

**Master Services Agreement
for
("Company")**

This Agreement is made by and between EAP Consultants, LLC dba ESPYR, a limited liability company organized under the laws of the state of Delaware located at 1850 Parkway Place, Suite 700, Marietta, GA 30067, (hereinafter referred to as "ESPYR") and Florida Housing Finance Corporation, a public corporation and a public body corporate and politic, having a mailing address of 227 N. Bronough Street, Suite 5000 Tallahassee, FL 32301-1329, (hereinafter referred to as the "Company").

WHEREAS, ESPYR is engaged in the business of providing employee assistance services (hereinafter referred to as the "Program") to employer groups; and

WHEREAS, ESPYR shall maintain the staff and resources necessary to fulfill requirements of this Agreement;

WHEREAS, the Company desires to retain ESPYR to provide the Company with employee assistance services (hereinafter referred to as the "Services") for the Company's covered Employees (as defined below) and their dependents as defined below.

WHEREAS, the effective date for the commencement date of services will be May 1, 2020.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the value and receipt of which is acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I.
PRICING AND PAYMENT**

- 1.1 The Company shall pay ESPYR for Services at the price(s) set forth on Appendix 1.
- 1.2 On or before the fifteenth (15th) day of the agreed upon billing cycle Company shall provide a completed Espyr Billing and Eligibility File, listing all current eligible covered employees that are entitled to the provided Services. The Espyr Billing and Eligibility File shall be submitted electronically.
- 1.3 Based upon the Billing and Eligibility File provided pursuant to Article 1.2, above, ESPYR shall calculate an invoice for the subsequent billing period. Espyr sends an invoice on the 1st day of the month for services rendered in that month and the term is net 30 days. ESPYR reserves the right to charge Company a late fee of 1.5% per month applied against overdue amounts, or the maximum rate permitted by law, whichever is less. Late fees will be recalculated every 30 days thereafter, based on Company's current outstanding balance.
- 1.4 ESPYR's invoices will be based on the number of Covered Employees on the Billing and Eligibility File provided to ESPYR by Company in accordance with Article 2.2.

**ARTICLE II.
THE PROGRAM**

- 2.1 ESPYR agrees to provide Company with an employee assistance program (EAP) for its covered Employees and their dependents. Dependents are defined as spouses, domestic partners, as well as children up to the age of 26 who are eligible to be on a parent's health insurance plan. The Services shall include those set forth on Appendix 2.
- 2.2 The Company may elect to include as covered employees, COBRA employees or other employees whose employment has been terminated by identifying such employees in a separate employee Billing and Eligibility File. Coverage for such employees will end when the company Billing and Eligibility File no longer contains their names, or dates, or on the date of so indicated by the company on the respective Billing and Eligibility File.
- 2.3 ESPYR may withhold all of the Services described on Appendix 2, if any compensation due to ESPYR by Company has not been received by ESPYR in accordance with the terms set forth in Article VI, below.

**ARTICLE III.
CONFIDENTIALITY OF INFORMATION**

- 3.1. ESPYR agrees to protect and maintain the confidentiality of all personal information of, and the identity of, Covered Employees and their Dependents seeking assistance through the Services in accordance with all Federal and State laws and regulations.
- 3.2. Each party also agrees to maintain the secrecy of the other's Confidential Information. Confidential Information shall mean all information, documents, software, present and future products and policies disclosed by either party to the other during the term of this Agreement, which are required to be confidential under any applicable law or regulation or by agreement of the parties, or which are treated by the party as Confidential (whether or not such information is marked "Confidential"), together with any analysis or other documents prepared by either party. Confidential Information shall not include; a) information which is readily available in the public domain, or b) information that has been made available by third parties who are not bound by any obligation of confidentiality. The parties acknowledge and agree that the Confidential Information is proprietary to, and a valuable trade secret of, the disclosing party, and that any disclosure or unauthorized use thereof will cause irreparable harm to the disclosing party.
- 3.3 In addition, the parties agree to comply with the Health Insurance Portability and Accountability Act (HIPAA) and, contemporaneously with the execution of this Agreement, the parties have entered into the Business Associate Agreement("BAA") pertaining to Protected Health ("PHI") in the form attached as Exhibit B. The parties agree to comply with all aspects of the BAA. The term of the BAA shall be the same as the term of this Agreement.

**ARTICLE IV.
INDEMNIFICATION**

- 4.1. To the extent allowable under s. 768.28, Fla. Stat., the Company agrees to indemnify, defend and hold harmless ESPYR, its officers, agents and employees from any claims, damages and actions of any kind or nature that may be brought against ESPYR whether at law or in equity arising from or caused by any acts or omissions of the Company including, without limitation, claims resulting from ESPYR's withholding of the Services as a result of Company's failure to pay for same in violation of Article 2.3, above.
- 4.2. ESPYR agrees to indemnify, defend and hold harmless the Company, its officers, agents and employees from any claims, damages and actions of any kind or nature that may be brought against the Company whether at law or in equity arising from or caused by any acts or omissions directly related to the services provided by ESPYR under this Agreement.

**ARTICLE V.
RELATIONSHIP**

- 5.1. ESPYR will always be an independent contractor, and not an employee or agent, of Company in connection with the performance of the Services. ESPYR will (i) not enter into any contract, agreement or other commitment, or incur any obligation or liability, in the name or otherwise on behalf of Company and (ii) will retain full control over the manner in which it performs the Services. This Agreement and the transactions entered into pursuant hereto shall not be construed to create a partnership, joint venture or employment relationship between ESPYR and the Company and the parties agree that they are not in any way authorized to make any contract, agreement, warranty, or representation on behalf of the other party or to create any obligation express or implied on behalf of the other party.

**ARTICLE VI.
TERMS**

- 6.1 The term of the Agreement shall commence on May 1st 2020 the Effective Date and, shall continue until April 30th, 2025 at which time it shall automatically renew for additional one year successive terms for a period of up to five years, unless either party shall terminate the Agreement by providing the other party with a written notice of termination at least ninety (90) days prior to the end of the then current term of the Agreement. Notwithstanding the foregoing, in the event of a breach of this Agreement by Company for nonpayment of any amounts due hereunder, ESPYR shall have the right to terminate this Agreement upon ten (10) days prior written notice, should Company not cure its breach by bringing its account current within that 10-day period.
- 6.2 In addition to the foregoing, either party may terminate this Agreement for material breach on 30 days written notice. The notice shall describe the breach with particularity and, should the party receiving the notice not cure the material breach within that 30-day period, then this Agreement shall be deemed terminated at the end of that 30-day period.

- 6.3 Any notice required under this Agreement shall be provided to the other party at the address stated herein above, shall be provided by overnight delivery service and shall be deemed received on the day after deposit with the overnight delivery service.

**ARTICLE VII.
LIMITED WARRANTY/LIMITATION OF LIABILITY**

- 7.1 **ESPYR WARRANTS THAT THE SERVICES SHALL COMPLY IN ALL MATERIAL RESPECTS WITH ANY SPECIFICATIONS AND OTHER REQUIREMENTS SET FORTH IN THE DESCRIPTION OF SERVICES. ESPYR SHALL USE REASONABLE EFFORTS TO CORRECT ANY SERVICES THAT DO NOT COMPLY WITH THE FOREGOING WARRANTY; PROVIDED THAT CUSTOMER NOTIFIES BINDER OF SUCH NONCOMPLIANCE WITHIN THIRTY (30) DAYS AFTER PERFORMANCE OF SUCH SERVICES.**
- 7.2 **THE WARRANTY AND REMEDY FOR SERVICES SET FORTH IN SECTION 7.1 ARE EXCLUSIVE. EXCEPT AS SET FORTH IN SECTION 7.1, ESPYR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO ANY SERVICES, RESULTS OR OTHER ITEMS (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE).**
- 7.3 **ESPYR WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS OR SERVICES PROVIDED HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ESPYR SHALL NOT HAVE LIABILITY FOR THE FOLLOWING: (I) LOSS OF REVENUE, INCOME, PROFIT OR SAVINGS; (II) LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION; OR (III) BUSINESS INTERRUPTION OR DOWNTIME. IN ADDITION, ESPYR DISCLAIMS ALL LIABILITY RESULTING FROM ERRORS IN ANY INFORMATION PROVIDED BY CUSTOMER. THESE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER FOR COMMERCIAL OR PERSONAL INJURY, AND WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT OR OTHERWISE.**
- 7.4 **NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT ESPYR'S LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. NEVERTHELESS, UNLESS OTHERWISE NOTED, ESPYR'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

**ARTICLE VIII.
MISCELLANEOUS PROVISIONS**

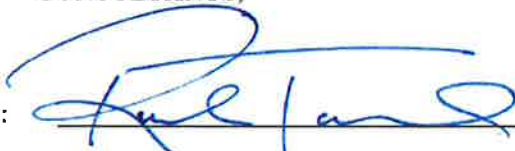

- 8.1. Except as otherwise provided in Article 5.1, no assignment of this Agreement or any rights hereunder shall be binding on either party hereto without the prior written consent of the other party hereto.
- 8.2. ESPYR shall maintain at all times professional liability insurance with coverage amounts for each occurrence at \$1,000,000 and an aggregate limit of \$3,000,000.
- 8.3. The waiver by a party hereto of any duty detailed herein, or breach of any covenant given herein, shall not operate as or be construed as a continuing waiver or a waiver of any subsequent breach or duty, and shall not estop a party from asserting or exercising any rights respecting any continuing, other, or subsequent duty or breach.
- 8.4. This Agreement may be modified, supplemented, amended or revised only in writing by the mutual agreement of all parties hereto.
- 8.5. This Agreement supersedes all previous Agreements and understandings, written or oral, between the parties as to the subject matter hereof.
- 8.6. All provisions, paragraphs, sentences, phrases, words and numerals in this Agreement shall be deemed severable, and if any provision, paragraph, sentence, clause, word or numeral, or the application thereof may be invalidated, such invalidity shall not affect the validity of the remainder of this Agreement, and the application of such provision, paragraph, sentence, clause, words or numeral in any other circumstances shall not be affected thereby.
- 8.7. This Agreement, and any and all claims relating to or concerning this Agreement shall be governed by the laws of the State of Florida.
- 8.8. The parties agree to submit all claims arising from or relating to this Agreement or to the Services supplied hereunder to arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), then in effect. If the matter in dispute exceeds \$100,000, the matter shall be considered by a panel of three arbitrators. Each party shall appoint one arbitrator within fifteen (15) days of receipt of the notice of the party requesting arbitration and the arbitrators so selected shall, within fifteen (15) days of their appointment, then select a third arbitrator. Upon failure of a party(ies) to appoint an arbitrator (or of the arbitrators selected to appoint a third arbitrator) as contemplated in the foregoing sentence, AAA shall appoint an arbitrator. If the matter in dispute is less than \$100,000, the matter shall be considered by a single arbitrator. The parties shall mutually agree to the single arbitrator, or if the parties are unable to so agree on an arbitrator within fifteen (15) days following a request for arbitration by either party, the arbitrator shall be selected by AAA. The decision of the arbitrator(s) (by majority vote if there are three arbitrators) shall be binding upon all parties and non-appealable. If there are three arbitrators, each party shall bear the cost of its appointed arbitrator and cost of the third arbitrator shall be borne by the non-prevailing party. If there is a single arbitrator, the non-prevailing party shall bear the cost of the arbitrator. Each party shall bear all of its own witness fees and attorneys' fees. The arbitration proceeding shall occur at the AAA Offices in Tallahassee, Florida unless another location is chosen by mutual agreement of the parties. The parties agree to waive, to the maximum extent permitted by law, any right to a jury

trial with respect to any dispute hereunder. Discovery shall be limited to a simultaneous exchange of relevant documents on a date set forth by the Arbitrator(s) and to no more than three depositions per side.

In Witness Whereof, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers. This Agreement constitutes the entire Agreement between the parties with respect to its subject matter, supersedes all prior or contemporaneous agreements and understandings with respect thereto, whether written or oral, and cannot be modified or amended except by a written instrument signed by both parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

EAP CONSULTANTS, LLC DBA ESPYR

FLORIDA HOUSING FINANCE CORPORATION

By: 	By: 
Title: <u>President & CEO</u>	Title: <u>General Counsel</u>
Date: <u>3/11/2020</u>	Date: <u>3-12-20</u>

APPENDIX 1

PRICING

The Company shall pay ESPYR a fee per Covered Employee per month in the amount of \$2.89. Currently Company estimates that it will have approximately 130 Covered Employees. Fees shall remain fixed through April 30th, 2025 after which ESPYR may update pricing once per year upon 60 days prior written notice to Company. In addition, Company agrees to pay any sales, excise or other such tax levied on its payments.

APPENDIX 2

THE SERVICES

The Services shall include the following services for Covered Employees, their eligible Dependents and the Organization:

a. Assessment, Referral or Problem-Solving Counseling Services

- 24 hours per day, 7 days per week toll-free telephonic access to Espyr's behavioral health clinicians, who provide Covered Employees and Dependents with in-the-moment assessment, support and guidance to address a range of personal and work-related concerns that may affect employee well-being and job performance.
- When deemed appropriate by an Espyr clinician, a Covered Employee or Dependent may be referred to a local Espyr network provider for assessment, short term counseling, referral and follow-up services. Counseling is available in-person as well as by telephone and online video conference.
- Covered Employees and each of their Dependents are eligible for up to six (6) EAP counseling visits per unique issue per year. When a Covered Employee or Dependent's presenting issue is determined to be outside the scope of the EAP or is not likely to be resolved within the short-term EAP counseling model, the Espyr clinician or network provider will coordinate referrals to appropriate resources through the health insurance plan or community-based services.
- Multilingual telephonic interpreter services available in 140 languages.

b. Services for Company Management

- Unlimited telephonic consultations to supervisors and managers concerning Employees.
- When a Covered Employee is referred by management for certain job-related problems, monitoring of that person's progress in the EAP and of all treatment for up to two years by maintaining contact with the Covered Employee, treatment providers, and the employer, if appropriate and with the Employee's signed written consent.
- Unlimited telephonic consultations regarding organizational issues, including sexual harassment, drug-free workplace, downsizing, conflict resolution, and workplace violence, job performance, attendance and/or conduct problems.
- Unlimited telephonic consultations and electronic educational materials in support of traumatic workplace events.
- Up to 4 hours per year of onsite trauma debriefings for critical incidents. Additional hours of onsite response available at \$350.00 per hour.

c. Work/Life Services

- Consultation, information, resources and referrals for personal and family needs such as: childcare, eldercare, adoption, academic, pet services, special needs, and concierge/daily living. Legal consultation provided by attorneys, and simple wills prepared at no cost. A 25% discount off attorneys' hourly rate for other legal services rendered beyond the scope of the initial consultation is available.
- Financial consultation by experts regarding debt matters, investment options, money management and retirement planning.

d. Web-Based Services

- Includes self-assessments and interactive tools, videos, articles, forms, calculators, and expert information on topics such as health, emotional wellbeing, relationships, personal finances, identity theft, legal, and personal/professional growth.
- Monthly webinars as well as interactive training courses related to such topics as supervision, leadership, communications, human resources, team building, business management and personal growth.

e. Employee Education and Training

- Web-based Employee orientation and supervisory training is available at ESPYR's website.
- Up to four (4) hours per year of onsite training for Employee orientations, representation at Benefit or Health and Wellbeing Fairs in the workplace, supervisory training, drug-free workplace or work/life seminars is included. Additional training is available for an additional charge of \$300.00 per hour including travel time and reasonable out-of-pocket expenses. A late cancellation (defined as a customer cancellation occurring within 72 hours of a confirmed EAP presentation or training) will incur a charge of \$250.00 for a one-hour training event and proportional and additional fees for cancellation of a multi-hour training event.
- Electronic promotional materials which will consist of some of the following; EAP brochures, wallet cards, posters, newsletters and flyers. Additional costs will be incurred for hardcopies.

**Exclusions to the above*

- Employees whose employment has terminated (and their Dependents) are not eligible for services. The only exception can be found in Article 2.2.
- Eligible Parents or Guardians seeking assessment, counseling and referral services for pre-school age children may be served as clients for assistance with parenting issues, but pre-school age children are not eligible for services.

- **Psychological evaluations, medication therapy, court-ordered assessments, therapy or counseling, or other Court-related reports, letters or testimony, child custody or guardianship evaluations, fitness-for-duty evaluations, substance use treatment services, and other behavioral health treatment services are not covered.**
- **ESPYR expressly will not offer assistance and/or legal guidance, to Employees or Dependents, with labor law or employment related issues.**