

**CITY OF NAPERVILLE
CONSULTANT SERVICES
AGREEMENT/PROFESSIONAL**

THIS AGREEMENT (hereinafter referred to as the "Agreement") is entered into this 28th day of February 2017, between the City of Naperville, an Illinois municipal corporation and home rule unit of government, with offices at 400 South Eagle Street, Naperville, P.O. Box 3020, Naperville, Illinois 60566-7020 (hereinafter referred to as the "City"), and CuraLinc, LLC (d.b.a. CuraLinc Healthcare), with offices at 8707 Skokie Blvd, Suite 109, Skokie, Illinois 60077, a Limited Liability Company licensed to do business in the State of Illinois (hereinafter referred to as the "Consultant") which parties are hereinafter individually referenced as "Party" and cumulatively referenced as "Parties".

RECITALS

WHEREAS, the City intends to retain the services of a qualified and experienced consulting firm to perform Employee Assistance Program Services hereinafter referred to as the "Project"), utilizing the services of the Consultant in accordance with this Agreement; and

WHEREAS, this Agreement includes the following Exhibit A which contains the 1) The definitions of terms used; 2) The scope of services provided; 3) Consultant's covered entity disclosure; 4) Payment terms; and 5) Consultant's Proprietary Information; and

WHEREAS, this Exhibit A is attached hereto and incorporated herein as though fully set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Parties agree as follows:

SECTION 1- Services of the Consultant

- 1.1. The foregoing Recitals are a material part of this Agreement, and are incorporated in this Section I as though fully set forth herein.
- 1.2. The Consultant shall perform services in accordance with this Agreement and Exhibit A attached hereto. The Consultant retains the right to control the manner of performance of the services provided for in this Agreement and is an independent contractor and not an employee of the City. All employees and sub consultants or subcontractors of the Consultant shall likewise not be considered to be employees of the City.
- 1.3. The Consultant shall designate, in writing, a person to act as its Project Manager for the work to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define the Consultant's policies and decisions with respect to the work covered by this Agreement.

- 1.4. The Consultant shall employ only persons duly licensed by the State of Illinois to perform the professional services required under this Agreement for which applicable Illinois law requires a license, subject to prior approval of the City. The Consultant shall employ only well qualified persons to perform any of the remaining services required under this Agreement, also subject to prior approval of the City.
- 1.5. The Consultant, and Consultant's employees, agents, sub consultants and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars and all license and permit requirements in the performance this Agreement, including, without limitation and to the extent applicable, the Illinois Prevailing Wage Act, the federal Davis Bacon Act, and the Illinois Employment of Illinois Workers on Public Works Act.
- 1.6. The Consultant shall obtain prior approval from the City prior to subcontracting with any entity or person to perform any of the work required under this Agreement. If the Consultant subcontracts any of the services to be performed under this Agreement, such agreement shall provide that the services to be performed shall not be sold, transferred, assigned or otherwise disposed of or performed by another entity or person without the City's prior written consent, and such agreement shall incorporate all relevant provisions herein, including but not limited to the provisions set forth in Section 9 below. The Consultant shall be responsible for the integrity, accuracy and quality of any sub consultants and subcontractors' work.
- 1.7. The Consultant shall cooperate fully with the City as may be directed by the City, including but not limited to attendance at meetings, discussions and hearings.
- 1.8. The Consultant shall furnish the City with copies of all necessary reports, documents, and plans listed in the Scope of Services.

SECTION 2 - Additional Services

- 2.1. If a representative of the City verbally requests the Consultant to perform additional services ("Additional Services") not included in the Scope of Services set forth in Exhibit A, the Consultant shall confirm in writing the specific services that have been requested and specify that such services are Additional Services. Optional services (hereinafter "Optional Services"), as described in Exhibit A and as priced therein shall not be considered "Additional Services". Failure of the City to respond to the Consultant's confirmation of said services within thirty (30) calendar days of receipt of the notice shall be deemed rejection of, and refusal to pay for the Additional Services. Consultant shall not perform any Additional Services until City has confirmed approval of said Additional Services in writing. If authorized as provided herein, the Consultant shall furnish, or obtain from others, Additional Services which shall be paid for by the City as set forth in Section 5 of this Agreement. Additional Services may include the following (if such services are not part of the original Scope of Services and other exhibits attached hereto).

- a. Additional Services due to significant changes in the scope of the Project or its design;
- b. Revisions of previously approved studies, reports, design documents, drawings or specifications;
- c. Investigations involving detailed consideration of operations, maintenance and overhead expenses for the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material and labor, and material audits or inventories required for certification of force account construction performed by the City;
- d. Preparation of substantial change orders requested by the City;
- e. Additional Services in connection with the Project by the City and services not otherwise provided for in this Agreement;
- f. Preparing to serve or serving as an expert witness for the City in any litigation or other proceeding involving the Project; and

SECTION 3 – The City's Responsibilities

- 3.1. The City shall assist the Consultant by placing at its disposal all available information in its possession which it deems pertinent to the Project, including previous reports and any other data relative to design and construction of the Project. The City makes no representation or warranty of any nature whatsoever as to the accuracy of information or documentation provided by the City to the Consultant unless such representation or warranty is included in the Scope of Services attached hereto as Exhibit A.
- 3.2. The City's Compensation and Benefits Manager shall designate in writing a person to act as the City's Project Manager, with respect to the work to be performed under this Agreement.
- 3.3. The City shall give prompt written notice to the Consultant whenever the City observes or otherwise becomes aware of any defect in the Project.
- 3.4. The City may direct the Consultant to provide, at a cost agreed upon by the Parties, Additional Services pursuant to Section 2 of this Agreement.

SECTION 4 - Period of Service

- 4.1. The Consultant shall commence work on the Project within seven (7) calendar days after receipt of a written notice from the City to proceed. The City shall determine when the Consultant has completed the work required pursuant to this Agreement.

SECTION 5 - Payment For Services and Reimbursements

5.1. The City will pay all approved invoices pursuant to the Payment terms in Exhibit A. This provision supersedes and replaces the Illinois Prompt Payment Act.

5.1.1 Payment to the Consultant shall be made quarterly, based on the employee headcount provided by the City at the beginning of the quarter. The City reserves the right to revise the employee headcount on a quarterly basis. Further, the Consultant shall perform the identified deliverables in Exhibit A pursuant to amounts specified for each such deliverable, so long as the total amount invoiced for the Project is based on the number of employees in each quarter.

5.1.2 The City shall have the right to withhold payment to the Consultant to the extent that the Consultant has failed to perform the work described herein to the satisfaction of the City, or if the Consultant has failed or refused to perform any of its obligations hereunder.

5.2. In the event that, in the City's sole discretion, the City directs the Consultant to perform any of the Additional Services described in Exhibit A/ Services Provided, payment for said Additional Services shall be in amounts not to exceed those set forth in Exhibit A, and other provisions set forth in this Section 5 shall apply equally to such Optional Services.

5.3. In the event of termination of this Agreement pursuant to paragraph 6.1 after approved completion of any phase of the basic services, fees due the Consultant for services rendered through such phase shall constitute final payment for such services, and no further fees shall be due to the Consultant. In the event of such termination by the City during any phase of the basic services, the Consultant shall be paid for services here under for services through the date of termination. In the event of any such termination, the Consultant shall also be reimbursed for charges not in dispute incurred as a result of any work performed by any sub consultants to the date of termination, and shall also be paid for any unpaid Additional Services and reimbursable expenses not in dispute.

5.4. All invoices for this Project must be sent to:

City of Naperville Human Resources Department
Compensation and Benefits Manager
400 South Eagle Street
P.O. Box 3020
Naperville, IL 60566-7020

SECTION 6 - Completion, Expiration or Termination of the Agreement

6.1. This Agreement may be terminated by the City upon thirty (90) days written notice for any reason. Mailing or facsimile transmission of such notice shall be equivalent to personal notice and shall be deemed to have been given at the time of

receipt.

- 6.2. Within thirty (30) days of completion, expiration or termination of this Agreement, the Consultant, and Consultant's sub consultants, subcontractors and sub-vendors (as applicable) shall turn over to the City any documents, drafts, and materials, including but not limited to, outstanding work product, data, studies, test results, source documents, and such other items specifically identified by the City, and all items identified in Section 9.1 of this Agreement. Upon receipt of said items, the Consultant shall be paid for work performed to the date of termination as provided in Section 5. The Parties to this Agreement shall continue to perform all obligations hereunder through the date of termination.

SECTION 7-Insurance

- 7.1. At the Consultant's expense, the Consultant shall procure and maintain in effect throughout the duration of this contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, and its agents, representatives, employees or subcontractors.
- 7.2. The Consultant must furnish Certificates of Insurance and Additional Insured Endorsements to the City before staff recommends award of the contract to City Council. If requested, the Consultant will give the City a copy of the insurance policies. The policies must be delivered to the City within two weeks of the request. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A: VII according to the A.M. Best Company. Should any of the insurance policies be canceled before the expiration date, the issuing company will mail thirty (30) days written notice to the City. The Consultant shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein.
- 7.3. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 7.4. The limits of liability for insurance required hereunder shall provide coverage for not less than the following amounts, or greater where required by law. If the Consultant maintains higher limits than the minimums shown below, the City shall be entitled to coverage under the higher limits maintained by the Consultant.

(A) Commercial General Liability:

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability

Occurrence Form CG 00 01 and include Premise/Operations, Products/Completed Operations, Independent Contractors, Contractual and Personal Injury/Advertising Injury.

Limits:	
General Aggregate	\$2,000,000.00
Products/Completed Operations	\$2,000,000.00
Each Occurrence	\$2,000,000.00
Personal Injury	\$2,000,000.00

(B) Automobile Liability:

Coverage shall be at least as broad as Insurance Services Office Form CA 00 01 to include all Owned, Hired, Non-owned vehicles.

Limits:	
Combined Single Limit per Accident	\$2,000,000.00

(C) Workers' Compensation:

Coverage shall be in accordance with the provisions of the laws of the State of Illinois.

(D) Employers' Liability

Limits:	
Each Accident	\$2,000,000.00
Each Employee Bodily Injury by Disease	\$2,000,000.00
Policy Limit Bodily Injury by Disease	\$2,000,000.00

(E) Errors & Omissions Liability/Professional Liability

Per Occurrence Annual	\$2,000,000.00
Aggregate	\$2,000,000.00

If Errors & Omissions coverage is written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase extended reporting period coverage for a minimum of three (3) years after completion of contract work.

(F) Other Insurance Provisions:

The Commercial General Liability policy shall cover liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall include an Additional Insured endorsement to the Consultant's insurance policy, or as a separate owner's policy covering The City, its officers, officials, employees and volunteers as insured's. Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

The Automobile Liability Policy shall cover liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant. Automobile Liability coverage shall contain or be endorsed to contain the City, and its officers, officials, employees and volunteers as insureds. Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant and its employees, agents, sub consultants, subcontractors and sub-vendors.

- 7.5. The Consultant understands that the acceptance by the City of Certificates of Insurance, additional insured endorsements, insurance policies, and/or any other documents in noway releases the Consultant from the requirements set forth herein.

SECTION 8 - Damages - Defense/Indemnification/Hold Harmless

- 8.1. The Consultant shall be responsible for any and all damages to property or person as a result of any negligent act or omission or willful misconduct in the performance of the work under this Agreement.
- 8.2. The Contractor shall defend, indemnify and hold harmless the City and its officers, agents, and employees from any and all liability, losses or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including but not limited to costs, and fees, including reasonable attorney fees, resulting from any negligent or willful act or omission on the part of the Contractor or Contractor's subcontractors, sub consultants, or sub-vendors, or their respective employees, agents and representatives, during the performance of this Agreement, including without limitation, failure to comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars and all license and permit requirements. Such defense, indemnification, and hold harmless provisions shall not be

limited by reason of any insurance coverage herein provided.

8.2.1 Nothing herein shall be construed as a limitation or waiver of defenses available to the City and employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1- 101 *et seq.*

- 8.3. The Consultant shall not be responsible for any delay in the performance or progress of the Project, or liable for any costs or damages sustained by the City resulting from such delay, caused by any errors, omissions and/or negligent acts of the City or their agents, or by changes ordered in the work. In the event of such delay, the Consultant will proceed with due diligence to alleviate the delay and continue the performance of its obligations under this Agreement.
- 8.4. The Consultant shall not be responsible for any damages, which may occur as a result of any modifications made to the plans of the Consultant by others without the Consultant's knowledge, or for damages that may occur because of the improper or negligent acts of others.
- 8.5. The City will release and hold harmless the Consultant for delays or losses experienced by the City directly attributable to the discovery of concealed conditions, as defined below, which require additional design, disposal, mitigation or other remedial action. When the Parties agree that such discovery warrants the need for additional services, those services will be considered additional under Section 2 of this Agreement. For the purposes of this Agreement, the term "Concealed Condition" is defined as a physical condition substantially at variance with the conditions disclosed by the reports and documents provided to the Consultant by the City, or otherwise in the Consultant's possession or available to the Consultant in the normal course of business, or physical conditions which are of an unusual nature, differing materially from conditions ordinarily encountered and generally recognized as inherent in the nature of the work encompassed within the Project. It is Consultant's responsibility to demonstrate the existence of a Concealed Condition and the Consultant shall give written notice to the City within three (3) business days of the discovery of a Concealed Condition or shall be deemed to have waived the issue.
- 8.6. The City will release and hold harmless the Consultant from delays or costs experienced by the City which are directly attributable to the discovery of hazardous wastes, contaminants or pollutants which require additional design, disposal, mitigation or other remedial action.
- 8.7. The provisions of this Section 8 shall survive completion, expiration or termination of this Agreement.

SECTION 9 - Documents, Drawings and Intellectual Property

9.1. Any documents and/or intellectual property (hereinafter "Documents") defined herein without limitation as drawings, survey data, reports, studies, processes specifications, estimates, maps, plans, computations, photographs, audio and video recordings, electronic data, software (including but not limited to source code and run-time executable), system integration details (including but not limited to data mapping, data conversion, data customization, and system customization), and all other documentary materials, regardless of physical form or characteristics, prepared by the Consultant, or Consultant's subcontractors, sub consultants, or sub-vendors, for the Project shall be considered Works for Hire and the sole property of the City. Nothing contained in this Section shall be construed as limiting or depriving Consultant of its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement. The City shall not acquire any rights to any of Consultant's, its subcontractors', sub consultants, or sub-vendors' proprietary computer software, or other intellectual property except: i) to the extent any such software or other intellectual property is modified pursuant to this Agreement, or ii) as may be separately agreed in writing.

9.2. During the course of the Agreement, the Consultant, and Consultant's subcontractors, sub consultants, and sub-vendors shall provide Documents as required in the Scope of Work and as requested by the City's Project Manager. Files delivered in an electronic medium must be compatible and work with the City's then-current systems and software.

Within thirty (30) days of completion, expiration or termination of the Agreement, a hard copy and an electronic set of original Documents as defined in paragraph 9.1 above, including but not limited to those required in the Scope of Work, shall be delivered to the City's Project Manager and shall be labeled "Original-Final". In the event of a conflict between any specifications, reports, or other documents, the Documents labeled "Original- Final" will govern, Files delivered in an electronic medium must be compatible and work with the City's then-current systems and software.

9.3. The Consultant shall maintain for a minimum of three (3) years after the completion of this Agreement, or for three (3) years after the termination of this Agreement, whichever comes later, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with the Agreement. The Consultant shall make its books, records, digital files, and any others supporting documents related to the Agreement promptly available for review and audit by the City and/or by the federal funding entity, if applicable. Further, the Consultant agrees to cooperate fully with any audit conducted by the City, or federal funding authority, and to provide full access to all materials related to any aspect of this Agreement. Failure to maintain the books, records, digital files, and supporting documents required by this subsection shall establish a presumption in favor of the

City for recovery of any funds paid under the Agreement for which adequate books, records, digital files and supporting documentation are not available to support their purported disbursement.

9.3.1 The Consultant shall include a similar provision in any agreement it enters into for work under this Agreement with any subcontractor, sub consultant, and sub-vendor.

9.4. The provisions of this Section 9 shall survive completion, expiration or termination of this Agreement.

SECTION 10 -Term-Option to Renew

10.1. The term of the contract shall begin on January 1, 2017 and expires on December 31, 2021. Thereafter, this Agreement shall automatically renew for successive one (1) year periods, unless either party has notified the other in writing of its intention to not renew the Agreement at least ninety (90) days prior to the expiration date or anniversary.

SECTION 11 - Successors and Assigns

11.1. The City and the Consultant each bind themselves and their partners, successors, executors, administrators and assigns to the other party of the Agreement and to the partners, successors, executors, administrators and assigns of such other party in respect to all c o v e n a n t s of this Agreement. Neither the City nor the Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any publicbody, which may be a party hereto, nor shall it be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.

SECTION 12 - Force Majeure

12.1. Whenever a period of time is provided for in this Agreement for the Consultant or the City to do or perform any act or obligation, neither party shall be liable for any delays or inability to perform if such delay is caused by an event beyond its control and without its fault or negligence, including: (1) earthquakes, floods, hurricanes, tornadoes, or othersimilar calamities; (2) acts or war; (3) acts of civil or military authority; (4) embargoes; (5) major environmental disturbances; (6) public disorders, civil violence or disobedience; (7) riots, sabotage, insurrection or rebellion; (8) epidemics; (9) terrorist acts; (10) fires or explosions; or (11) nuclear accidents. If a delay is caused by any of the Force Majeure circumstances set forth above, the time period shall be extended for only the actual amount of time said party is so delayed. Further, either party claiming a delay due to an event of force majeure shall give the other party written notice of such event within three (3) business days of its occurrence or it shall be deemed to be waived.

SECTION 13 - Amendments and Modifications

13.1. Except as otherwise provided herein, the nature and scope of services specified in this Agreement may only be modified by written amendment to this Agreement, approved by both Parties. This Agreement may be modified or amended from time to time provided, however, that no such amendment or modifications shall be effective unless reduced to writing and duly authorized and signed by the authorized representatives of the Parties.

SECTION 14 - Standard of Care

14.1. The Consultant, and Consultant's sub consultants and subcontractors if applicable, shall perform the services provided for herein to the satisfaction of the City and with that degree of care, knowledge, skill, and diligence ordinarily exercised by reputable members of the same profession currently practicing under similar conditions within the State of Illinois.

14.2. The Consultant shall be responsible for the accuracy of its services, and the services of its subconsultants and subcontractors, under this Agreement, and shall promptly make necessary revisions or corrections resulting from its errors, omissions, or acts, or resulting from the errors, omissions, or acts of its subcontractors and subconsultants, without additional compensation.

14.3. The Consultant shall respond to any notice of errors, omissions, or issues with the products or services under this Agreement within 48 hours of notification by the Project Manager. The Consultant shall be required to promptly visit the Project site if directed by the Project Manager. The Consultant shall include these requirements in its agreements with any subconsultants and subcontractors.

14.4. The Consultant, and Consultant's subconsultants and subcontractors, shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to their performance under this Agreement.

14.5. If, within years after the Consultant has received a final payment under this Agreement, any of the Consultant's work (or the work of any sub consultant or subcontractor) is found to be not in accordance with the requirements of this Agreement, the Consultant shall correct it promptly after receipt of written notice from the City to do so at no cost to the City. This remedy is in addition to any other remedies the City may have under this Agreement or the law.

14.6. The provisions of this Section 14 shall survive the completion, expiration or termination of this Agreement.

SECTION 15 - Savings Clause

15.1. If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

SECTION 16 - Captions and Paragraph Headings

16.1. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

SECTION 17 - Non-Waiver of Rights

17.1. No failure of either Party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

SECTION 18 - Entire Agreement

18.1. With the exception of any "General Terms and Conditions" document which may be applicable to this Agreement, this Agreement sets forth all the covenants, conditions and promises between the Parties with regard to the subject matter set forth herein and there are no covenants, promises, agreements, conditions or understandings between the Parties, either oral or written, other than those contained in this Agreement. In the event of a conflict between the provisions of this Agreement and an applicable General Terms and Conditions document, this Agreement shall prevail.

SECTION 19 - Governing Law

19.1. This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance. Venue for any action arising out of or due to this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

SECTION 20 - Notice

20.1. Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, or by personal service, to the persons and addresses indicated below or to such other addresses as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

If to the City:
Compensation and Benefits Manager
Human Resources Dept.
City of Naperville 400 S. Eagle Street
P.O. Box 3020
Naperville, Illinois 60566-7020

If to the Consultant:
Sean Fogarty
President and CEO
Curalinc, LLC
8707 Skokie Blvd.
Suite 109
Skokie, IL 60077

20.2. Mailing of such notice as and when provided above shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

SECTION 21 - Execution of Agreement

21.1. This Agreement shall be signed last by the City Manager and the City Clerk. The City Clerk shall affix the date on which they sign this Agreement on Page 1 hereof which date shall be the effective date of this Agreement.

SECTION 22 - Authorizations

22.1. The Consultant's authorized representatives who have executed this Agreement warrant that they have been lawfully authorized by the Consultant's board of directors or its bylaws to execute this Agreement on its behalf. The City Manager and City Clerk warrant that they have been lawfully authorized to execute this Agreement. The Consultant and the City shall deliver upon request to each other copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents which evidence their legal authority to execute this Agreement on behalf of their respective Parties.

SECTION 23 - Illinois Freedom of Information Act

23.1. The Illinois Freedom of Information Act, 5 ILCS 140/7(2), provides that records in the possession of others whom the City has contracted with to perform a governmental function are covered by the Act and subject to disclosure within limited statutory timeframes (5 working days with a possible 5 working day extension, or within such other time frame as agreed upon in writing by the requester). Upon notification from the City that it has received a Freedom of Information Act request that calls for records within the Consultant's control, the Consultant shall promptly provide all requested records to the City so that the City may comply with the request within the required timeframe. The City and the Consultant shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such

records, or part thereof, are applicable.

23.1.1. Consultant may seek to have proprietary information submitted by it to the City withheld from disclosure to third parties to the extent that such information falls within the definition and provisions of Section 7(I)(g) of the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), and so long as such information has been furnished to the City under a proprietary claim as provided in said Act.

SECTION 24-Counterparts

24.1. For convenience, this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives on the day and date first written above.

City of Naperville

CuraLinc, LLC (d.b.a. CuraLinc Healthcare)



**Doug Krieger
City Manager
City of Naperville**



**Sean Fogarty
President and CEO
Curalinc, LLC**

EXHIBIT A

I. DEFINITIONS

The following definitions apply to this Agreement:

1. **“Agreement”** means the contents of this document in full, including attachments incorporated herein by reference.
2. **“Assessment”** refers to a service included in the initial EAP intake. CuraLinc will provide at a minimum one (1) telephonic assessment to evaluate the CIEBD’s Presenting Issue and determine if the concern is within the scope of the EAP (as defined below).
3. **“Benefit Training”** consists of an Orientation Meeting(s) with supervisors and employees of the Company describing the EAP and providing an overview of the Program.
4. **“Benefits”** means the services to which CIEBD’s are entitled under the SupportLinc Employee Assistance Program Services Agreement.
5. **“Covered Individuals & Eligible Beneficiaries/Dependents” (“CIEBD”)** refers to benefit-eligible employees of the Company and their family members who are eligible for the services described herein.
6. **“Crisis Intervention”** means the process of responding to a CIEBD’s request for immediate services in order to determine whether or not a medical-psychiatric emergency or urgent situation exists and to otherwise assess the needs for short term counseling, referrals to community resources and referrals to medical psychiatric emergency services.
7. **“Critical Incident”** A critical incident is a disastrous or possibly disastrous event at the workplace or impacting the work force. Examples include, but are not limited to: an employee being seriously injured, a catastrophic event on a work site, the accidental death of another employee, a kidnapping or a robbery.
8. **“Covered Services”** means the services described in this Agreement. Any services not explicitly set forth in this Agreement are not included as part of this Agreement.
9. **“Critical Incident Stress Management (CISM) Services”** will be provided for “Critical Incidents,” as defined above. These services are referred to as “interventions” and will be handled face-to-face whenever possible, or telephonically when a face-to-face appointment cannot be arranged. CuraLinc will make every reasonable effort to

provide face-to-face emergency responses within 24 hours of a request for such services consistent with the terms of this Agreement by Company.

10. **“Distance Counseling”** refers to a counseling approach that takes the best practices of traditional counseling and adapts them for delivery to clients via electronic means in order to maximize the use of technology-assisted counseling techniques.
11. **“eConnect[®]”** refers to CuraLinc’s proprietary Distance Counseling platform.
12. **“Employee Assistance Program (“EAP” or “Program”)** An EAP is a service for CIEBDs to provide confidential assessments, counseling and referrals for problems related to marital, parent- child, alcohol and other drug abuse, emotional, legal/financial issues, childcare, eldercare, and other personal challenges or stresses.
13. **“EAP Provider”** means the licensed mental health professionals employed by, or under contract with, CuraLinc to provide services to the CIEBD.
14. **“Emergency Services and Crisis Intervention”** is defined as intervention within 24 hours required during acute crisis situations (e.g., threats to harm self or others). If, in CuraLinc’s Provider’s professional opinion, the CIEBD is in danger to self or others, or may require medication, the employee would then be referred to a physician or hospital for additional care outside of the scope of CuraLinc’s services under this Agreement.
15. **“Fee for Service”** entails invoicing and payment for non-Agreement services on a mutually agreed upon hourly rate.
16. **“Limitation”** means the maximum number of sessions available to a CIEBD per separate presenting issue brought to the EAP Program.
17. **“PerformanceLinc”** is the brand name for the training service offered by CuraLinc.
18. **“PerformanceLinc Training System”** is the proprietary web-based training service offered by CuraLinc.
19. **“Plan Implementation”** means the tasks required by the Company and CuraLinc in order to install the services covered within this Agreement, including the development of EAP documents specifying the scope of services, means to access service, training of designated Company management and other employees, and the review and distribution of promotional materials.
20. **“Prepayment Fees”** means the quarterly amounts due and payable to CuraLinc by the Company for providing Benefits to CIEBD.

21. **“Presenting Issue”** means the problem or concern for the CIEBD to receive assistance through the SupportLinc program. These issues include, but are not limited to: family and marital problems; relationship problems; substance abuse; emotional distress; depression; grief and loss; domestic and workplace violence; and legal and financial concerns.
22. **“ResponseLinc”** is the brand name for the critical incident stress management services offered by CuraLinc.
23. **“Short-Term Counseling”** means a series or block of counseling sessions available under the Program. Short-term counseling sessions are intended to be applied to situations in which the CuraLinc EAP Case Manager believes that the presenting issues can be reasonably and appropriately resolved in the Program. Examples of these types of short-term issues can be, but are not limited to: job stress; grief and loss; substance abuse awareness; family concerns and conflicts; adjustment issues (relocation, new family members, new relationships, new job); co-dependency.
24. **“SupportLinc”** is the brand name for the Employee Assistance Program (EAP) and Work/Life Benefits offered by CuraLinc.
25. **“Topical Training”** refers training provided to supervisors, managers and staff of the Company about issues related to the workplace, to include stress management, communication, identification and referral of employee problems.
26. **“Work/Life Services”** relates to information concerning local community and/or professional resources for dependent care (parenting, childcare, aging, eldercare, education, etc.), legal and financial concerns. Work/Life Services do not include counseling services. It is limited to the provision of names and telephone numbers of resources available to CIEBDs under the Agreement.

II. SERVICES PROVIDED BY CURALINC

CuraLinc hereby agrees to perform or assist in the performance of the following services for Company.

1. Provide on-going consultation for the Company’s EAP, to include the overall design, development, implementation and management of the Program.
2. Provide telephonic access to the Program 24 hours/day, seven days/week, 365 days/year.
3. Provide an intake Assessment including, but not limited to: gathering psychosocial history including presenting problem, treatment history and substance abuse history; completing a risk assessment of the CIEBD; and determining the appropriate level of

care.

- a. If the presenting issue can be resolved within the framework of the EAP's short-term counseling model, CuraLinc will provide clinical consultation and individual case management to Company and their CIEBDs, which will include:
 - i. Crisis counseling of employees and family members.
 - ii. Assessment, short-term counseling (up to *six sessions*) and/or referrals.
 - iii. At the CIEBD's discretion, the aforementioned Short-Term Counseling sessions may be delivered either in-person or via CuraLinc's eConnect[®] platform.
 - iv. Post-case referral to an appropriate professional or helping agency.
 - v. Follow-up on each case to determine success of the rehabilitation process or need for further assistance.
- b. If the initial assessment reveals that treatment is required beyond the scope of the EAP, the case manager will provide the CIEBD with appropriate referrals for Mental Health or Substance Abuse providers or facilities that are in the CIEBD's benefit plan network.
 - i. CuraLinc will verify the CIEBD's eligibility.
 - ii. CuraLinc will educate the CIEBD regarding the upcoming sequence of events.
 - iii. CuraLinc will give the CIEBD names of in-network providers that are appropriate for his/her condition, based on his/her need.
4. Liaise between Company and all treatment facilities that serve Company employees referred through the Program in the areas of psychological health and chemical dependency.
5. Assist in the internal promotion of the program, including information dissemination sessions, preparation of pamphlets, wallet cards, draft letters to the family, posters and master copies of newsletters. CuraLinc will provide at no additional cost 125% allocation of the SupportLinc tri-fold employee brochure for the covered employee participants for the initial twelve (12) months of this Agreement. Additionally, CuraLinc shall provide for each subsequent twelve (12) months of this Agreement a 15% supply of the SupportLinc tri-fold brochure to allow for employee turnover. *At*

additional cost to Company, CuraLinc will provide additional SupportLinc tri-fold brochures at (\$0.25) apiece.

6. Provide program evaluation and quarterly utilization and program activity reports so that Company can track the utilization and performance of the Program.
7. Provide Work/Life services as described below:
 - a. **Legal Assist Services:** Each employee/family member is entitled to Telephonic Legal Services and In-Person Legal Services as described below at no cost. All additional costs following the consultation will be identified by the attorney in the retainer agreement, which must be agreed to in advance by the employee, who is solely responsible for payment. Excluded services are any matters involving current or prior work related issues of the eligible employee or dependents, or any issues related to Company. Unlimited access to web-based Legal Assist services is also available on the SupportLinc website.
 - i. **Telephonic Legal Services:** CuraLinc will provide the CIEBD with access to an attorney who: has been licensed to practice law in the forum state for at least ten years; has no public record of non-administrative discipline within the last ten years; and carries malpractice insurance. The attorney shall provide, via telephone, at no cost to the CIEBD, up to one-half hour of time to answer general questions of law according to the applicable state law.
 - ii. **In-Person Legal Services:** CuraLinc will provide the CIEBD with one-half hour office consultation from an attorney or law firm that: is duly licensed to practice law in the CIEBD's forum state; has a managing or operating partner with a minimum of five years' experience from the date admitted to the bar of the forum state; and has not been convicted of any felony or crime involving moral turpitude, been the subject of any non-administrative public discipline in any jurisdiction, or been the subject of a malpractice action or judgment.
 - a. **Integrated Identity Recovery Program** – Each CIEBD is entitled to one (1) 30-minute telephone consultation with a Certified Consumer Credit Counselor. In this consultation, the professional will work with employee/family member to objectively assess their situation, create an action plan, and provide the knowledge and tools to implement that plan most effectively.
 - b. **Financial Assist Services** – Each CIEBD is entitled to one (1) telephone consultation with a financial planner or budget specialist at no cost. The result of the consultation may result in further activities including, but not limited to

mailing of a budget development package, debt consolidation follow-up, investment planning and, in some cases, referral to an attorney or to the EAP. Any additional work requested of the CPA will be provided at a 25% discount off regular hourly rates when a CPA is actually retained. Tax preparation for the 1040 and State return is available telephonically to each member by a CPA at a preferred rate reduction of 25% from the CPA's normal fee. Cost for any of these additional services will be the sole responsibility of the employee.

- c. **Child Care Resource and Referral Services** – Each CIEBD is entitled to unlimited access to referral services, mapping and reference library materials including telephonic consultation to assess need, financial ability, geographic limitations, facility/provider credentials and licensure and unlimited access to information materials offered through CuraLinc. It is understood that the selection of a facility/provider is the responsibility of the Company employee. Listing of said materials to be provided to CIEBD by CuraLinc and/or available through CuraLinc's SupportLinc website.
 - d. **Elder Care Resource and Referral Services** – Each CIEBD is entitled to unlimited access to referral services, mapping and reference library materials including telephonic consultation to assess need, financial ability, geographic limitations, facility/provider credentials and licensure and unlimited access to information materials offered through CuraLinc. It is understood that the selection of a facility/provider is the responsibility of the Company employee. Listing of said materials to be provided to CIEBD by CuraLinc and/or available through CuraLinc's SupportLinc website.
 - e. **Convenience Resource and Referral Services** – Each CIEBD is entitled to unlimited telephone consultation on enhanced services/convenience services that include, but are not limited to, diet and nutrition, smoking cessation, clubs/associations, kennels/pet care, relocation services, home repair, automobile services, etc. Costs associated with membership and retention of services will be the sole responsibility of the employee or family member.
8. Create and provide an EAP and Work-Life website customized for Company that includes, but is not limited to, information, articles, resource search engines, audio and video files, "how-to" guides, and online educational and training seminars.
9. Corporate Training services (PerformanceLinc) as described below:
- a. Provide up to ***eight (8) hours*** of in-person Topical or Benefit Training per year, selected from the most current version of CuraLinc's PerformanceLinc Training Catalog, at no additional cost. ***At additional cost to Company and only at Company's request***, subsequent in-person Topical or Benefit Training sessions are available for \$150.00 per hour.

- i. Additional fees may apply if the session is not scheduled with CuraLinc at least 45 days before the event.
 - ii. Company will be responsible for the cost of an in-person training session if a notice to cancel is not provided to CuraLinc within 48 hours of the event.
 - iii. At Company's discretion, the aforementioned allocation of in-person Topical or Benefit training may be used for Level II or Level III Critical Incident Stress Management services.
- b. *At additional cost to Company and only at Company's request*, Topical Training modules, delivered through the web-based PerformanceLinc Training System, are available for \$450.00 per module. All PerformanceLinc Training System modules include a post-module proficiency quiz.

10. Critical Incident Stress Management services (ResponseLinc) as described below:

- a. **Level I Crisis Intervention:** Acute post-traumatic stress is a normal reaction in a normal person to an abnormal event. The most widely used intervention in a critical incident is one- on-one individual intervention. While Debriefings are very important to work groups of victims and witnesses, most employees choose to talk to a critical incident counselor separately. The cost of a Level I Critical Incident response is included in CuraLinc's SupportLinc EAP services.
- b. **Level II Critical Incident Defusing:** A Defusing is aimed at the core work groups that are victims or witnesses of the incident. Defusing provided at the right time may lessen the need to do a full Debriefing. Employees are often in crisis and may be more open to help. Follow- up services are always necessary after a Defusing to assure that employees are managing stress adequately. *At additional cost to Company and only at Company's request*, the cost of a Level II Critical Incident response is \$150.00 per EAP Provider per hour. Additional fees may apply if a response is scheduled with less than 24 hours' notice.
 - i. Company will be responsible for the cost of a Level II Critical Incident response if a notice to cancel is not provided to CuraLinc within 48 hours of the event.
- c. **Level III Critical Incident Stress Debriefing:** The Critical Incident Stress Debriefing (CISD) is conducted in a small group meeting (group size of less than 20 participants is ideal, over 20 limits the opportunity for everyone to share). It is a discussion about the critical incident or traumatic event. This structured group setting gives employees the opportunity to discuss their thoughts and emotions about the incident in a controlled, structured rational

manner. *At additional cost to Company and only at Company's request*, the cost of a Level III Critical Incident response is \$150.00 per EAP Provider per hour. Additional fees may apply if a response is scheduled with less than 24 hours notice.

- i. Company will be responsible for the cost of a Level III Critical Incident response if a notice to cancel is not provided to CuraLinc within 48 hours of the event.

11. *At additional cost to Company and only at Company's request*, any additional onsite services will be provided for \$150.00 per hour.

III. COVERED ENTITY DISCLOSURE

CuraLinc acknowledges that it is a "covered entity" as that term is defined under the Health Insurance Portability and Accountability Act of 1996 and the regulations thereunder ("HIPAA") and the Privacy Rule issued by the Department of Health and Human Services (45 CFR Subparts 160 and 164) (the "Privacy Rule"). In such event, CuraLinc acknowledges it has specified responsibilities to limit the uses and disclosures of protected health information ("PHI"), a term defined by the Privacy Rule (45 CFR Section 164.501, incorporated herein by reference as though set forth in full). CuraLinc represents that it will use and disclose PHI only as permitted by HIPAA and the Privacy Rule, subject to any additional limitations on the use and disclosure of that information as imposed by this Agreement, and CuraLinc will comply with all other applicable provisions of HIPAA, including the responsibility under HIPAA and the Privacy Rule to provide each Eligible Participant with access to his or her PHI (45 CFR Section 164.524); to allow that Eligible Participant to amend his or her PHI (45 CFR Section 164.526); and to provide an accounting of those disclosures identified under the Privacy Rule as reportable disclosures (45 CFR Section 164.528). In the event that CuraLinc is deemed to be a business associate of the Company, CuraLinc agrees to comply with the requirements relating to business associates in HIPAA, and enter into a business associate agreement with the Company in compliance with HIPAA.

IV. PAYMENT

In Consideration for the above-mentioned services, Company agrees to pay CuraLinc a sum of *one dollar and nineteen cents (\$1.19)* per employee per month. *The aforementioned price(s) will be guaranteed to the Company until December 31, 2021.*

SupportLinc EAP Services will be invoiced quarterly thirty (30) days in advance of the first day of the quarter. The fee for SupportLinc EAP Services shall be calculated based upon the number of employees designated as eligible as of the start of each quarter. Payment is due by the first day of the billing period. The initial premium must be paid before program implementation activities can begin. All invoices for additional services such as Topical

Training sessions, Benefit Training sessions, and/or Critical Incident services are due thirty (30) days from the invoice date. A finance charge of 2.0% of unpaid invoices will be assessed each month for any amounts that are not the subject of a good faith dispute and are unpaid past the due date. If this Agreement terminates for any reason prior to the expiration of a quarter for which Company has paid the applicable quarterly fees, then CuraLinc shall refund to Company that portion of the quarterly fees that relate to the unexpired portion of the quarter.

V. TRADEMARK LICENSE

CuraLinc has used and continues to use the Registered Trademark eConnect® in connection with its EAP services (the “Registered Trademark”) and has developed certain intellectual property and commercial rights in said Trademark, and continues to use said trademark in said capacity throughout the United States. The eConnect® trademark is registered with the United States Patent and Trademark Office under Serial Number 85813748. CuraLinc and Company agree that CuraLinc has exclusive title to and ownership of the Registered Trademark and is entitled to all trademark rights, including all goodwill associated therewith, associated with the trademark eConnect® as used in connection with the services set forth in this Agreement. Company agrees that during the term of this Agreement and at any time thereafter, it shall not challenge the ownership and other commercial and proprietary rights CuraLinc retains with respect to the aforementioned Registered Trademark, shall not challenge the validity of this Agreement and shall not engage in any actions or omissions deemed harmful by CuraLinc to such rights. Company acknowledges CuraLinc’s exclusive right, title and interest in and to the Registered Trademark under applicable law in all jurisdictions, and will not, either directly or indirectly, at any time, do anything to discredit, encumber or diminish any part of such right, title, or interest or challenge the validity of this license. Company agrees that its use of the Registered Trademark will inure entirely to the benefit of CuraLinc.

To the extent permitted by law, upon the terms and conditions set forth herein, CuraLinc grants to Company a non-exclusive, non-transferable, royalty-free license to use the Registered Trademark in relation Company’s utilization and provision of CuraLinc’s services as set forth in this Agreement and/or the promotion and advertising thereof (the “Licensed Activities”). Company shall use the Registered Trademark only in relation to the Licensed Activities and only in accordance with the terms and conditions of this Agreement. Any use of the Registered Trademark not provided for in this Agreement is expressly prohibited absent express written consent of CuraLinc.

Company shall use the Registered Trademark only in the precise form and manner as prescribed herein by CuraLinc. CuraLinc retains the right to specify, from time to time, the format in which Company shall use and display the Registered Trademark, and Company shall only use or display the Registered Trademark in a format approved by CuraLinc. Every use of the Registered Trademark by Company shall incorporate in an appropriate manner the “®” symbol. An example of an approved use is as follows:

eConnect®

Company shall not permit any other person and/or company to use the Registered Trademark without CuraLinc's prior written consent and shall not assign or transfer in any way its rights and duties derived from this license.

Company shall immediately notify CuraLinc in writing of any infringements or third party imitations of any mark and/or design, or other act of a third party that may concern the Registered Trademark, of which Licensee becomes aware. CuraLinc shall have the sole right to determine whether or not any action shall be taken on account of such infringements or imitations. In the event that CuraLinc determines that action shall be taken on account of such infringements or imitations, it is the sole responsibility of CuraLinc to pursue and bear the cost of said action. Company shall cooperate with CuraLinc in good faith, at CuraLinc's expense, in the event of any action for infringement pursued by CuraLinc. Company is under no obligation to pursue or bear the cost of any action against infringements or third party imitations of any mark and/or design, or other act of a third party that may concern the Registered Trademark.

The term of this license shall generally coincide with the Term of the Agreement, and this license shall terminate upon termination of the Agreement. Notwithstanding, either party may terminate this license with or without cause by delivering ten (10) business days written notice to the other party. All rights granted by this license, including without limitation, Company's right to use the Registered Trademark, shall expire upon termination of this license or the Agreement, and upon termination, Company shall immediately cease and desist from all further use of the Registered Trademark.

END OF EXHIBIT