. Except as otherwise specified herein or in an Order Form, (i) fees are based on access rights acquired and not actual usage, (ii) payment obligations are non-cancelable and non-refundable, and (iii) access rights purchased for the number of Users cannot be decreased during the relevant Subscription Term.

8.2. Invoicing and Payment. Subscription Fees and all other fees due hereunder will be invoiced to County. All fees due hereunder (except fees subject to good faith dispute) shall be due and payable as set up in the applicable Order. County shall provide BetterUp with complete and accurate billing and contact information including a valid email address. Upon BetterUp’s request, County will make payments via electronic bank transfer.

8.3. Taxes. BetterUp’s fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “**Taxes**”). County is responsible for paying all Taxes associated with its purchases hereunder. If BetterUp has the legal obligation to pay or collect Taxes for which County is responsible under this section, BetterUp will invoice County and County will pay that amount unless County provides BetterUp with a valid tax exemption certificate authorized by the appropriate taxing authority.

9. Audit Rights. During the term of this Agreement and for three (3) years thereafter (but not more than once per calendar year, unless circumstances warrant additional audits as described below), BetterUp, at its expense, may cause an audit and/or inspection to be made of the applicable County records during normal business hours in order to verify County’s compliance with the terms of this Agreement. County agrees to provide BetterUp, or its designated audit or inspection team, access to the relevant County records. If any discrepancy is discovered, County shall pay BetterUp the full amount of any underpayment revealed by the audit or inspection plus interest from the date such payments were due under the terms of Sections 3 and 7. Notwithstanding the foregoing, the Parties agree that BetterUp may conduct an audit at any time, in the event of (i) audits required by a governmental or regulatory authority, (ii) investigations of claims of misappropriation, fraud, or business irregularities of a potentially criminal nature, or (iii) BetterUp reasonably believes that an audit is necessary to address a material operational problem or issue that poses a threat to BetterUp’s business.

10. Trademarks. BetterUp’s name, BetterUp’s trademarks, BetterUp’s logos, and any other BetterUp product, service name, or slogan included in the Services are property of BetterUp and may not be copied, imitated, or used (in whole or in part) without BetterUp’s prior written consent. The look and feel of the Services, including all custom graphics, button icons, and scripts constitute service marks, trademarks, or trade dress of BetterUp and may not be copied, imitated, or used (in whole or in part) without BetterUp’s prior written consent. All other trademarks, registered trademarks, product names, and County names or logos mentioned in BetterUp Services or on the BetterUp Platform (“**Third Party Trademarks**”) are the property of their respective owners, and the use of such Third Party Trademarks inures to the benefit of each owner. The use of such Third Party Trademarks is intended to denote

interoperability and does not constitute an affiliation by BetterUp and its licensors with such County or an endorsement or approval by such County of BetterUp or its licensors or their respective products or services.

11. Confidentiality.

11.1. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other Party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Notwithstanding the foregoing, Confidential Information shall not include any information to the extent that it can be established by written documentation by the Receiving Party that such information: (i) is or becomes generally known to the public without breach of any obligation of confidentiality by the Receiving Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party and who has a legal right to disclose such information; or (iv) was independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information. The Parties agree that, during the Term, including any extensions thereto, and for three (3) years thereafter, the Receiving Party shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement the Confidential Information of the Disclosing Party.

11.2. Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to handle, treat, store, access (or limit access), and otherwise protect (including with encryption, as applicable) the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care). The Receiving Party: (i) will not use any Confidential Information of the Disclosing Party for any purpose outside the scope of, or as permitted by, this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by obligations to the Receiving Party consistent with this Agreement.

11.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law or regulatory process to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted and practicable (e.g., there is sufficient time to provide such notice) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

11.4. Return or Destruction of Confidential Information. Upon written request, The Receiving Party shall return to the Disclosing Party or destroy all Confidential Information received from the Disclosing Party during the Term of this Agreement except digital backup copies created through automated system processes provided that such backup copies are protected as Confidential Information by the Receiving Party for as long as the information is retained.

11.5. Ownership of Confidential Information. The Receiving Party acknowledges that, except as otherwise provided herein, (a) the Disclosing Party is the exclusive owner of and has all rights to its Confidential Information, including all intellectual property rights therein, such as patents, copyrights, trade secrets, trademarks, moral rights and similar rights of any type under the laws of any governmental authority (collectively, "Intellectual Property Rights"); and (b) no right, title, interest or license to the Receiving Party is either granted or implied under any Intellectual Property Rights by the disclosure of Confidential Information hereunder.

1. Term, Termination and Effects of Termination. This Agreement commences upon the Effective Date and will continue in effect until terminated by either Party in accordance with this Section. Unless otherwise set forth in an Order Form, Subscriptions shall have a term of 12 months and shall automatically renew for additional one-year terms unless either Party chooses not to sign a subsequent Order Form in which case no such renewal will take place. BetterUp may change the pricing for Subscription Terms subsequent to the initial Term (each a "Renewal Term"), in its sole discretion. Either Party may terminate this Agreement (including all Orders affected by the breach) for cause if the other Party fails to cure any material breach of this Agreement or the Order within 30 days after written notice (10 days for breach of payment obligations). Upon any expiration or termination of an Order, (a) BetterUp will cease providing the BetterUp Services under that Order,

(b) County and the Users will cease any access to the BetterUp Platform under such Order, except Users may contract individually with BetterUp for coaching separately from BetterUp's client relationship with County, and (c) County may retain and continue use of all BetterUp Analytics provided by BetterUp prior to the effective date of termination or expiration of this Agreement, except if BetterUp terminates this Agreement for cause. If this Agreement is terminated or expires, but at least one Order remains in effect, then the terms of this Agreement will continue to apply to any such Orders. Notwithstanding any terms to the contrary in this Agreement, (i) in addition to this sentence, Sections 2, 5, 7, 8, 10, 11, 12, 13, 14, and 15 survive any termination or expiration of this Agreement, and (ii) no refunds will be issued.

2. Representations and Warranties. Each Party represents and warrants that (a) the person signing this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement, (b) this Agreement is valid, binding and enforceable against it in accordance with its terms, and (c) it will fulfil its obligations under this Agreement in accordance with all applicable laws.

3. Disclaimer. EXCEPT AS SET FORTH IN SECTION 11, BETTERUP MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. COACHING DOES NOT CONSTITUTE MEDICAL ADVICE OR THERAPY. BETTERUP WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF BETTERUP.

4. Limitation of Liability. EXCEPT FOR COUNTY'S BREACH OF THE RESTRICTIONS IN SECTION 5 OR OTHER MISAPPROPRIATION OF BETTERUP'S INTELLECTUAL PROPERTY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL (A) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; AND (B) EITHER PARTY'S ENTIRE LIABILITY TO THE OTHER PARTY EXCEED THE AMOUNT ACTUALLY PAID BY COUNTY TO BETTERUP UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE MONTH IN WHICH THE EVENT OCCURRED GIVING RISE TO THE CLAIM.

16. General Provisions.

16.1. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be entirely performed within the State of California, without resort to its conflict of law provisions. The state or federal court in San Francisco County, California will be the jurisdiction in which any suits should be filed if they relate to this Agreement.

16.2. Ownership. As between the Parties and subject to the grants expressly set forth in this Agreement, BetterUp owns all right, title and interest in and to the BetterUp Services and anonymous/aggregate data, feedback and any and all patent rights, copyrights, trademark rights, trade secret rights and other intellectual property rights embodied in or related to the foregoing.

16.3. Subcontractors. BetterUp may use the services of Third-Party coaches and other subcontractors and permit them to provide the BetterUp Services.

16.4. Third-Party Tools. County acknowledges and agrees that Users may choose to utilize certain third-party videoconferencing, communications tools and other services used by Users in connection with BetterUp Services, e.g., Skype or FaceTime ("Third-Party Tools"). While user data provided to BetterUp through Third-Party Tools remains subject to the BetterUp User Terms, use of Third-Party Tools themselves is subject to the terms and conditions of the Third-Party Tool providers. BetterUp is not responsible for the operation of or any changes to the Third-Party Tools or the acts or omissions of Third-Party Tool providers.

16.5. Assignment. Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated, by operation of law or otherwise, without the prior written consent of the non-assigning Party, and any attempted transfer, assignment or delegation without such consent will be void and without effect. Notwithstanding the above, either Party may freely transfer, assign or delegate this Agreement or its rights and duties under this Agreement without the consent of the non-assigning party to an affiliate, as part of a change of control, or to a successor in interest to all or substantially all of its business or assets. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective representatives,

heirs, administrators, successors and permitted assigns.

16.6. Notices. Notices will be deemed given as of the day they are received by email, messenger, delivery service, or U.S. mail (postage prepaid, certified or registered, return receipt requested), and addressed as set forth below, or to such other address as the Party to receive the notice so designates by notice.

16.7. Waiver and Severability. A Party's delay or failure to exercise a right or remedy will not result in a waiver of that right or remedy. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable under the governing law, the remaining provisions will remain in full force and effect, and will be construed so as to most nearly reflect the Parties' intent with respect to such provision.

16.8. Miscellaneous. This Agreement, including all Orders, constitutes the entire agreement between the Parties and supersedes all previous or contemporaneous agreements between the Parties, relating to its subject matter, and any change to its terms must be in writing and signed by the Parties. Except as otherwise expressly provided to the contrary in this Agreement, this Agreement may only be changed or modified by a mutually executed amendment signed by both Parties. The Parties may execute this Agreement in counterparts, including facsimile, PDF and other electronic copies, which taken together will constitute one instrument.

End of Exhibit B

Exhibit C: SLA and Support

I. SLA

BetterUp shall use all reasonable commercial efforts, being no less than accepted industry standards, to ensure that BetterUp Services are available to Customer and Users 99% of the time in any calendar month (the "**BetterUp Uptime SLA**").

Definitions. The following definitions shall apply to the BetterUp Uptime SLA.

- "**Downtime**" means the period of time in which BetterUp Services are not accessible by Users.
- "**Emergency Downtime**" means those times where BetterUp becomes aware of a vulnerability which, based on a risk assessment of the vulnerability, BetterUp deems to require immediate remediation and, as a result, BetterUp Services are made temporarily unavailable in order for BetterUp to address the vulnerability. Emergency Downtime is not considered Downtime for purposes of this BetterUp Uptime SLA, and will not be counted towards any Downtime periods.
- "**Monthly Uptime Percentage**" means the total number of minutes in the calendar month minus the number of minutes of Downtime suffered from all Downtime periods in the calendar month, divided by the total number of minutes in the calendar month.
- "**Scheduled Downtime**" means those times where BetterUp notifies County or Users of periods of Downtime prior to the commencement of such Downtime. There will be no more than twelve (12) hours of Scheduled Downtime per calendar year. Scheduled Downtime is not considered Downtime for purposes of this BetterUp Uptime SLA and will not be counted towards any Downtime periods.
- "**Services**" means the services provided to County or Users via the BetterUp website located at <https://www.betterup.co/>.

Right to terminate: In the event the Monthly Uptime Percentage is less than 99% three (3) times in a five (5) month period, County will have a right to terminate the BetterUp Service order form, with a pro-rated refund of fees paid.

Uptime SLA Exclusions. The Uptime SLA does not apply to any performance issues: (i) caused by factors outside of BetterUp's reasonable control; (ii) that resulted from any actions or inactions of County or any third parties; (iii) that resulted from County's or User's equipment and/or third-party equipment (not within the primary control of BetterUp), (iv) Emergency Downtime; or (v) Scheduled Downtime. This BetterUp Uptime SLA states County's sole and exclusive remedy for any failure by BetterUp to provide the Services as a result of Downtime.

II. Support

BetterUp will provide e-mail support twenty-four (24) hours a day, five (5) days a week for assistance in identifying and resolving Errors in accordance with the Severity Levels and Response Times set forth in this Exhibit C. BetterUp will be available to answer questions related to the operational use of the BetterUp Platform. Weekend support is available for Severity I issues.

1. Definitions

For purposes of this Exhibit C, the following definitions apply:

- a. "Error" means a defect in the BetterUp Platform that prevents the BetterUp Platform from performing according to Agreement and the applicable Order. Errors include operation and functionality defects, security defects, viruses and bugs.
- b. "Initial Response" means a written or electronic response from BetterUp to County regarding a reported or discovered Error acknowledging receipt.
- c. "Temporary Resolution" means a temporary fix or patch that BetterUp has implemented and incorporated into the BetterUp Platform to restore the BetterUp Platform functionality in accordance until the Final Resolution is available.

d. "Final Resolution" means a permanent fix that BetterUp has implemented and incorporated into BetterUp Platform to restore BetterUp Platform functionality.

2. **General Support.** BetterUp will provide support as set forth below:

BetterUp will provide all necessary resources to support troubleshooting and implementation of the BetterUp Platform.

3. **Severity Levels**

When BetterUp initially detects an Error with the BetterUp Platform, or when the County reports to BetterUp an Error with the BetterUp Platform, the Error will be promptly classified by BetterUp in accordance with the following severity incident guidelines.

Severity Incident Level	Definition
Severity 1	A critical problem with the BetterUp Platform in which any of the following occur: the BetterUp Platform is down, inoperable, inaccessible or unavailable or the BetterUp Platform otherwise materially cease operation.
Severity 2	A problem with the BetterUp Platform in which any of the following occur: <ul style="list-style-type: none"> ○ the BetterUp Platform is severely limited or degraded, major functions are not performing properly; or ○ The BetterUp Platform has been interrupted but recovered, and in BetterUp's opinion there is high risk of reoccurrence;

4. **Incident Response Service Level**

BetterUp will respond to County and provide Initial Responses, Temporary Resolutions and Final Resolutions in accordance with the time requirements set forth in the table below.

Severity Level:	BetterUp's Initial Response will be provided within:	BetterUp's Temporary Resolution will be provided within:	BetterUp's Final Resolution will be provided within:
1	Two (2) hour from receipt of initial notice from County, or other discovery, of the Error	Eight (8) hours from receipt of initial notice from County, or other discovery, of the Error	Seven (7) days from receipt of initial notice from County, or other discovery, of the Error
2	Six (6) hours from receipt of initial notice from County, or other discovery, of the Error	Forty-eight (48) hours from receipt of initial notice from County, or other discovery, of the Error	Fourteen (14) days from receipt of initial notice from County, or other discovery, of the Error