

AGREEMENT BETWEEN COUNTY OF MONTEREY AND FEI BEHAVIORAL HEALTH, INC.

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County," and FEI Behavioral Health, Inc., hereinafter referred to as "CONTRACTOR," for the provision of an Employee Assistance Program.

RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP # 10692) for an Employee Assistance Program (EAP) for County employees and their household members, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services in accord with the terms of RFP # 10692; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP # 10692 and in this AGREEMENT on the terms and conditions contained herein and in RFP # 10692. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:
 - This AGREEMENT, including all its attachments, exhibits and appendix
 - RFP # 10692 Addendum # 1
 - RFP # 10692 dated August 23, 2018, including all attachments and exhibits
 - CONTRACTOR'S proposal dated September 20, 2018
 - Certificate of Insurance and Additional Insured Endorsements
- 1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the

contract, the contract documents shall be construed in the following order: AGREEMENT including all attachments, exhibits and appendix; RFP # 10692 Addendum # 1; RFP # 10692, including all attachments and exhibits; CONTRACTOR'S proposal; and Certificate of Insurance and Additional Insured Endorsements.

- 1.3 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 the County, or immediate family of an employee of the County.
- 1.4 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.
 - 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 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 County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

- 2.1 Contractor Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total contract price before computing the amount of work required to be performed by the Contractor with his own organization.
- 2.2 The Scope of Service includes but is not limited to the following:
 - 2.2.1 30 Hours Annually of Employee Trainings and Orientations. CONTRACTOR shall provide a **combined minimum** of 30 hours per calendar year of the following to County:
 - a. Lunch and Learn workshops regarding the EAP;
 - b. Employee orientations about the EAP;
 - c. Orientations specifically designed for Human Resources Staff and Benefits staff about the EAP;
 - d. Training and orientations may be delivered in a variety of formats such as on-site or online.

- e. Training in excess of 30 hours will be available to County upon request at an additional rate specified in EXHIBIT B of the AGREEMENT.

2.2.2 24 Hours Annually of Manager and Supervisor Training. CONTRACTOR shall provide a total of 24 hours per calendar year of the following to County:

- a. Comprehensive training geared specifically for managers and supervisors regarding the use of effective management skills in the workplace;
- b. Training may be delivered in a variety of formats such as on-site trainings and online trainings;
- c. Training shall cover a variety of topics such as effective supervisory skills, performance-based identification of troubled employees, the Supervisor Referral process, conflict intervention, trauma/crisis situation and more.

2.2.3 30 Hours Annually of Critical Incident Response Services. CONTRACTOR shall provide a total of 30 hours per calendar year of the following to County:

- a. Critical incident response services to employees adversely impacted by a critical incident. Critical incident responses are provided in the events such as natural and human made disasters, sudden deaths, accidents in the workplace, workplace violence, reduction in workforce, traumatic losses affecting workers at home, etc.
- b. On-site individual consultations administered by qualified consultants to address trauma and crisis situations within 4 hours of incident.
- c. Critical incident response services in excess of 30 hours will be available to County upon request at an additional rate specified in EXHIBIT B of the AGREEMENT.

2.2.4 Confidential Assessment, Counseling and Referrals to Outside Professionals. The EAP shall offer all County employees and their family members, dependents, and any persons residing in the employee's household (housemate):

- a. A toll-free phone number that employees may call where their concerns are assessed prior to any counseling;
 - i. Phone line(s) shall have communications device for the deaf (TDD) capability;
 - ii. An Interactive Voice Response (IVR) system will be utilized to distribute counseling related calls for live answer 24x7x365 by an EAP counselor;
 - iii. Crisis situations shall be processed immediately.
- b. Scheduled appointments with qualified/licensed counselors experienced in EAPs within 3 working days of the assessment;
- c. Up to 3 counseling visits per individual and at no cost to employee or employee's family, dependent or housemate, per calendar year, per incident for problems related but not limited to stress, financial worries, mental health concerns, depression, grief, family issues, marriage and divorce, work-related problems, substance abuse/addiction, aging/elder care concerns, eating disorders, gambling, conflict resolution, and abuse;
- d. Referrals to other outside professionals, such as lawyers, financial consultants, psychologist/psychiatrists, social workers, medical practitioners, and/or

treatment facilities when deemed necessary and which coordinate with employees' health benefits plan whenever possible, once the employee has exhausted the number of free counseling sessions and further counseling is needed or when the problems require specialized treatment or assistance.

2.2.5 Consultations and Employee Referral Services for Managers and Supervisors. CONTRACTOR shall provide to County:

- a. A toll-free phone number for supervisor-driven referrals;
- b. Individual consultations administered by qualified management consultants to County managers and supervisors as needed regarding the management and referral to the EAP of employees with job performance or behavioral or medical problems;
- c. Telephonic assistance as needed with supervisor driven referrals.

2.2.6 Administrative Services. CONTRACTOR shall provide to County:

- a. A monthly utilization report;
- b. An annual summary utilization report;
- c. Quarterly articles (in electronic format) pertaining to an EAP which may be used by County in a newsletter or other distributed media;
- d. A backup phone number for a key contact of CONTRACTOR for emergency situations in which the toll-free number is yielding unsatisfactory or untimely results;
- e. Availability of records, in full compliance with the Health Insurance Portability and Accountability Act (HIPAA), upon 10 days written notice by certain key County managers (to be designated in the AGREEMENT);
- f. Copies of all responses to all complaints made against CONTRACTOR, in full compliance with the HIPAA.

2.2.7 Communication and Awareness Materials. Information provided by CONTRACTOR to County to maximize awareness in the workplace and promote easy access to EAP services and support shall include but is not limited to:

- a. Within 60 calendar days of the effective date of the AGREEMENT, an informational campaign will be implemented throughout County's organization. The campaign shall include electronic EAP informational materials including but not limited to posters, brochures, wallet cards, etc. and orientation dates will be announced. All printed materials shall be pre-approved by County in advance of mass publication for distribution;
- b. A website developed and maintained by CONTRACTOR which provides County access to a variety of online information regarding the EAP including but not limited to informative, helpful and procedural content, and interactive features;
- c. Materials relevant to all trainings and orientations by CONTRACTOR for County shall be provided during such occasions and shall also be made available online in CONTRACTOR'S website.

2.2.8 Transition Plan. CONTRACTOR shall provide a transition plan to County:

- a. Within 15 business days from the execution of the AGREEMENT,

CONTRACTOR shall submit a written Transition-In Plan via email to County (contact & email address to be designated in AGREEMENT) that shall describe how County will transition from the current EAP into the new EAP, identifying all key tasks and activities. A complete transition timeline shall be included. This plan may be subject to minor changes as requested by County;

- b. Within 30 business days from the execution of the AGREEMENT, CONTRACTOR shall provide a written Transition-Out plan via email to County (contact & email address to be designated in AGREEMENT) that shall describe how County will transition from CONTRACTOR'S EAP into any new EAP which the County may choose to implement, identifying all key tasks and activities. This plan may be subject to minor changes as requested by County.

2.2.9 Additional On-Site Services as Requested. On occasion, County may request CONTRACTOR to provide additional on-site services which County agrees to pay separately for. Fees for additional on-site services are addressed in EXHIBIT B of the AGREEMENT. Additional on-site services may include but are not limited to:

- a. Attendance at County Wellness events and Health Fairs;
- b. Exclusive County department-specific trainings or consulting.

3.0 TERM OF AGREEMENT

- 3.1 The term of this AGREEMENT is from January 1, 2019 through and including December 31, 2021, with the option to extend this AGREEMENT for three (3) additional one (1)-year periods. County is not required to state a reason if it elects not to renew this AGREEMENT.
- 3.2 If County exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions. Both parties shall agree upon rate extension(s) or changes in writing.
- 3.3 County reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, with a thirty (30)-day written notice without cause, or immediately with cause.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the payment provisions attached hereto as EXHIBITS A and B.
- 4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.

- 4.3 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety (90) days prior to the expiration of this AGREEMENT.
- 4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than thirty (30) days.
- 4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.6 Tax:
 - 4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
 - 4.6.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the Human Resources Department at the following address:

County of Monterey
Human Resources Department
Attn: Paulette Clark
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901

- 5.2 CONTRACTOR shall reference "RFP 10692" on all invoices submitted to County. CONTRACTOR shall submit such invoices 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. Software license fees shall be invoiced annually and paid in advance. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor- Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).

- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

6.0 STANDARD INDEMNIFICATION

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, 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 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.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

- 7.4.1 Prior to commencement of this AGREEMENT, 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, CONTRACTOR upon request shall provide a certified copy of the policy or policies.

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

- 7.2 Qualifying Insurers: All coverages, 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 County's Purchasing Officer.

- 7.3 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:

- 7.4.1 Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Products and Completed Operations, with a limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
 - 7.4.2 Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
 - 7.4.3 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.
 - 7.4.4 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 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, 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.
- 7.4 Other Insurance Requirements:
- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County 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.
 - 7.4.2 Each liability policy shall provide that County 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 insureds 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.
 - 7.4.3 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 form 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 form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five 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.
- 7.4.5 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 County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County 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 County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall

return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.

- 8.3 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.
- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTS with subcontractors to perform work under the contract.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.

- 10.3 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in this AGREEMENT.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of the Board of Supervisors of COUNTY.
- 11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify COUNTY in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to COUNTY hereunder.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

13.0 DRUG FREE WORKPLACE

- 13.1 CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TIME OF ESSENCE

- 14.1 Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

- 15.1 Assurance of Performance: If at any time, County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.
- 15.2 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

16.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT

- 16.1 In the case of default by CONTRACTOR, County may procure the articles or services from

other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR or by proceeding against any performance bond of CONTRACTOR, if any, or by suit against CONTRACTOR. The prices paid by County shall be considered the prevailing market price at the time such purchase(s) may be made. Inspections of deliveries or offers for deliveries that do not meet specifications shall be made at the expense of CONTRACTOR.

17.0 FORCE MAJEURE

- 17.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.
- 17.2 If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.
- 17.3 CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

18.0 BACKGROUND CHECKS

- 18.1 CONTRACTOR shall be required to obtain State and Federal level criminal background clearance(s) for all personnel required to work within County facilities that are deemed restricted or high security, including but not limited to the Sheriff's Office, Probation Department, 911 Center, and District Attorney's Office.
 - 18.1.1 A California licensed Investigator must perform the required State level criminal background check(s) which must then be submitted to County prior to the personnel being allowed to work within such County facilities. CONTRACTOR shall be responsible for the cost of these background check costs unless otherwise informed by County. In some circumstances, a specific County department may request that County Sheriff's Office perform the background checks.
 - 18.1.2 All CONTRACTOR personnel who are designated to provide services at any of the County Sheriff's facilities are required to undergo fingerprinting and background checks through the Sheriff's main office specifically.
- 18.2 CONTRACTOR shall obtain State and Federal level criminal background clearance(s) for all employees and contractors who will have access to any of the County confidential data during their employment with CONTRACTOR.

19.0 TRAVEL REIMBURSEMENTS

- 19.1 Travel reimbursements shall not exceed the IRS allowance rates as per County of Monterey Travel Policy. A copy of County's Travel Policy is available on the Auditor-Controller's web site at: <http://www.co.monterey.ca.us/auditor/policies.htm>.

20.0 INFORMATION PORTABILITY AND ACCOUNTABILITY ACT- HIPAA COMPLIANCE

- 20.1 CONTRACTOR agrees to operate its business in a manner as necessary to permit County to comply with its obligations under the Health Insurance Portability and Accountability Act of 1996, Subtitle F, Public Law 104-191, relating to the privacy and security of confidential health information, and any final regulations or rules promulgated by the U.S. Department of Health and Human Services thereunder (collectively, the "HIPAA Standards"). As such, CONTRACTOR agrees to and shall sign the BUSINESS ASSOCIATES AGREEMENT attached hereto.

21.0 NON-APPROPRIATIONS CLAUSE

- 21.1 Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, County will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for payments.

22.0 INTELLECTUAL PROPERTY RIGHTS

- 22.1 All data provided by County belongs to County. All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, source codes, specifications and all other similar recorded data, shall become and remain the property of County. Use or distribution of County data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from County.
- 22.2 For systems hosted or stored on equipment not owned by County, CONTRACTOR shall furnish all data to County upon request by County at any time during the term of this AGREEMENT in a useable format as specified by County and at no additional cost to County.

- 22.3 Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to this AGREEMENT.

23.0 NOTICES

- 23.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

County of Monterey
Attn: Contracts & Purchasing Officer
1488 Schilling Place
Salinas, CA 93901
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969
derm@co.monterey.ca.us

TO CONTRACTOR:

FEI Behavioral Health, Inc.
Attn: Ryan Atherton
648 N. Plankinton Avenue, Suite 425
Milwaukee, WI 53203
Tel. No.: (414) 359-6525
FAX No.: (414) 359-1973
ratherton@feinet.com

24.0 LEGAL DISPUTES

- 24.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 24.2 Either party shall have the option to choose where to file its claim should one arise under or relating to this AGREEMENT.
- 24.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

- 24.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.
- 24.5 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 this AGREEMENT shall prevail and control.

-----*This section left blank intentionally*-----

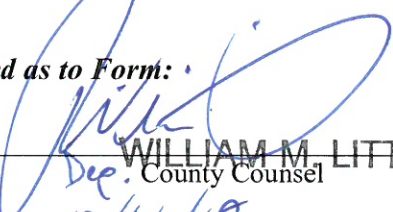
IN WITNESS WHEREOF, County and CONTRACTOR have executed this AGREEMENT as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: 
Contracts/Purchasing Officer

Date: 18 Dec 2018

Approved as to Form: 
By: WILLIAM M. LITT
County Counsel

Date: 12/14/18

Approved as to Fiscal Provisions: 
By:
Auditor/Controller

Date: 12/14/18

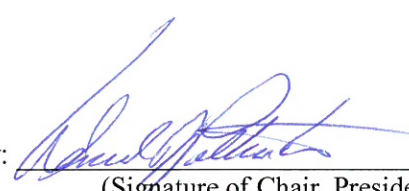
Approved as to Liability Provisions:

By:
Risk Management

Date:

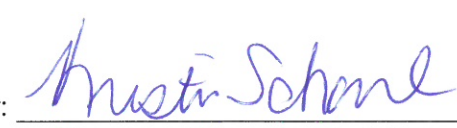
FEI Behavioral Health, Inc.

Contractor's Business Name*

By: 
(Signature of Chair, President, or Vice-President)*

DAVID J. POSEY, CEO
Name and Title

Date: 11/28/18

By: 
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Christi Scharl, CFO
Name and Title

Date: 11/28/18

County Board of Supervisor's Agreement Number: A-14192, approved on (date): 12/4/2018

*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. 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. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

EXHIBIT A

**To Agreement by and between
County of Monterey, hereinafter referred to as "County"**

AND

FEI Behavioral Health, Inc., hereinafter referred to as "CONTRACTOR"

Payment Provisions

A. COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$920,000.00 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Service. CONTRACTOR'S compensation for services rendered shall be based on the rates stated in EXHIBIT B.

County shall ensure CONTRACTOR is informed of current monthly employee counts regularly. Total amount will fluctuate as employee counts vary. Employee participation does not affect the total due; CONTRACTOR shall be paid regardless of employee participation levels in the EAP.

CONTRACTOR agrees that there shall be no dollar increase to any and all costs stated herein and in EXHIBIT B during the term of the Agreement.

CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

B. CONTRACTORS BILLING PROCEDURES

County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs.

EXHIBIT B

To Agreement by and between County of Monterey and FEI Behavioral Health, Inc.

EMPLOYEE ASSISTANCE PROGRAM SERVICES RATES

EMPLOYEE ASSISTANCE PROGRAM/WORK-LIFE SERVICES	
1. Eligible Participants:	Employees, dependents & housemates.
2. Employee Count:	Program design and pricing based upon 4,800 employees, updated regularly as actual employee count changes.
3. Base Rate:	\$1.62 per employee per month.
4. Terms:	Up to three (3) sessions per eligible individual per incident/year.
5. Capitated Contract Billing Terms:	Base rate charges to be billed monthly.
6. Additional Services:	Fee-for-service (see page B-3).

I. Employee Assistance Program (EAP)	Components
A. EAP Assessment & Consultation. 24-Hour, toll-free telephonic access to live counselors. (Interpreter and TDD services.)	Included.
B. Short-Term, Solution-Focused Counseling. In-person sessions at offices of local counselors within 20 minutes or 20 miles from the work site or home. Telephonic counseling on appointment basis also available.	Up to three (3) sessions per eligible individual per incident/year.
II. Work-Life Services	Components
A. Work-Life Consultation. Telephonic access to Work-Life Specialists (e.g., Child Care, Adoption, Educational Resource, Elder Care, Dependent Care, etc.).	Included.
B. Personalized Searches & Referrals. Work-Life Specialists work with callers to provide verified referrals to resources/facilities.	Included.
C. Family and Individual Information Packets.	Included.
D. Legal Consultation. One telephonic and/or 30-minute in-person consultation with an attorney per legal matter. Beyond the initial consultation, clients will receive a 25% discount from the attorney's usual and customary fees.	Included.
E. Financial Consultation. One telephonic consultation per financial matter.	Included.

F. Identity Theft. Online information education materials, Tool Kit/Action Log, Consultation with identity theft experts.	Included.
III. Education & Promotion	Components
A. Program Orientation & Promotion. Informational presentations for employees or managers about EAP and Work-Life services.	Available as part of a bank of fifty-four (54) hours, that can be used for orientation or training (30 hours for Employees, 24 hours for Managers/Supervisors.
B. LifeCycle® Connect Web Site.	Included.
C. Electronic Newsletters for Employees (<i>EAPost</i>)	Included - Quarterly.
D. <i>Manager Exchange</i>. A blog designed for managers and supervisors updated bi-weekly with an array of topics relevant to a manager's daily job experience.	Included.
E. Monthly Emails. Brief topical emails sent to designated program contact(s).	Included.
F. Marketing Materials.	A PDF file brochure* will be made available to the County of Monterey . Posters are provided in PDF format*. Each month a poster is sent along with the monthly e-mail message. There will be an added charge for materials needing language translation. * Printing and distribution is the responsibility of the County of Monterey.
G. Monthly Wellbeing Webinars. For employees on a variety of EAP and work-life topics.	Included.
IV. Organizational Services	Components
A. Account Management. Your Account Manager works with the County of Monterey to help obtain maximum value of FEI's services.	Included.
B. Manager Consultation on employee and workplace issues.	Included.
C. Case Management for Job Performance Referrals	Included.
D. Educational Seminars/Training. Educational programs on workplace and family topics such as Communicating Effectively, Managing Work-Life Balance, Coping with Worries About Money, etc.	Available as part of a bank of fifty-four (54) hours, that can be used for orientation or training. (30 hours for Employees, 24 hours for Managers/Supervisors.
E. Critical Incident Response (CIR) services	Up to thirty (30) hours included annually.
F. Activity Reports including statistics and analysis of data.	Included.

ADDITIONAL SERVICES: FEE-FOR-SERVICE

A. Additional EAP Critical Incident Response.	\$220.00 per hour per counselor plus travel at \$165.00 per day per counselor.
B. Additional Educational Seminars/Training. Educational programs on workplace and family topics such as Communicating Effectively, Managing Work-Life Balance, Coping with Worries About Money, etc.	\$185.00 per hour plus travel expenses.
C. Additional Marketing Materials (Hardcopy). FEI can arrange to print and ship hardcopies of materials.	Cost to be determined on per case basis (paid by the County of Monterey, with prior written approval by the County of Monterey).
D. Customized Training. A consultancy-based approach driven by initial needs assessment to provide targeted, solution-oriented programs.	Available for an additional fee based on client need.
E. Substance Abuse Professional Referral (Mandatory Positive Drug Screen Referral for DOT and Non-DOT Employees)	\$700.00 per case.
F. Benefit/Health Fairs	\$125.00 per staffing hour plus travel charge. Four-week notice is required.
G. Benefit Fair in a Box. Customized promotional kit containing a mounted poster, service detail and assorted topical flyers, wallet cards, and table tents. Available in kit only; no staffing included.	\$50.00 for "Benefit Fair in a Box" for up to 500 employees. Four-week notice is required.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective January 1, 2019 (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, (“Covered Entity”) and FEI Behavioral Health, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. DEFINITIONS

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. PERMITTED USES AND DISCLOSURES OF PHI

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents agree to

adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901
Attn: Paulette Clark
Tel: (831) 755-5456
Fax: (831) 796-8603

If to Covered Entity, to:
648 N. Plankinton Avenue, Suite 425
Milwaukee, WI 53203
Attn: Ryan Atherton
Tel: (414) 359-6525
Fax: (414) 359-1973

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

COUNTY OF MONTEREY

FEI BEHAVIORAL HEALTH, INC.

By: Irma Ramirez-Bough

Print Name: Irma Ramirez-Bough

Print Title: Director of Human Resources

Date: 12-10-18

By: David J. Porten

Print Name: DAVID J. PORTEN

Print Title: COO

Date: 11/28/18