

K21-747



FIRST RESP*NSE
MENTAL HEALTH

Master Services Agreement



THIS AGREEMENT is made on the 5th day of November, 2020 (the "Effective Date") by and between First Response Mental Health Inc. ("FRMH"), an Ontario Corporation, its primary office at 585 Squier St. Thunder Bay, ON, P7B 4A7, and the City of New Orleans, represented by LaToya Cantrell, Mayor ("Customer"), with an office at 2929 Earhart Blvd. New Orleans Louisiana 70125.

WHEREAS, FRMH is the developer and has the exclusive right to license various peer and community support management tools further detailed in the attached Statement of Work ("SOW") which, together with its accompanying documentation and other materials, shall be referred to hereafter as the "Solution" or "Service"); and

WHEREAS, Customer wishes to license and use the Solution and FRMH Services for the price and on the terms set forth in this Agreement, including the Statement of Work ("SOW") which is attached as Exhibit A.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereto agree to the terms and conditions of this Agreement.

ARTICLE I - TERM AND TERMINATION

Term. This Agreement shall become effective upon execution by both parties for twelve (12) months beginning on the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

Extension. At the end of the initial term the parties may mutually agree to extend the duration of this Agreement for an additional twelve (12) month period.

Termination for convenience. Either Party may terminate this Agreement at any time during the term of the Agreement by giving the other written notice of the termination at least 30 calendar days before the intended date of termination.

Termination for Non-Appropriation. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

Termination for Cause. Either party may terminate this Agreement immediately for cause by sending written notice to the other Party. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging Party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging Party; no further notice will be required.

General Termination. The parties may otherwise terminate this agreement by: (1) mutual agreement of the parties, (2) Customer upon thirty(30) days' written notice to FRMH, or (3) as otherwise provided herein.

Suspension. Notwithstanding the article on Force Majeure, the City may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City.

Survival of Certain Provisions. Notwithstanding the article on Force Majeure, the City may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from the City Articles IV(Confidentiality) , VI (Ownership of Data), VII (Indemnification), X (Non-solicitation of Employees), XI (Independent Contractor), shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

ARTICLE II - License

Subject to the terms of this Agreement and in exchange for the fees agreed to in the SOW, FRMH will provide to Customer the services described in this Agreement and purchased by Customer, including the grant of a non-exclusive, non-transferable terminable license to use the Solution as set forth more



particularly in the Terms of Use, which is attached hereto as Appendix A and incorporated by reference herein.

ARTICLE III - Fees, Costs, And Invoicing

Fees, costs, and invoicing are based on the products and/or services selected by Customer. Fees applicable to this Agreement are found in the Statement of Work (SOW) attached as Exhibit A.

ARTICLE IV - Confidentiality

FRMH and Customer agree that each party may have access to, or become acquainted with Confidential Information about the other. "Confidential Information" of a party hereto means this Agreement, and any exhibits, Appendices, or addenda, and any proprietary computer software program including the Solution, proprietary information or terminology used in its business, and any materials evidencing the same (specifically, including without limitation, screen shots and functionality of the Solution, other technical data or know-how relating to the Solution and all products, development plans, employee names and qualifications, services, customers, markets, engineering, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, business plans, executive summaries, discussion and research memos, marketing accounts and/or financial information). Each party shall keep said Confidential Information of the other party in confidence and shall not use, copy, reveal, report, publish, disclose, transfer or otherwise make it available, directly or indirectly, without the prior written consent of the other party. Each party agrees to: (a) maintain the confidentiality of all Confidential Information using at least the degree of care and security as it uses to maintain the confidentiality of its own Confidential Information, and in no event less than a reasonable degree of care, and (b) not use the other's Confidential Information except in accordance with this Agreement. Information shall not be considered confidential that: (i) is publicly known prior to or after disclosure hereunder other than through acts or omissions attributable to the recipient or its employees or representatives; (ii) as demonstrated by prior written records, is already known to the recipient at the time of disclosure hereunder; (iii) is disclosed in good faith to the recipient by a third party having a lawful right to do so; (iv) is the subject of written consent of the party which supplied such information authorizing disclosure; or (v) is required to be disclosed by law; provided that the recipient shall give the disclosing party reasonable notice in writing prior to disclosing such information in order to facilitate seeking a protective order or other appropriate remedy from the proper authority.

Notwithstanding the foregoing, if the parties have previously executed an agreement concerning confidentiality and non-disclosure, and any of those terms directly conflict with the terms in this section, the most restrictive and protective term will prevail. FRMH shall have the right to disclose that the Customer is using the Solution.

ARTICLE V - Support and Service Level Agreement

Commencing on the Effective Date of this Agreement, FRMH shall provide Customer with the services and support below.

5.1 Maintenance Services.

- a. **Defect Correction.** When Customer reports a suspected Defect in the Solution (the "Service Offering") to FRMH, FRMH shall attempt to recreate the suspected defect based upon information provided by Customer. If the Defect is confirmed, FRMH shall implement a Correction into the Service Offering and provide Customer a Correction. For the purpose herein, a "Defect" is a material failure of the Service Offering to operate substantially in accordance with this Agreement, which failure is attributable exclusively to FRMH or the Solution. Failure of the service offering attributable to data provided by Customer which does not comply with FRMH published specifications, whether accepted by FRMH or not, is not considered a Defect. A "Correction" means, without limitation, workarounds, support releases, component replacements, patches and/or documentation changes, as FRMH deems reasonably appropriate.
- b. **Technical Support and Communications.** Customer may report problems and seek assistance regarding Customer's use of the Service Offering. Customer shall report problems or request service by contacting FRMH at the email address / phone number specified in the implementation plan.
- c. **Maintenance Scheduling.** Scheduled maintenance will be communicated to Customer at least one day in advance. Standard downtime for any scheduled maintenance is less than four (4) hours. Maintenance will occur before 8:00 a.m. EST and after 6:00 p.m. (EST) (i.e. off working hours) whenever possible. The foregoing notwithstanding, when it is in the interest of Customer, any urgent issue can be addressed by FRMH without advance notice to Customer of such maintenance.
- d. **Data Backup.** Customer data backup is scheduled nightly and occurs automatically after 6:00 p.m. (EST) and before 8:00 a.m. (EST) the next day.
- e. **Additional Charges.** Requests, if not associated with a technical performance or standard system functionality, will be subject to review and may be subject to additional charges.



5.2 System Access and Service Level Warranties.

FRMH warrants that the Service target of ninety-nine-point five percent uptime (99.5%) will be met. This warranty will not apply to any downtime caused by Customer or resulting from a failure of or problems in Customer's equipment, any Customer power or utility problems, any problems in Customer's network, or any other failures caused by persons or events for which FRMH is not responsible. Maintenance periods do not impact uptime measurements.

Article VI - Ownership of Data

All right, title and interest in the data used and/or submitted by Customer in connection with the Solution ("Data") is owned by Customer. Customer hereby grants to FRMH a license to use the Data consistent with its obligations hereunder and as required by this Agreement. FRMH may collect and use de-identified data from the Data and may aggregate such de-identified data from other end users and sources. Collected de-identified data shall not be used by FRMH in any way that identifies Customer or any individual. Customer hereby grants to FRMH a worldwide, perpetual, irrevocable royalty-free license to use and incorporate into the services and Solution any suggestions, enhancement request, recommendation, correction or other feedback provided by Customer.

Article VII - Indemnification

FRMH agrees to indemnify, defend and hold harmless Customer from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party, including amounts incurred pursuant to resolution or settlement agreements with government agencies (cumulatively, each a "Claim"), arising out of: (a) any breach by FRMH of Article VI (Confidentiality) or (b) any allegation that any of the Solution or Services (or any portion thereof) infringes or misappropriates, as applicable, a third party's copyrights, trademarks, or trade secrets. Customer will promptly notify FRMH in writing of any Claim under this section, will reasonably cooperate with FRMH at FRMH's sole cost and expense, and will allow FRMH sole authority to control the defense and settlement of such Claim. FRMH will not settle any Claim against Customer without Customer's prior written consent, which will not be unreasonably withheld. Customer will have the right, at its option, to participate in the defense of any Claim under this section by counsel of its own choice and its own expense. FRMH's



indemnification applies only to that part of a Claim, which can be directly attributed to FRMH; FRMH shall not be liable for any acts or omissions attributable to any other person, entity, or occurrence.

Customer agrees to indemnify, defend and hold harmless FRMH from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party, including amounts incurred pursuant to resolution or settlement agreements with government agencies (cumulatively, each a "Claim"), arising out of: (a) any breach by Customer of Article VI (Confidentiality) or (b) any breach by Customer of a term or condition of this Agreement. FRMH will promptly notify Customer in writing of any Claim under this section, will reasonably cooperate with Customer at the Customer's sole cost and expense, and will allow Customer sole authority to control the defense and settlement of such Claim. Customer will not settle any Claim against FRMH without FRMH's prior written consent, which will not be unreasonably withheld. FRMH will have the right, at its option, to participate in the defense of any Claim under this section by counsel of its own choice and its own expense.

ARTICLE VIII - Non-Solicitation of Employees

During the term of this Agreement and for one (1) year thereafter, each party agrees that it will not induce or attempt to influence any employee, subcontractor, or agent of the other party to (1) terminate his/her or its relationship with the other party, or (2) enter into any employment or other business relationship with any other person firm or entity. Notwithstanding the foregoing, nothing in this section will prohibit either party from engaging in general advertising for positions (as long as they are not targeted at any aforementioned person) and hiring anyone in response to such general advertising.

ARTICLE IX - INDEPENDENT CONTRACTOR

FRMH is at all times an independent contractor and nothing in this Agreement is intended, or construed, to create between Customer and FRMH an agency, joint venture or partnership relationship. Except as specifically set forth herein, neither party may act on behalf of the other.

ARTICLE X - DEFAULT

Failure by either party to perform as agreed upon in this Agreement shall be a default. Prior to initiating any legal action or termination of this Agreement, the non-defaulting party shall give written notice of the default to the other party. If the default is not cured within ten (10) days of delivery of the notice, the non-



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defaulting party may, at its option, terminate this Agreement, including Customer's rights under the Terms of Use. In the event of a payment default, FRMH may suspend and/or terminate service to Customer. Termination of this Agreement by FRMH does not relieve Customer of the obligation to make immediate payment of all fees and costs arising during the original term of the Agreement.

ARTICLE XII - NOTICES

Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

To Customer/City

Attn: William Salmeron, Chief
New Orleans EMS
2929 Earhart Blvd.
New Orleans, LA 70125

&

City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

To FRMH

Contract Management
First Response Mental Health
585 Squier St.
Thunder Bay, ON, P7B 4A7
Email: Admin@firstresponsemh.com

ARTICLE XV- OTHER PROVISIONS

- 14.1 **Modifications.** Any modification of this Agreement shall be binding only if evidenced in writing, and signed by each party.



- 14.2 **Invalidity.** Should any part of this Agreement for any reason be declared invalid, such declaration shall not affect the remaining portions of this Agreement, which shall remain in full force and effect as if this Agreement had been executed without the invalid portion thereof.
- 14.3 **Headings.** The division of this Agreement into sections and subparagraphs and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 14.4 **Assignment.** The Agreement may not be assigned by Customer without the prior express written consent of FRMH; such consent will not be unreasonably withheld.
- 14.5 **Force Majeure.** Neither party shall be liable or deemed in default for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by the occurrence of any event beyond the reasonable control of such party, including without limitation, fire, flood, strikes and other industrial disturbances, accident, embargo, act of the government, war, terrorism or national emergency requirement, act of God, act of the public enemy, electrical, internet, or telecommunication outage that is not caused by the obligated party.
- 14.6 **Convicted Felon Statement.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.
- 14.7 **Entire Agreement.** This Agreement together with the SOW attached as Exhibit A and the Appendices A (Terms of Use), and B (Customer Proposal) hereto contains the entire agreement between the parties hereto and supersedes all prior agreements, arrangements, negotiations and understandings between the parties hereto relating to the subject matter hereof. In the event of a conflict between the Master Agreement and an Exhibit or Schedule, the Master Agreement shall prevail. In the event of a conflict between an Exhibit and a Schedule, the Exhibit shall prevail.
- 14.8 **Counterparts.** This Agreement may be executed in counterparts, delivered by facsimile transmission or as a .PDF attachment to an email.



14.9 **Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

14.10 **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

IN WITNESS WHEREOF, FRMH and Customer have entered into this Agreement as of the Effective Date.

For Customer:

Signature: _____

Name: _____

Title: _____

For FRMH:

Signature: _____

Name: _____

Title: _____

Attachments:

Exhibit A – Statement of Work

Appendix A – Terms of Use **[ATTACHED SEPARATELY]**

FORM AND LEGALITY APPROVED:

Law Department, City of New Orleans



EXHIBIT A : STATEMENT OF WORK (SOW)

1. **Applicable Fees.** The selection of products and/or services chosen by Customer are indicated below, as are applicable fees.

PeerConnect: Proactive Wellness App	
Description	○ First Response Mental Health Proactive Peer Support Application ○ Application will display Client logos/colours
Pricing	NOLA EMS Flat rate based , including 3 years of support and hosting : \$26,640.00

Application Training	
Standard Pricing & Description	1. General User Training: 1.5 hrs @ \$30.00/User (minimum 8 users) 2. Peer Support Training: 1.5 hrs @ \$50.00/person (minimum 10 users) 3. Admin Training: ½ day training @200.00/Admin (no minimum)
NOLA EMS Pricing	Training to cover App Administrators and 30 Peer Supports Training to take place twice, once before initial app launch, and again after 1.5 years as a feedback opportunity and training refresher: • Initial Training: Virtual to accommodate Covid concerns • 1.5 year mark training: In-person to provide focus group and feedback opportunities as well as app training re-fresh NOLA TRAINING COST TOTALS: \$1,500.00 for initial training \$1,500.00 + \$1,600.00 (travel) for 1.5 year mark training = \$3100.00

Grand Total of : \$26640 + 1500 + 3100 = \$31,240.00

2. **Services and Fees:**



- a. Implementation. Implementation will be conducted as set forth in the implementation plan provided to the Customer by FRMH. Implementation includes set-up, system configuration, hosting and deployment, and standard training on use of the Solution. "Go-Live" shall begin when the Customer's system is available for download from Google Play and/or Apple App Store. If additional support is required additional consulting and travel fees may apply, subject to a written scope change document, executed by both parties.
- b. PEPM Fee. The Customer shall pay fees on a **one-time** basis as detailed herein. The first payment shall be due on the date which is thirty (30) days from Master Services Agreement execution

3. Additional Fees: The following fees may be assessed in addition to the fees described above:

- a. Consulting Fees. Consulting services required in excess of the services described herein will be subject to a written scope document executed by the parties prior to such services being provided; additional consulting shall be invoiced at \$175.00 per hour for senior management consultation, \$125.00 per hour for technical services. Such costs are in addition to the fees set forth in this SOW and will be documented as a scope change for Customer approval before work is undertaken.
- b. Travel Fees. Requested travel of FRMH employees, if any, will incur costs in addition to the Implementation Fee and other fees. Travel expenses will include all travel time that is in addition to training time, which will be invoiced at \$80.00 per hour. All travel costs will be billed as incurred.
- c. Interest Charges. In addition to the default remedies available at law and in the Agreement, any past due amounts will accrue monthly interest at one-and-a-half percent (1.5%). All invoices are due thirty (30) days from receipt. Invoices over sixty (60) days due will incur an additional \$100 administrative fee.

4. Contact Person:

- a. Customer must designate a main contact person (the "**Contact**") for all communications and decisions involving the Customer's use of the Solution. The Contact must be reasonably available on a daily basis to handle all communications with FRMH. If the Contact is frequently or constantly unavailable, FRMH may require that Customer designate a replacement contact person. Failure of the Contact to be available may also result in the imposition of additional fees to the Customer. The Customer shall advise FRMH in writing and in advance of replacing its designated contact person.



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Contact Name, Title

Street Address

City, State, Zip Code

Phone Number

Email Address
