



CONTRACT CVPAN1000010869

BETWEEN
COUNTY OF ORANGE
AND
HORIZON HEALTH EAP
FOR

EMPLOYEE ASSISTANCE PROGRAM

**Contract CVPAN1000010869
For Employee Assistance Program**

Table of Contents.....2-3

Recitals4

ARTICLES

1. Scope of Work.....4
2. Pricing4
3. Invoicing/Payment4
4. Contract Term4
5. Entire Agreement4
6. Amendments4
7. Governing Law and Venue5
8. Appropriation/Contingency of Funds.....5
9. Taxes5
10. Delivery.....5
11. Independent Contractor5
12. Assignment or Sub-contracting.....5
13. Non-Discrimination.....5
14. Performance5
15. Errors and Omissions6
16. Warranty.....6
17. Patent/Copyright Material/Propriety Infringement6
18. Compliance with Laws6
19. Indemnification and Insurance6
20. Insurance Provisions6
21. Confidentiality.....9
22. Contractor Personnel.....9
23. Contractor’s Account Manager and Key Personnel9
24. Project Manager9
25. Reports/Meetings9
26. Ownership of Documents.....10
27. Title to Data.....10
28. Records.....10
29. Audit/Inspections10
30. Publication.....10
31. Conflict of Interest10
32. Termination11
33. Breach of Contract11
34. Disputes11
35. Orderly Termination.....12
36. Force Majeure12
37. Consent to Breach Not Waiver.....12
38. Remedies Not Exclusive12
39. Notices.....12
40. County Child Support Enforcement.....13
41. Change of Ownership.....13
42. Precedence.....13
43. Headings.....13
44. Severability.....13

45. Calendar Days	13
46. Attorney Fees	13
47. Waiver of Jury Trial	13
48. Interpretation	13
49. Authority	14
50. Health Insurance Portability and Accountability Act (HIPAA).....	14
51. Survival	14
52. Employee Eligibility Verification	14
53. Changes.....	14
54. Terms and Conditions.....	14
Contract Signature Page.....	15

Attachments and Exhibits:

Attachment A	Scope of Work.....	16-20
Attachment B	Cost/Compensation for Contractor Services	21-23
Attachment C	Implementation Plan/Project Schedule.....	24
Attachment D	Staffing Plan	25
Attachment E	Performance Guarantees.....	26
Attachment F	HIPAA Privacy Business Associate Agreement.....	27-31

Exhibits

Exhibit 1	County of Orange Child Support Enforcement Certifications.....	32
Exhibit 2	EDD Independent Contractor Reporting Requirements.....	33

**CONTRACT CVPN1000010869
For Employee Assistance Program**

THIS Contract Number CVPN1000010869 for an Employee Assistance Program, hereinafter referred to as (“Contract”) is effective July 1, 2009 by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County” and Health and Human Resource Center dba ~~Horizon Health~~ EPAetna Resources for Living, with a place of business at ~~9370 Sky Park Court, Ste 140, San Diego, CA 92123-5374~~ 7676 Hazard Center Drive, Suite 1100, San Diego, CA 92108, hereinafter referred to as “Contractor”, which are sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (“RFP”) for providing an Employee Assistance Program as defined in this Contract; and

WHEREAS, the Contractor represents that its services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, the County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract with Contractor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Work:** This Contract specifies the contractual terms and conditions by which the County will obtain professional services as further set forth in Attachment A hereto.
2. **Pricing:** The Contract price, as specified in Attachment B hereto, includes full compensation for providing all services to be provided under this Contract.
3. **Invoicing/Payment:** All payment for services performed under this Contract shall be as specified in Attachment B, hereto.
4. **Term of Contract:** ~~This Contract shall commence on July 1, 2009 upon execution of all necessary signatures and approval by the County Board of Supervisors, and shall continue in effect for a period of three (3) years. The Contract may be renewed thereafter for two (2) additional years upon mutual agreement of both Parties and approval of the County Board of Supervisors if necessary. The County does not have to provide a reason if it elects not to renew this Contract.~~The initial three-year Term of this Contract shall be July 1, 2009 through June 30, 2012, unless otherwise terminated by County. The Contract may be renewed for a one-year period commencing July 1, 2012 through June 30, 2013, upon mutual agreement of the Parties. The Contract may be renewed thereafter for one (1) additional one (1) year period upon mutual agreement of the Parties. The County does not have to give reason if it elects not to renew this Contract.
5. **Entire Agreement:** This Contract, including Attachments, which are attached hereto and incorporated herein by this reference, contains the entire contract between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.
6. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties.

7. **Governing Law and Venue:** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.
8. **Appropriation/Contingency of Funds:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County Board of Supervisors for each fiscal year during the Term of this Contract. If such appropriations are not approved, this Contract will immediately terminate without penalty to the County.
9. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
10. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work.
11. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
12. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract. Notwithstanding the foregoing, the County consents to the subcontractors listed in Attachment D. Irrespective of any assignment of subcontracting with respect to any portion of this Contract, Contractor shall remain fully responsible and liable for the performance of all services required herein.
13. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination laws or regulations including but not limited to Section 1720 *et seq.*, of the California Labor Code.
14. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.

15. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Account Manager and key personnel, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction at no charge to County.
16. **Warranty:** Contractor expressly warrants that the services covered by this Contract are: 1) merchantable and good for the ordinary purposes for which they are used; and 2) fit for the particular purpose for which they are intended. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees, as identified in paragraph 19 below and as more fully described in paragraph 19, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, regulations, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
17. **Patent/Copyright Materials/Proprietary Infringement:** Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph 19 below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim, including, but not limited to, attorney's fees, costs and expenses.
18. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph 19 below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
19. **Indemnification/Insurance:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold harmless County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
20. **Insurance Provisions** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit

with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor. If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

All insurance policies required by this contract shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/ Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating, and VIII Financial Size Category).

If the carrier is a non-admitted carrier in the State of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage

Minimum Limits

Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 Combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 Combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 limit per occurrence
Sexual Misconduct Liability	\$1,000,000 limit per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

All liability insurance, except Professional Liability, required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a “Claims Made” basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Workers’ Compensation/Employers’ Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Contract shall be primary insurance, and any insurance maintained by the County shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor’s insurance is primary and shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Contract shall give the County 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

All insurance policies required by this Contract shall waive all rights of subrogation against the County and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If Contractor’s Professional Liability policy is a “claims made” policy, Contractor shall agree to maintain professional liability coverage for two years following completion of Contract.

The Commercial General Liability policy shall contain a severability of interest’s clause.

The Contractor is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers’ Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the Contractor has secured, for the period of this Contract, statutory Workers’ Compensation insurance and Employers’ Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation. If the Contractor fails to provide the insurance certificates and endorsements within (7) seven days of notification by Employee Benefits/Human Resources, or by the “Deputy Purchasing Agent”, award may be made to the next qualified contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such

changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

21. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
22. **Contractor Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract to the County. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's Account Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.
23. **Contractor's Account Manager and Key Personnel:** Contractor shall appoint an Account Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Account Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's project manager, which consent shall not be unreasonably withheld. The Contractor's Account Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor's Account Manager.
24. **Project Manager:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor. The County's project manager shall have the right to require the removal and replacement of the Contractor's Account Manager from providing services to County under this Contract. The County's Project Manager shall notify the Contractor in writing of such request for removal of Contractor's Account Manager. The Contractor shall accomplish the removal within one (1) day after written notice by the County's project manager or earlier if the County deems necessary. The County's project manager shall review and approve the appointment of the replacement for the Contractor's Account Manager. The County is not required to provide any additional information, reason or rationale for the request for removal of Contractor's Account Manager from providing services to County under this Contract.
25. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and the Contractor's Account Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Account Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

26. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
27. **Title to Data:** All materials, documents, data or information obtained from the County data files, created by Contractor in the performance of services under this Contract and any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract in an electronic form agreed to by the County.
28. **Records:** The Contractor shall keep an accurate record expended by Contractor and the sub-contractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times.
29. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the County's authorized representative (including auditors from a private auditing firm hired by the County. access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records and to permit the County to audit such records for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to cooperate with the County and its auditor's and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

30. **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
31. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier contractor's and third parties associated with accomplishing services hereunder. The Contractor's efforts shall include, but not be limited to

establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

32. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified in this contract. Cause shall be defined as any breach of this Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
33. **Breach of Contract:** The failure of the Contractor to comply with any of the terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach; and/or
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and offset against any monies to the Contractor but yet unpaid by the County those monies disallowed pursuant to the above; and/or
 - c. Terminate this Contract immediately, without penalty to the County.
34. **Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Account Manager and the County's project manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:
 - a. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent ("DPA") a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to this Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the amount for which the Contractor believes the County is liable.
 - c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.

35. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of this Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
36. **Force Majeure:** Contractor shall not be in breach of this Contract during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
37. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
38. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Price Contract does not preclude resort by either Party to any other remedies provided by law.
39. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing, except through the course of the County's project manager and Contractor's Account Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County:	Project Manager, Diana Banzet <u>Fraey Vonada</u> Human Resources/Employee Benefits Hall of Administration 333 W. Santa Ana Blvd., 2 nd Floor Santa Ana, CA 92701
cc:	Human Resources/Employee Benefits, Hall of Administration Attn: Barbara Voelkel, Deputy Purchasing Agent 333 W. Santa Ana Blvd., 2nd Floor Santa Ana, Ca 92701
Contractor:	Health and Human Resource Center Dbas Horizon Health EAP <u>Aetna Resources for Living</u> 9370 Sky Park Court, Ste 140 San Diego, CA 92123-5374

40. **County Child Support Enforcement:** Contractor is required to comply with the child support enforcement requirements of the County. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of this Contract.
41. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
42. **Precedence:** The documents herein consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the attachments and exhibits.
43. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
44. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
45. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
46. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
47. **Waiver of Jury Trial:** To the extent enforceable under California law, each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities. on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
48. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654. or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.

49. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
50. **Health Insurance Portability and Accountability Act (HIPAA):** Contractor understands and agrees that the disclosure of PHI by a health care component of a covered entity is subject to the HIPAA Privacy Rule, Contractor understands and agrees that it is a Business Associate of County for the purposes of the HIPAA Privacy Rule. Therefore, the provisions set forth in Attachment H hereto shall be operative and control the Business Associate relationship of the parties. Nothing in Attachment E shall be considered a waiver of the limitation on subcontracting as set forth in this Contract.
51. **Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18 and 19 shall survive the termination of this Contract.
52. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
53. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
54. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

HEALTH AND HUMAN RESOURCE CENTER*

PEGGY WAGNER PRESIDENT
Print Name Title

 4/2/09
Signature Date

GLEN SKIRVW CFO
Print Name Title

 4/2/09
Signature Date

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1. The Chairman of the Board; 2. The President; 3. any Vice President.

The second corporate officer signature must be one of the following: a. Secretary; b. Assistant Secretary; c. Chief Financial Officer; d. Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County of Orange, a political subdivision of the State of California

Print Name Title

Signature Date

Approved by Board of Supervisors on: Date: _____

APPROVED AS TO FORM:


Nikhil Daftary
Deputy County Counsel

ATTACHMENT A

Scope of Work

1. FACILITIES AND STAFFING

Contractor shall:

- a) Provide EAP services in Contractor's offices or offices of County approved Providers. Service locations shall be mutually agreed upon, in writing, and approved by County Project Manager. Normal services shall be delivered within five days of a request by a participant. Emergency services will be available on a 24-hour-per-day, 7 day-per-week basis. Emergencies will be handled on an immediate basis.
- b) Make accommodations for handicapped clients at Contractor or Provider service locations and any future service sites which may be required.
- c) Maintain 24 hour, seven days a week access including holidays, to a toll free telephone number with live answer and immediate access to a clinician so that employees, dependents, and County supervisors have immediate access to EAP services when needed, particularly during crisis. Answering services or message machines are not acceptable. Any changes or additions to existing phone numbers during the term of the Contract shall be submitted in writing to County 90 days prior to the proposed change and shall be added to existing literature, cards, or other information provided to the employees or agencies, at the Contractor's cost.
- d) Maintain a sufficient professional staff that meet all necessary qualifications and licenses required but not limited to California state and federal law and regulations to provide the subject services in a timely manner, including a minimum of one professional interviewer with at least a Master's Degree in Counseling, Psychology or Social Work and knowledge of community resources or any equivalent combination of education training and experience. Identify qualifications of Contractor's staff. Contractor should supply adequately trained personnel to accommodate the County's multi-lingual population.

2. EMPLOYEES AND THEIR FAMILIES

Contractor shall:

- a) Through the toll free line and/or EAP office locations, provide assessment and referral to EAP services for necessary mental health and substance abuse treatment services to appropriate community resources. Such assessment and referral to services shall be provided to employees and their family members recognizing language and cultural differences, as well as other potential barriers to effective counseling.
- b) At no charge to the employee or family member, provide up to three free, face-to-face sessions for diagnostic assessment, referral and, brief private counseling sessions per incident each year with either counselor who hold one or more of the following credentials: FCC, LCSW, MFCC, Ph.D., Certified Alcohol and Drug Abuse Counselor (CADAC) or Certified Employee Assistance Professional (CEAP) counselors.
- c) Hold a valid Knox Keene license or demonstrate compliance with California Knox Keene requirements for any counseling visits.
- d) Counseling shall be provided for the full range of common short term counseling needs, such as, but not limited to: family problems, marital problems, drug/alcohol abuse and dependency, depression, anxiety, stress/tension, grief, child and adolescent problems, job performance problems, job attendance problems, inter-personal problems with co-workers and supervisors, and single presenting problems. Intake, assessment and referral for medical and referral for medical, debt and legal problems shall be provided by Contractor's certified EAP personnel, with appropriate support counseling to resolve any problems contributing to the medical, debt or legal problems.
- e) Provide referral services, when deemed to be warranted, to certified EAP personnel and/or designated health care providers or utilize community resources and providers which give the best quality care at the most reasonable cost.
- f) Provide written compliance letter to County Drug Test Administrator in cases of positive alcohol or drug test referrals.
- g) Track employee participation and monitor the effectiveness of referral programs for 100 percent of all referrals (including 100% of all emergent referrals within 24 hours and all urgent referrals within 48 hours and all substance abuse referrals within 7 days).

- h) Maintain office hours that accommodate diverse work shifts by having day, evening, and Saturday office hours. Specify if services will be available at one and/or multiple office locations and specify the office hours for each location.
- i) Provide timely appointments for assessment and referral within the following standards: emergent callers 0 to 6 hours, as clinically appropriate, urgent appointments 48 hours, routine appointments 5 business days.
- j) Maintain confidentiality according to all State and Federal laws.
- k) Develop and provide quarterly “Lunch-n-Learn” seminars at 3-5 locations per quarter on topics of health, financial, legal, or other topics as appropriate depending on the time of year and the current issues facing County employees.
- l) Coordinate the necessary referral for mental health and substance abuse in conjunction with the employee’s possible health plan benefits.

3. COUNTY MANAGEMENT/SUPERVISORY TRAINING AND EDUCATIONAL MATERIAL

Contractor shall:

- a) In the event of a mandatory supervisory referral the Contractor shall develop and execute written “Return to Work Contracts” with EAP participants to establish the stipulations under which the employee may return to work following hospitalization and/or treatment for an addiction, dependency or form of mental illness that may directly interfere with the employee’s work if the treatment plan is not followed.
- b) In the event of a mandatory supervisory referral the Contractor shall coordinate with the employees’ supervisors, including providing information regarding:
 - Whether the employee made and/or kept the EAP appointment.
 - Whether the employee accepted or rejected the Employee Assistance Program’s recommendation.
 - The employee’s progress and status.
- c) Provide, as needed by agency/departments, training and orientation sessions to County management and supervisory personnel on the program, goals, benefits, and how to refer, including handouts and/or reference materials.
- d) Provide educational and promotional DVD’s and, CD-ROMs to the County for use in employee orientations.
- e) Provide unlimited 24/7 management consultation and support to managers, supervisors, and departments, which will enhance the use of the EAP as a management resource.

4. PROGRAM PROMOTION

Contractor shall:

- a) Enhance the visibility of the EAP services by marketing the program through a publicity plan including EAP educational materials such as emails, newsletters, brochures, magnets, key chains, pamphlets for all County employees. Text must be prepared and printed by Contractor, subject to review and approval by the County Project Manager.
- b) Provide a quarterly EAP Newsletter email. Text must be prepared by Contractor, subject to review and approval by the County Project Manager.
- c) Provide articles for the newsletter that are appropriate for the issues facing County employees and their families, including articles which, upon request, will be customized to the County.
- d) Upon request, provide additional informational articles and/or fliers, including those customized to the County employees.
- e) Design, produce, and distribute brochures, posters, pocket cards, and other promotional materials for use in all County facilities, made available in Spanish , Vietnamese, Japanese, Farsi, Tagalog, Thai, Laotian, Chinese and Cambodian, as well some professionals who can provide services in sign language.
- f) Materials to be distributed by Contractor, to County agency/departments on request.
- g) Participate, upon request, in Health Fairs and/or Wellness activities organized for County employees. Provide quarterly wellness Brown Bag Seminar throughout the County, Quarterly Management training on EAP, EAP Orientation for Employees, and provide 2 EAP staff persons to participate in OCEA Health Fair booth.
- h) Inform the various employee organizations about the EAP and work with them to facilitate referrals to the EAP.

5. CRITICAL INCIDENT STRESS DEBRIEFINGS (CISD's)

Contractor shall:

- a) Provide on-site group and individual counseling for employees/supervisors who have experienced trauma/crisis in the workplace. If there are time or scheduling constraints, multiple sessions are to be scheduled, and alternative meeting places are to be arranged. For purposes of this contract, a Critical Incident Stress Debriefing is defined as a traumatic incident occurring at the worksite, or to an employee which can create the risk of significant disruption in the performance of the workgroup.
- b) Provide CISD services to one or more employees, co-workers, supervisors, and family members, when appropriate, within 24 – 48 hours, of the request or incident. CISD shall be available 7 days a week, including post CISD follow up and referral coordination.

6. MANAGEMENT INFORMATION REPORTS (MIS)

- a) Provide on a quarterly basis, reports to aid management in evaluating the effectiveness of the EAP as an Employee Benefit and a Management tool. Reports are to include the following:
 - Quarterly, YTD and annual program utilization including:
 - the number of unique callers to the EAP line (or to the EAP office location) as a percent of eligible employees,
 - the number and type of unique cases with at least 1 face-to-face counseling visit,
 - the total number and type of face-to-face counseling visits,
 - the number of telephone assessments,
 - the number and type of EAP cases resolved within the EAP,
 - the number and type of EAP callers referred directly to Behavioral Health treatment under their medical plan benefits,
 - the total number and title of training sessions provided and attendance,
 - the total number of CISD hours or sessions provided,
 - the total number and type of web-hits
 - Client wait time, including initial call to assessment, assessment to referral, or initial call to referral, if no assessment is required.
 - Total number of EAP sessions given during the period
 - Client breakdown by primary problem, including graph and change since last period
 - Client breakdown by age, group, and sex, including change since last period
 - Client breakdown by ethnic origin
 - Client breakdown by referral type, including change since last period
 - Supervisory referral, breakdown by problem type, including change since last period
 - Client breakdown by job category, including change since last period
 - Client breakdown by agency, including change since last period
 - Client breakdown by marital status
 - Status of closed cases
 - Promotional activities and CISD's performed during the reporting period.
- b) Contractor shall additionally provide the following:
 - Quarterly program summary showing number of new cases
 - Annual program summary letter and promotion plan for the upcoming year

7. RECORDS RETENTION AND AUDIT

Contractor shall:

- a) Maintain an individual chart for each referral for whom assessment is provided to employee and/or employee's family. The chart shall include but not be limited to the following:
 - Employee face sheet documentation the type of problem identified, nature of the referral, demographic and departmental information on the participating employee.
 - Assessment and clinical evaluation of client status and treatment needs.
 - Summary of referral action including prognosis
 - Consent to refer form
 - All charts shall have a unique means of identification.
- b) Maintain written policies and procedure in the program office available for County review to include at least the following:
 - Specific goals and measurable objectives supportive of the program's stated philosophy
 - Referral procedures and resources.
 - Program activities, goals, and objectives including hours and locations of services.
 - Procedures for dealing with special needs of non-English speaking or disabled clients.
 - Job descriptions for all staff positions.
 - Current organizational chart showing all staff and positions.
 - Follow up procedures.
 - Procedures for internal evaluation and record review.
 - Emergency Medical procedure.

8. NOTIFICATION OF DEATH AND SPECIAL INCIDENTS

Contractor shall:

- a) Notify the County of the death of any person serviced under the Contract including written notification.
- b) Notify the County within twenty-four hours when becoming aware of any occurrence of a serious nature which may expose the County to liability, including, but not limited to, accident, injury, negligence, or loss or damage to County property in possession of the Contractor.

9. OTHER

Contractor shall:

- a) Assist the County in containing or reducing the cost of benefits without affecting the quality of care provided by:
 - Using self-help groups appropriately as an integral part of treatment planning where appropriate.
 - Consulting with Employee Benefits personnel on methods by which the EAP can provide a gatekeeping function for substance abuse and mental health treatment.
- b) Publicize the Contractor's participation in Substance Abuse PPO's which provide treatment through existing programs at reduced fees, and communicate these discounted rates to County health plans when applicable.
- c) Encourage outpatient treatment whenever appropriate.
- d) Assist in the substance abuse education program. Program objectives would include:
 - Inform employees
 - Furnish information to supervisors on how to deal with employees experiencing performance problems as a result of alcohol and/or drug abuse.
 - Provide information regarding drug/alcohol abuse for new employee orientation when requested.
 - Contribute articles regarding drug and/or alcohol abuse for County publications, where appropriate.
 - Assist Human Resources and/or individual County agencies in the development and presentation of a supervisory training program on alcohol and substance abuse.

- e) Promote a positive workforce environment by providing the following:
 - Employee Orientation
 - Drug-Free Workplace
 - Stress Management
 - Time Management
 - Workplace Violence
 - Cultural Diversity
 - Health Promotion
- f) Provide a broad array of preventive-focused services:
 - Web-based educational materials
 - Weight loss programs
 - Smoking-cessation programs
 - Guidance to community and self-help resources
- g) Develop work/life services that help the County address strategic issues:
 - Productivity
 - Recruitment
 - Retention
 - Employee commitment
- h) Serve as the “Trusted Advisor” to the County in term of the following:
 - Benefits modification
 - Necessary training interventions
 - Program offerings
 - Specialized interventions for problems areas

ATTACHMENT B

Cost/Compensation for Contractor Services

I. COMPENSATION

This is a \$89,544.00 annual **FIRM FIXED PRICE CONTRACT** between the County of Orange and Contractor to provide a comprehensive EMPLOYEE ASSISTANCE PROGRAM. The Annual Firm Fixed Price includes thirty-nine (39) CISD full day sessions per year. County agrees to compensate the Contractor the Annual Firm Fixed Price Contract as set forth below. Contractor agrees to accept the same as full compensation for performing all services and furnishing all staffing and materials called for; and for risks connected with the services; and for performance by Contractor of all its duties and obligations hereunder.

II. CONTRACT EXPENSE

The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

In addition to the annual firm fixed fee, the following charges may apply:

Other (Order only if County requests):

Fliers, Brochures, Distributions, price per sheet	\$.05 per sheet
Business Card with County Logo, Quantity 20,000	\$1,500.00
Refrigerator Magnets, 3 color, Quantity 5,000	\$1,150.00
Key Chains, Quantity 5,000	Included at no charge

Additional CISD (above 39 CISD included in the firm fixed price):

\$650.00 per full day session 40 and over

a. The Total price for year 1, year 2, and year 3:	
Firm Fixed Price	\$268,632.00
Additional charges	<u>\$ 51,630.00</u>
TOTAL FOR YEARS 1 THROUGH 3	\$320,262.00

The annual firmed fixed price of \$89,544.00 for each year includes: electronic newsletters quarterly, 20,000 County business cards annually, 5,000 Refrigerator Magnets and 39 full day CISD sessions annually for three years. This price included all taxes.

b. The Total price for option year 4, if contract is renewed (Including the firm fixed price for the program)	\$106,754.00
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The annual firm fixed price of \$89,544.00 for option year 4 includes: electronic newsletters quarterly, 20,000 County business cards annually, 5,000 Refrigerator Magnets and 39 full day CISD sessions. This price included all taxes.

c. The Total Price for option year 5, if contract is renewed (Including the fixed fee price for the program)	\$106,754.00
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The annual firm fixed price of \$89,544.00 for option year 5 includes: electronic newsletters quarterly, 20,000 County business cards annually, 5,000 Refrigerator Magnets and 39 full day CISD sessions. This price included all taxes.

d. Total Estimated Price for the 5 years: \$533,770.00

The annual amount will be prorated by twelve months and determines the monthly \$7,462.00 billing rate. The annual fee shall include all expenses related to the performance of work and services required to meet the requirements of this Scope of Work. The additional charges for additional services will be billed separately in arrears monthly.

III. PAYMENT

A. Invoicing Instructions:

Invoices and support documentation (Monthly Program Summary) is to be sent to:
Project Manager, Tracy Vonada
Human Resources, Employee Benefits
Hall of Administration
333 W. Santa Ana Blvd, 2nd Floor
Santa Ana, CA 92702-4062

The County's Project Manager is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing payment.

B. Payment Term- Payment in Arrears

Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this contract. Contractor shall reference price agreement number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this contract and shall not be construed as acceptance of any part of the goods or services.

C. Payment– Invoicing Instructions

The Contractor will provide a two-part invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1, above
3. Name of County agency/department
4. Delivery/service address
5. Price Agreement (PG) or Purchase Order (PC) number
6. Date of order
7. Product/service description, quantity, and prices
8. Sales tax, if applicable

9. Freight/delivery charges, if applicable
10. Contractor's Federal I.D. Number

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Attachment C

Implementation Plan/Project Schedule

Implementation & Program Re-Launch Planning	Responsible Party	Duration
Review New Website Format for County User IDs & Passwords	Horizon Health	10 days
Initial Implementation Meeting & Review Program needs & priorities	Horizon Health & County of Orange	1 day
Follow-up Meetings to discuss implementation re-launch status	Horizon Health & County of Orange	Up to 90 days
Final wrap-up implementation/re-launch meeting and evaluation	Horizon Health & County of Orange	1 day
Communications Campaign	Responsible Party	Duration
Draft copy of employee notification and communication materials regarding program re-launch	Horizon Health	10 days
Approve and/or provide edits to employee notification and communication materials regarding program re-launch to Horizon Health	County of Orange	5 days
Order materials for production and distribution	Horizon Health	3 days
Integration Planning & Development	Responsible Party	Duration
Identification & discussion of key issues for County of Orange for development of vendor integration & cross referrals	Horizon Health & County of Orange	2 days
Reporting & Structure	Responsible Party	Duration
Review reporting structure/changes for County of Orange profile	Horizon Health & County of Orange	3 days
Utilization report provided to County for review and approval	Horizon Health	5 days
Approve and/or provide edits to Utilization report & format	County of Orange	3 days
User Resources	Responsible Party	Duration
Online demonstration of new web features	Horizon Health	1 day
Select & test new web features for County website	County of Orange	10 days
Launch new & improved features on County website	Horizon Health	5 days

Attachment D

Staffing Plan

Name	Classification/Title	Experience/Qualifications
Carol Allen	Account Executive	12 Years EAP, Bachelor's Degree in Business Administration, Certified Employee Assistance Professional (CEAP)", CCN's Best Practices for Critical Incident Response, Certified Trainer, Teleometrics International, Models for Management, Jeffrey Mitchell Model, Critical Incident Stress Debriefings, Zenger Miller Frontline Leadership
Peggy Wagner	President	20 Years Behavioral Health/EAP, Bachelor's degree in Social Work; Master's degree in Social Certified Employee Assistance Professional (CEAP), Licensed Clinical Social Worker (LCSW)
Gigi Kaney	Account Executive (Support & Back-Up)	18 Years Human Resources and EAP, Bachelor's Degree in Business Administration

Substitution or addition of Contractor's key personnel shall be allowed only with prior written approval of the County Project Manager.

The Contractor may reserve the right to involve other personnel, as their services are required. Assignment of additional key personnel shall be subject to County approval.

Attachment E

Performance Guarantees

The following sets forth the amount(s) to be deducted for Contractor's failure to comply with each of the Performance Standards. This remedy is in addition to all other remedies set forth in this Contract and/or available under law or equity.

A. Standard-Timely Production of Quarterly Newsletters

Contractor guarantees that four newsletters, one each calendar quarter, will be produced and provided to the County's Project Manager for electronic distribution and/or posting on the County's EAP website. This standard shall be measured and reported on a quarterly basis to the County's Project Manager with quarterly EAP Usage Reports. The amount of \$1,000 per quarter shall be automatically deducted from all monies due and owing to Contractor from County for Contractor's failure to meet this performance guarantee each quarter. Penalty shall not exceed \$2,000 per year.

B. Standard- Timely Production of Management Reports

Contractor guarantees that EAP Usage reports shall be provided to County Management within 45 calendar days after the end of a quarterly reporting period. This standard shall be measured and reported on a quarterly basis to County's Project Manager. The amount of \$1,000.00 per quarter shall be automatically deducted from all monies due and owing to Contractor from County for Contractor's failure to meet this performance guarantee. Penalty shall not exceed \$2,000.00 per year.

C. Standard-Frequency of Account Management Meetings to Review Results

Contractor guarantees it will meet with County as needed and requested through the implementation process and a minimum of quarterly thereafter. This standard shall be measured and reported annually to County's Project Manager. The amount of \$1,000.00 shall be automatically deducted from all monies due and owing to Contractor from County for Contractor's failure to meet this performance guarantee. Penalty shall not exceed \$2,000 per year.

D. Standard-Wait Time

Contractor guarantees the following client wait times:

- Contractor guarantees that upon initial call, an appointment with an EAP counselor for purposes of assessment will be offered and/or made within 24-96 hours, depending upon the urgency of the problem.
- Contractor guarantees that upon assessment, a referral appointment with an appropriate network provider for purposes of treatment will be offered and/or made within 24-96 hours, depending upon the urgency of the problem.
- Initial call to referral: Appointments/Referrals offered and/or made within 1-8 calendar days.

This standard shall be measured and reported quarterly to County's Project Manager. The amount of \$1,000.00 shall be automatically deducted from all monies due and owing to Contractor from County for Contractor's failure to meet this performance guarantee. Penalty shall not exceed \$2,000 per year.

E. Utilization

Contractor guarantees an annualized EAP utilization rate of 5%. Utilization will be calculated using the number of full-time and part-time employees as of the beginning of the Contract year. This standard shall be measured and reported on an annual basis, within 45 days following the end of the Contract year. The first reporting period shall end June 30, 2010. The amount of \$1,000.00 shall be automatically deducted from all monies due and owing to Contractor from County for Contractor's failure to meet this performance guarantee. Penalty shall not exceed \$2,000 per year.

Attachment F

HIPAA PRIVACY BUSINESS ASSOCIATE AGREEMENT

This Contract is entered into this ___ day of _____, 2009, between the County of Orange the “County” and _____ “Business Associate”. The parties intend to use this Amendment to satisfy the Business Associate contract requirements in the regulations at 45 CFR 164.502(e. and 164.504(e., issued under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

1) Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501) Notwithstanding the above, "the Plan" shall mean County of Orange Group Health Plans and Management and Dental Plan; “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g); “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee; and “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

2.0 Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by Section 3.0 of this Agreement, or as Required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Plan any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, the Plan agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, at the request of Plan or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations, to Protected Health Information in a Designated Record Set, to the Plan as directed, or directly to an Individual in order to meet the requirements under 45 CFR 164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Plan directs or agrees to pursuant to 45 CFR 164.526 at the request of Plan or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations.
- (h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Plan available, or at the request of the Plan or the Secretary, to the Plan or to the Secretary in a time and manner, which shall

be designated by the Plan or the Secretary, for purposes of the Secretary determining Plan's compliance with the Privacy Rule.

- (i) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) Business Associate agrees to provide to the Plan or an Individual in a prompt and reasonable manner consistent with the HIPAA regulations as designated by the Plan, information collected in accordance with Section 2.0 (i) of this Agreement, to permit Plan to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (k) Business Associate agrees to satisfy all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI. Standards, at 45 CFR Part 162) Business Associate further agrees to ensure that any agent, including a subcontractor that conducts standard transactions on its behalf will comply with the EDI Standards.
- (l) Business Associate agrees to determine the Minimum Necessary type and amount of PHI required to perform its services and will comply with 45 CFR 164.502(b) and 514(d)

3.0 Permitted or Required Uses and Disclosures by Business Associate

- (a) General Use and Disclosure. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Plan as specified in the Contract referenced above, or in this Agreement, provided that such use or disclosure of Protected Health Information would not violate the Privacy Rule. Business Associate, its agents or subcontractors shall only request, use and disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.
- (b) Additional use and disclosure.
 - (i) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (ii) To the extent that Business Associate uses one or more subcontractors or agents to provider services under this Agreement, and such subcontractors or agents receive or have access to PHI, of the Plan or Business Associate each such subcontractor or agent shall sign an agreement with Business Associate containing the same provisions as this Agreement.
 - (iii) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
 - (iv) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j) (1).

4.0 Obligations of Covered Entity to Inform Business Associate of Covered Entity's Privacy Practices, and any Authorization or Restrictions.

- (a) The Plan shall provide Business Associate with the notice of privacy practices that the Plan produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

- (b) The Plan shall provide Business Associate with any changes in, or revocation of, a specific Authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.
- (c) The Plan shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that the Plan has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

5.0 Permissible Requests by the Plan.

The Plan shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Plan with exception of data aggregation or management and administrative activities of Business Associate.

6.0 Term and Termination

- (a) *Term.* The Term of this Agreement shall be effective as of _____ subject to the Privacy Rule effective April 14, 2003, and any modifications thereof, and shall terminate on _____ or as of renewal date set forth in contract when all of the Protected Health Information provided by the Plan to Business Associate, or created or received by Business Associate on behalf of the Plan, is destroyed or returned to the Plan, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section, which ever occurs first.
- (b) *Termination for Cause.* Without limiting any other of the termination rights of the parties pursuant to the Contract, and upon the Plan's knowledge of a material breach by Business Associate or its subcontractor of a provision under this Agreement or the subcontractor agreement, the Plan shall provide an opportunity for Business Associate or its subcontractor to cure the breach or end the violation and terminate the Contract if Business Associate or its subcontractor does not cure the breach, or end the violation within the time specified by the Plan, or immediately terminate the Contract if Business Associate or its subcontractor has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, the Plan shall report the violation to the Secretary.
- (c) *Effect of Termination.*
 - (i) Except as provided in paragraph (ii) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from the Plan, or created or received by Business Associate on behalf of the Plan. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - (ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to the Plan notification of the conditions that make return or destruction infeasible. If infeasible as agreed to by the parties herein, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7.0 Security of Electronic Protected Health Information

7.1 Security. Business Associate will establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of

electronic protected health information. Business Associate will follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information “the Security Rule”, published at 45 CFR Parts 160 – 164. as soon as practicable, but no later than April 21, 2005.

7.2 Agents and Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom it provides electronic protected health information, agrees to implement reasonable and appropriate safeguards to protect that information.

7.3 Security Incidents. Business Associate will report any security incident of which it becomes aware to Client. For purposes of this agreement, a “security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempt to penetrate computer networks or servers maintained by Business Associate.

8.0 Rights of Individuals

Business Associate recognizes that HIPAA and state law grant individuals rights related to protected health information about them. Business Associate agrees to the following provisions for the protection of those individual rights.

8.1 Procedure. Business Associate will cooperate with Covered Entity in responding to requests by individuals who wish to exercise their rights under HIPAA. Any requests made directly to Business Associate will be referred to the Covered Entity. Covered Entity will be solely responsible for responding to the individual as required by HIPAA or other applicable law. Covered Entity will inform Business Associate in writing of any actions Business Associate is required to take with regard to records of individuals who exercise their rights under HIPAA. Business Associate will follow the direction of the Covered Entity regarding these records, and use commercially reasonable efforts to respond in a timely manner to enable Covered Entity to comply with deadlines established by HIPAA.

8.2 Confidential communications. Business Associate will provide confidential communications to individuals consistent with the requirements of 45 CFR 164.522.

8.3 Access to records. As directed by Covered Entity, Business Associate will provide Covered Entity with an electronic copy (or if an electronic copy is not available, a paper copy. of the “designated record set” of an individual to enable the Covered Entity to grant the individual access to the “designated record set” in accordance with 45 CFR 164.524. Business Associate may charge a reasonable fee for copying or preparing a summary of the designated record set. The fee schedule will be subject to the approval of Covered Entity.

8.4 “Amendment” of record. As directed by Covered Entity, Business Associate will add information to the designated record set of an individual, and forward the additional information to third parties when that information could have a material impact on a decision about the individual, all as required by 45 CFR 164.526.

8.5 Accounting of certain disclosures. Business Associate will make available to Covered Entity the information required to provide individuals an accounting of disclosures in accordance with 45 CFR 164.528.

9.0 Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

- (b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L No. 104-191.
- (c) *Survival.* The respective rights and obligations of Business Associate under Section 6.0 of this Agreement shall survive the termination of this Addendum.
- (d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (e) *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the state of California to the extent not preempted by the Privacy Rules or other applicable federal law.
- (f) *Indemnification and performance guarantees.* The indemnification and performance guarantee provisions contained in the Contract shall also apply to this Amendment.

EXHIBIT 1

County of Orange Child Support Enforcement
Certifications Requirements

A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity:

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

(Additional sheets may be used if necessary.)

*"I certify that _____
Company name is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.*

Authorized Signature	Name	Title	Date
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EXHIBIT 2

EDD Independent Contractor Reporting Requirements

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a “service provider” to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent contractor is defined as “an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

To comply with the reporting requirements, County procedures for contracting with independent Contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of contract
- Amount of contract

First Name	Middle Initial	Last Name
SSN _____		
Contract Number _____		Dollar value of contract _____
Start Date _____		Expiration Date _____