

Application Service Provider Agreement Order Form: Virgin Pulse Engage

Order Form Prepared for: Williamson County
Expiration Date: 7.16.2021
Prepared By: Rachel Grossman

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 Georgetown, TX 78626
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This Order Form and all accompanying appendices shall be referred to as the "Agreement."

The Initial Term of this Agreement will commence on the Effective Date and will expire on the Initial Order End Date.

The Effective Date of this Order Form is the last date it is signed by both parties below.

Virgin Pulse is an authorized Sourcewell Vendor and the Pricing and Product Descriptions detailed herein are authorized and approved via the Sourcewell Virgin Pulse Contract No. 102518-VRG.

Subscription Services

Services	Initial Order Start Date	Initial Order End Date	Initial Order Term (years)	Per Eligible Per Year Price	Minimum Eligible Lives	Estimated Eligible Lives	Total Price per Year
Engage Platform – Employees & Retirees	1/4/2022	12/31/2024	3 years	\$2.97	1,620	1,800	\$64,152
Engage Platform – Spouses + Domestic Partners (fees waived)	1/4/2022	12/31/2024	3 years	3	--	--	\$0
Total Per Year:							\$64,152

Additional Services

Services	Billing Type	Per Unit Price	Estimated Quantity	Total
Implementation	Per Unit	\$3,500	1	\$3,500
Custom Communications Service Credit	Annual Credit	\$3,000	1	--
Custom Reporting Service Credit	Annual Credit	\$3,000	1	--
Single Sign On – 1inbound + 5 outbound included	NA	NA	TBD	-
TOTAL FIRST YEAR COST				\$67,652

Payment Terms and Conditions:

- Pricing assumes an initial contract term of three (3) years.
- The Subscription Services Fees will be invoiced monthly in advance based on the actual number of Eligible Lives on record in Provider's system at the time of invoice.
- The initial Subscription Services Fees invoice under this Order Form shall be issued on the Initial Order Start Date. Thereafter, the invoices shall be issued every month following the Initial Order Start Date for the period of the Term.



4. All Subscription Services fees shall be due and payable within thirty (30) days of the date of the invoice.
5. The Implementation fees will be invoiced on the Contract Effective Date (date contract is fully executed).
6. The Custom Communications Service Credit is annual and expires at the end of each program year. Unused credit cannot be carried over each year; it cannot be applied to non-communication related services (e.g., reporting). It cannot be applied to hard costs like printing of materials or postage for shipping. All work exceeding the credit is billed at \$150 per hour.
7. The Communications Reporting Services Credit is annual and expires at the end of each program year. Unused credit cannot be carried over each year; it cannot be applied to non-reporting related services (e.g., communications). It cannot be applied to hard costs like printing of materials or postage for shipping. All work exceeding the credit is billed at \$200 per hour.
8. All Additional Services fees are due and payable within thirty (30) days of the invoice.

OPTIONAL RECOMMENDED SERVICES

Services	Billing Type	Per Unit Price	Estimated Quantity	Total
Tobacco Cessation Coaching	Per Participant Per Year	\$205	TBD	-
Nicotine Replacement Therapy (NRT) - Up to two (2) month supply of patches, lozenges or gum shipped directly to member's home address. Patches – 21 mg, 14 mg and 7 mg doses (to cover low, medium, and heavy tobacco use) Gum and Lozenges – 4 mg and 2 mg doses	Per Shipment Up to 2 one-month supplies offered to participants per program year (shipping included)	\$58	TBD	-
Form Processing Set-up (e.g., to receive forms from physicians)	Per Unit – One-time	\$1,500	TBD	-
Biometric Screening via Physician Form	Per Form Processed	\$5.00	TBD	-
Single Sign On (above the 1 inbound + 5 outbound included in base pricing)	Per Connection	\$2,500	TBD	-
Program vouchers (to reward employees for participating in off-platform events)	Per Voucher	\$.05	TBD	-

The parties have caused their duly authorized representatives to execute this Agreement as of the dates set forth below.

CLIENT: COUNTY OF WILLIAMSON, TX

By (Signature): _____

Name (Printed): _____

Title: _____

Date: _____

VIRGIN PULSE, INC.

By (Signature): _____

Name (Printed): _____

Title: _____

Date: _____

DocuSigned by:

Kim Stephan

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Kim Stephan

General Counsel

6/20/2021

DocuSigned by:

Gina Simonelli Baxter

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Assistant General Counsel



APPENDIX A: PRODUCT DESCRIPTION – VIRGIN PULSE ENGAGE

Virgin Pulse Engage is a total employee wellbeing solution that drives sustainable, long-term behavior change, increases productivity and strengthens workforce cultures by providing daily engagement tools, personalized program recommendations, targeted communications and daily habit-building activities. The integrated platform drives higher participation across all your HR programs and benefits. Engage is delivered through a web and mobile (iOS and Android) platform with success services for implementation, ongoing client success, member engagement and member support. The product description below may be updated from time to time to reflect feature changes.

STANDARD PRODUCT CAPABILITIES

Platform Design & Configurations	Configure your platform based on your wellbeing goals to drive participation and improved health outcomes. Leverage incentives and personalized content & programming to motivate your employees.
	Branding, Theming & Content Organization Configure platform elements to reflect your culture and brand. Align content and wellbeing pillars to your organizational focus areas.
	Personalization Engine Targeted programming and content delivered in an automated fashion to members based on their interests, health risks, & demographics to ensure a personalized experience.
	Incentive Management Framework Incentive structures are configured to your requirements. Reward options can be outcomes-based, task-based, and/or points-based designs. As members engage in healthy behaviors and participate in differing activities, they have the opportunity to earn rewards, i.e. cash, healthcare contributions, local incentives, or store credits. Incentives can be segmented by employee group, i.e. employee vs spouse, US vs. International. Additionally, the incentive management can be facilitated through the VP platform and/or VP can provide reporting to you to administer the incentive.
	Integration Framework Ability to integrate specific benefits and programming made available to your population. Configuration of available programs determined by client. Integrate and promote benefits, tools, events and information to drive awareness, usage and impact both on-platform via web & mobile and off-platform. The client has the ability to integrate client-specific programming as well as Virgin Pulse partnerships with the potential for data transfer and rewarding.
	Language Options The platform and mobile app are available in the following languages: US English, UK English, Chinese (Simplified), Chinese (Traditional), French (European), French (Canadian), German, Italian, Japanese, Korean, Malay, Polish, Portuguese (Brazilian), Russian, Spanish (Latin American), Spanish (European), Swedish, Vietnamese, Dutch, and Thai.
Habit Building & Behavior Change Tools	Daily trackers, content and activities to help members adopt and maintain healthy daily routines.
	Healthy Habit Trackers Members self-track health and wellbeing behaviors in key areas: activity, nutrition, learning, sleep, community, relationships, stress, productivity, financial wellbeing, safety, sustainability, diversity, inclusion, effectiveness and health conditions. They support successful behavior change by triggering members to make small but daily changes in their lifestyle.
	Daily Health & Wellbeing Tips Members receive personalized daily tip cards based on their selected interests. The cards take a micro-learning and small steps approach to cue healthy actions. The tip cards encompass key areas: activity, nutrition, learning, sleep, community, relationships, stress, productivity, financial wellbeing, safety, sustainability, diversity, inclusion, effectiveness and health conditions.
	Digital Coaching Virgin Pulse Journeys® are daily, self-guided courses that help employees successfully form and adopt new healthy habits. Each Journey breaks a key behavior or a larger goal into smaller achievable steps, helping

	people improve their health literacy and form new habits as they go. They cover a variety of lifestyle and health related topics including topics such as, nutrition, stress, finance, tobacco, and diabetes.
	Guides and Resources Personalized plans that provides practical guidance and a framework to adopt healthy habits with tracking tools, resources and tips, & reminders.
	Challenges Corporate and Peer competitions that drive step increases and/or healthy habit development. Also includes promotions and configuration options. Supported challenge types include: destination, staged, basic, charity, spotlight, and healthy habits.
	Social Connections Members can connect with colleagues, leverage a leaderboard to show activity among friends and join groups based on interests. Additionally, members can invite up to 10 Friends & Family to participate in a limited experience.
Assessment & Measurement	Tools to help survey the member population as well as help members assess their health status and risks.
	Health Assessment – Health Check Flagship assessment that leverages NCQA-certified content to offer members a fresh look at their lifestyle choices and personal health.
	Surveys Client-built custom surveys that can segmented and deployed through VP platform. Surveys include reporting to help clients take action on the insights provided by their population.
Condition Management	Resources to support members in addressing and preventing potential conditions; benefit simplification.
	My Care Checklist My Care Checklist provides personalized reminders based on data and HEDIS measures to help members stay on top of condition-specific and preventive care actions throughout the year.

ADMINISTRATIVE RESOURCES

Admin Portal	Admin Portal Program administrators can use web-based management tools to manage and segment components of their Virgin Pulse program including calendar events to promote events broadly or to specific locations. There is also the ability to configure wellbeing pillars and topics. Administrators can create daily cards and healthy habits for their employees. Lastly, this tool may be used to deploy unlimited Destination, Basic and Healthy Habit challenges. Choose from the Virgin Pulse Challenge Theme Library or create your own custom theme (client supplies custom content and images), and configure challenge settings (start/end dates, etc.)
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Program Reporting & Analytics

On-Demand Reporting

Program administrators will have 24/7 access to on-demand, self-serve analytics dashboard to configure and access a range of reports, track member engagement, measure outcomes, and tailor content and programming in real-time. Refreshed daily, metrics may be filtered by organizational hierarchy, rewards segmentation, and many other attributes, providing all the information necessary to manage diverse populations. Reports can be explored as Excel, CSV, and PowerPoint files for easy viewing and additional analysis.

On-Demand Reporting Dashboards Include:

- **Participation:** Easy to access and highly visual key metric overview gives you the pulse of your program and your workforce with real-time participation, engagement and location-specific reporting that help you put your data to work for your organization.
 - At-a-Glance Executive View
 - Enrollment
 - Engagement
- **Risk:** Virgin Pulse Analytics eliminates data silos by bringing all your biometric solutions together on one platform for a complete view into your population's risk profile.
 - HRA
 - Biometrics
- **Utilization:** Deep engagement and participate metrics deliver valuable insight into the wellbeing areas of highest interest to your employees.
 - Levels and Incentives
 - Corporate Challenges
 - External Programs
 - Topics

Self-Serve Data Extracts

Monthly member-level reporting automatically uploaded to Program administrators account to support internal reporting needs.

- Eligibility Report
- Member Activation
- Billable Cash Earned Report
- Non-Billable Cash
- Device Subsidy Orders Month End (*if applicable*)
- Coaching Month End (*if applicable*)

Standard Data Extracts

Monthly member-level reporting available upon request. Delivered for current reported month and in standard file format only. Client Success Manager will work with Program Administrator to determine applicable reports and cadence.

- Challenge Activity
- Healthy Habit Tracking
- Levels & Points
- Activity Complete
- Aggregated Rewards Trigger
- Device Subsidy and Shipping
- Reward and Incentive
- Drawing File
- Billable Cash
- Tobacco

	Claims Reporting Medical and pharmaceutical PDF report aggregating claims risk, conditions, gaps and gaps in closure for participants and non-participants within cohort and total population.
	Client Reviews Strategic review of all programming delivered with insightful recommendations. The Virgin Pulse Client Success team follows a consultative and collaborative support methodology. The Client Review is a critical part of the process and a key time for an in-depth analysis of data sets and KPIs relevant to your organization. Your Client Success Manager (CSM) will present an exhausted, detailed analysis across all your program data, evaluate and uncover program highlights, trends, insights and opportunities, review strategic recommendations, detailed plans and Virgin Pulse product roadmap.
	Custom Reporting Services Credit The Custom Reporting Service Credit is annual and expires at the end of each program year. Clients may apply the credit towards the creation of any custom report type not available as standard. Any custom reporting outside of the credit will be billed at \$200/HR.

COMMUNICATIONS

Communications	Standard Member Communications Includes launch campaign options with emails, posters, digital displays, and leadership kit to support enrollment. Additionally, on-going auto-generated comms are delivered to individuals based on their interactions with the platform via email and/or mobile app.
	Custom Communications Services Credit The Communications Service Credit is annual and expires at the end of each program year. Applicable examples of custom deliverables include: • Modification of Catalog Email • Multi-channel Custom Comms Campaign • New Custom Email • Site Pop-Ups • In-app messages / Mobile Push Notifications • Posters / Digital Displays • Print-Ready Post Card • Content for Custom Challenges, Healthy Habits, and Daily Cards • Language Translations • Custom Video Work (travel expenses billed separately)

CLIENT SUCCESS SERVICES

Client Success Services	A client success manager will be responsible for proactive program management and client outreach to optimize program performance. Services will include: • Recurring program strategy calls with client success manager • Annual program review with focus on mutually agreed upon KPI's • Comprehensive annual planning process • Annual review of Virgin Pulse Product Roadmap • Access to Client Service Portal, a self-service ticketing tool where clients can request feature configuration changes, custom content and support on member issues • Ability to create one (1) <i>custom</i> Basic or Destination challenge per year for clients, as requested. Client supplies custom content and images. • Ability to <i>configure</i> one (1) Basic or Destination challenges from the Challenge Theme Library per year for clients, as requested. For Destination challenges, client has option to supply custom destination content and images for up two (2) of the challenge locations. • Monthly newsletter including new feature announcements and engagement promotion updates • Two passes to the annual Virgin Pulse Thrive conference
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MEMBER SERVICES SUPPORT

Online Support	Members may access a knowledgebase of helpful program information and problem resolutions via the Support section of the program site or they may submit questions via the Support form
Member Services	Provides member-level support after launch via phone (888-671-9395) and email (support@virginpulse.com) from 8am-9pm EST, Monday-Friday; and chat 2am-9pm EST, Monday-Friday.

IMPLEMENTATION SERVICES

Implementation Services	All clients have a designated Implementation Project Manager who is responsible for facilitating and coordinating execution of program launch. Services include: • Designated Implementation Project Manager • Scheduled implementation meetings with client and any 3rd party vendors • Platform design consulting & forecasting • Facilitation of IT requirements review and validation • Setup, mapping, and testing of initial eligibility file and ongoing eligibility file process • Configuration and QA of Virgin Pulse platform and client's program design • Setup of applicable reward redemption options and ecommerce store • Coordination, setup and testing of file integrations with client's 3rd party vendors • Coordination of communications strategy; delivery of Launch Comms & Champions pre-launch <i>[if applicable]</i> • Configuration of initial corporate challenge • Coordination of device fulfillment & logistics if applicable
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OPTIONAL PROFESSIONAL SERVICES (ADDITIONAL FEES APPLY)

Inbound Single Sign-On Connection	Identity Provider (IdP) initiated SAML 2.0 SSO implementation
Outbound Single Sign-On Connection	SAML 2.0 SSO implementation from Virgin Pulse platform to client's third-party partner for authentication purposes (passing unique member ID and company identifier in token).
Custom Reporting	Development of custom reporting to client specifications
Custom Data Integration	Development of data integrations with 3 rd parties as requested by client.
Verified Form Processing	Includes verification of provider signature/stamp and triggering of associated reward for single activity, multiple activities, or PCP/biometrics intake.
Do-It-Yourself Event	Do-it-Yourself event kit for 500 people. Everything a client needs to host an event for 500 people, including prizes, collateral, posters, etc.

OPTIONAL VIRGIN PULSE HARDWARE – ACTIVITY TRACKERS & HEALTH STATIONS (ADDITIONAL FEES APPLY)

Virgin Pulse Hardware Tracking Devices	Max Buzz An activity and sleep tracking device with vibrating alerts for alarms and phone calls/text messages.
Virgin Pulse Hardware Health Stations	Health Station Biometric screening station for employees to easily upload weight, blood pressure, and BMI. Available as Desktop or iPad.

APPENDIX B: VIRGIN PULSE INC. TERMS & CONDITIONS

1. DEFINITIONS.

Certain capitalized terms, not otherwise defined on the Order, have the meanings set forth in this Section 1.

1.1 “Addendum” shall mean any addendum to this Agreement, and may include, without limitation, Provider’s standard Statement of Work (“SOW”).

1.2 “Administrative Vendor(s)” shall mean any third-party vendors used by Provider to operate and support the Application Services, Software and Virgin Pulse Program for Provider’s entire book of business.

1.3 “Application Services” shall mean the services and Software described in Appendix A and Provider content provided by Provider by means of access to certain content and use of the features and functionality of software applications available and accessible within the Provider web sites (the “Application” or “Platform”).

1.4 “Authorized Partner(s)” shall mean any of the third-party partners Provider can refer Client to for the provision of additional services to be integrated and expand the Virgin Pulse Program. Client shall contract with and be invoiced by such Authorized Partners directly.

1.5 “Blocked Person” shall mean any individuals, entities or organizations subject to sanction by the US Department of Commerce, the US Department of State, the US Department of the Treasury or any other agency of the US government (a consolidated list of such persons being available at <https://www.export.gov/csl-search>), the United Nations, the European Union or the United Kingdom.

1.6 “Certified Partner(s)” shall mean any of the third-party strategic partners Provider can offer directly to Client for the provision of additional services to be integrated and expand the Virgin Pulse Program.

1.7 “Client Brand” shall mean any one or more of the trademarks, service marks, trade names, domain names, logos, business and product names, slogans, and registrations and applications for registration thereof owned by Client as of the Effective Date.

1.8 “Client Data” shall mean the data, media and content provided by Client for use with the Application Services that are accessible through the Application Services.

1.9 “Confidential Information” shall have the meaning set forth in the non-disclosure agreement entered into by the Parties, or in the absence of such a non-disclosure agreement will mean all written or oral information, disclosed by either Party to the other, related to the corporate affairs of either Party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

1.10 “Connected Partner(s)” shall mean any of Client’s third-party vendors, with whom Client has a direct relationship, that Client requests be integrated or connected, as applicable in the context of the services offered by such Connected Partners, to the Virgin Pulse Program.

1.11 “Documentation” shall mean documentation related to Client’s access to the Software and use of the Application Services delivered by Provider to Client, as updated by Provider from time to time.

1.12 “Effective Date” shall mean the last date on the signature block on the Order Form.

1.13 “Eligible” or “Eligibles” shall mean Client employees, employee beneficiaries, and retirees and/or spouses of Client (when applicable), who are eligible to enroll in the Virgin Pulse Program.

1.14 “Embargoed Jurisdiction” shall mean those countries or jurisdictions subject to embargo by the United States, including the Crimea region, Cuba, Iran, North Korea and Syria.

1.15 “Initial Order Start Date” shall mean the anticipated date on which Provider will launch or otherwise make the Application Services and the Pulse Program available to the participating Members, as designated on the Order Form.

1.16 “Member” shall mean an authorized Eligible enrolled in the Virgin Pulse Program having access to the Application Services, provided that persons under contract with Client may not be Members unless the same have entered into a binding agreement to maintain the confidentiality of the Access Protocols and all Provider Confidential Information, for example, by agreeing to the Membership Agreement through enrollment in the Virgin Pulse Program accessible through the Application Services. The term “Guest” shall mean those persons invited by such Members to participate in a more limited version of the Virgin Pulse Program, and Client shall have no responsibility or liability with regard to Guests, any services or products provided to Guests, or any activities of Guests.

1.17 “Member Data” shall mean any information entered by Members into the Application Services, or information for which Member has provided its consent to be shared. By way of example, if a Member consents to the provision by a Biometrics provider of its data to Provider, such data shall be considered “Member Data” under the terms of this Agreement.

1.18 “Member Policies” shall mean the Virgin Pulse Membership Agreement, Privacy Policy and any additional legal notices provided by Provider during enrollment, and as updated from time to time.

1.19 “Provider” shall mean Virgin Pulse, Inc. and its predecessors and successors in interest.

1.20 “Software” shall mean the object code version of the proprietary computer software whose use is contemplated by the Application Services, including but not limited to the VPSync application, and any subsequent revisions or modifications thereto which are furnished to Client by Provider. The term Software does not include any proprietary software of a Third Party.

1.21 “Subscription Services Fees” shall mean those fees payable per Eligible per year for access to the Virgin Pulse Program.

1.22 “US Export Controls and Trade Sanctions” shall mean all laws, regulations and orders of the United States relating to export controls and trade sanctions, including but not limited to the Export Control Reform Act of 2018, the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707), and any regulations or orders issued pursuant thereto,



including but not limited to the Export Administration Regulations (15 C.F.R. Parts 730-774) and the economic sanctions and embargoes programs administered by the U.S. Treasury Department's Office of Foreign Assets Control (31 C.F.R. Part 501 et seq.).

1.23 "Virgin Pulse Program" shall mean a proprietary, interactive health and fitness program, including the Application, which provides Eligibles with incentives for increased activity and healthy behaviors; as applicable, interactive challenges to improve the Members engagement; and a combination of activity and biometric tracking devices, along with a personalized online program portal, to help Members monitor their daily activity and track measurable health outcomes.

2. ACCESS, USE AND MEMBERS.

2.1 Provision of Access for Member. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Client a non-exclusive, non-transferable, (a) object-code only license to use the Software, and (b) right to permit access to the Application Services for the number of Members specified on the Order Form, for which you have paid the applicable fees solely in accordance with the terms and conditions of this Agreement and the Membership Agreement. On or as soon as reasonably practicable after the Effective Date, Provider shall provide to Client the necessary passwords, security protocols and policies and network links or connections (the "**Access Protocols**") to allow Client to access the Application Services. Provider shall also provide Client the Documentation to be used by Client in accessing and using the Application Service.

2.2 Usage Restrictions. Client will not (a) copy or duplicate the Application or Software; (b) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Application Services or Software is compiled or interpreted; (c) modify the Application Services or Software or the Documentation, or create any derivative product from any of the foregoing, except with the prior written consent of Provider; or (d) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Client's rights under Sections 2.1 or 2.2. Client will ensure that its use of the Application Services and the Documentation and all Client Data complies with all applicable laws, statutes, regulations or rules. Client shall notify Provider immediately of any unauthorized use of any password or account or any other known or suspected breach of security.

2.3 US Export Controls and Trade Sanctions Compliance. Client will not request access to the Application Services for any Eligibles or request integrations with any Connected Partners who would be prohibited from receiving goods or services from the Provider pursuant to US Export Controls and Trade Sanctions, including but not limited to Blocked Persons or persons who are located in Embargoed Jurisdictions. Provider shall be under no obligation to provide such persons with access to the Application Services.

2.4 Retained Rights; Ownership.

(a) Subject to the rights granted in this Agreement, Client retains all right, title and interest in and to the Client Brand and Client Data, and Provider acknowledges that it neither owns nor acquires any additional rights in and to the Client Brand or Client Data not expressly granted by this Agreement. Client is solely responsible for all Client Data. Provider further acknowledges that Client retains the right to use the Client Brand and Client Data for any purpose in Client's sole discretion. Subject to the foregoing, Client hereby grants to Provider a non-exclusive, non-transferable right and license to use the Client Brand and Client Data during the Term for the limited purposes of performing Provider's obligations under this Agreement.

(b) Subject to the rights granted in this Agreement, Provider retains all right, title and interest in and to the Application Services, Software, and the Documentation, and Client acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Client further acknowledges that Provider retains the right to use the foregoing for any purpose in Provider's sole discretion.

3. PROVIDER OBLIGATIONS.

3.1 Implementation Services. Client understands that, before access to the Application Services can be provided to Client, Client's systems may require configuration, and will in any case require the performance of various services to prepare Client's systems for such purposes, and that Provider's systems may also require preparation in order to configure and prepare the Application for use under the terms of the Agreement as contemplated hereunder. Such services are included in the Implementation Services Package.

3.2 Professional Services. Client acknowledges that in the event that Client desires that Provider perform additional professional services, the Parties will negotiate an appropriate "Work Statement" setting forth a plan pursuant to an executed SOW. Notwithstanding the foregoing, Client acknowledges that Provider will have no obligation to perform any services under SOW unless and until engaged to perform such services in an Addendum to this Agreement.

3.3 Client Success Manager and Technical Support. Provider will make available to Client a Client Success Manager who will oversee services related to the Application Services. Provider will provide monthly reports to Client specifying the number of Members and as requested, to the extent permitted by applicable law and the Member Policies, each Member's level of attainment. Provider provides certain support services as part of the Application Services. However, Client may request for Provider to provide additional technical support services resulting in additional professional services related to Client's use of the Application Services. Provider agrees to provide such professional services as agreed by the Parties; provided the Client has also executed the applicable SOW. Until the Client has ordered technical support, Provider shall only provide the limited support it normally provides to its customers generally as part of the Application Services.

3.4 Claims for Incentives. Provider will make an initial determination of whether Members have earned and are entitled to incentives under wellness programs administered as part of the Application Services. Provider's role in administering claims for incentives is purely ministerial, and performed within a framework of policies, interpretations, rules, practices and procedures made or adopted by Client. Provider will only have authority to construe the provisions of the wellness program approved by Client and determine whether a claim for incentives is eligible to be granted in accordance with the terms of the Virgin Pulse Program and this Agreement. Upon determination on request of a Member that the Member has not earned or is not entitled to incentive under a wellness program, Provider will provide a claims denial notice in the

form and manner directed by Client. If and to the extent that any wellness program made available by Provider is part of a group health plan, Client shall administer any appeal process and retains ultimate authority, discretion and responsibility for the group health plan.

3.5 Content Providers. Provider may include information, data, subject matter, content and substance within its Products provided by or delivered through independent sources (collectively, “Content Providers”). Provider shall make commercially reasonable efforts to ensure that such providers leverage data sources, decision trees, patient instructions, and other information developed by credible sources.

3.6 Provider Status. In providing Application Services under this Agreement, Client acknowledges and agrees that neither Provider nor any independent contractors performing Services on Provider’s behalf are acting as a fiduciary of any employee welfare benefit plan, and neither Client nor Client’s welfare benefit plan(s) shall name Provider as a plan fiduciary. Provider does not have and shall not have any power to make any decisions as to plan benefits, policies, interpretations, practices or procedures. Client acknowledges and agrees that Provider does not have nor exercise any discretionary authority or control respecting management or administration of Client’s employee welfare benefit plans nor the funding or disposition of assets under such plan, such authority and control being retained by Client.

3.7 Additional Services. The Parties acknowledge and agree that Provider may provide additional services, including those set forth on the Order Form. Unless otherwise agreed pursuant to a SOW executed by the Parties, Provider shall have no obligation to provide any such services, including training, consulting, or customization support with respect to the Virgin Pulse Program. Certain services available through Provider may be subject to additional terms other than those set forth in this Agreement.

3.8 Portable Devices. Provider will provide portable monitoring devices (each a “**Portable Device**”), for a specified fee as listed in the Order Form or as may be updated by Provider in the Membership Agreement, to each Member to track the daily activity of such Members. All obligations with respect to delivery and use of the Portable Devices shall be subject to the Membership Agreement. The Parties acknowledge and agree that Provider may charge additional fees for the deployment of such Portable Devices which price lists may be modified from time to time in Provider’s sole discretion. Provider shall not be required to provide a Portable Device to any Eligible or other person in violation of US Export Controls or Trade Sanctions, including but not limited to persons who are Blocked Persons or who are located in an Embargoed Jurisdiction.

3.9 Rights with Respect to Errors or Unauthorized Use. The Parties acknowledge and agree that Provider, in the exercise of Provider’s sole discretion, shall be permitted to adjust, remove, or otherwise alter rewards accumulated by Members in error or in a manner that violates the Membership Agreement or have otherwise been accumulated in a fraudulent or dishonest manner.

4. CLIENT OBLIGATIONS.

4.1 Member Access to Services. Subject to the terms and conditions herein, Client may permit the Members to access and use the features and functions of the Application Service only through the Access Protocols. Client shall be responsible for screening its Eligibles and, as applicable, Connected Partners to ensure they are not Blocked Persons nor are they located in any Embargoed Jurisdictions.

4.2 Client Assistance. Client shall make available in a timely manner at no charge to Provider all content, graphic files, Client Data, Client Brand information or other information and resources of Client required by Provider for the performance of its obligations under this Agreement. Client shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such content, materials and information supplied by Client. Client shall also be solely responsible, at its own expense, for acquiring, installing and maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for it and its Members to connect to, access, and use the Application Services.

4.3 Provision of Data. Promptly after the Effective Date and on a monthly basis thereafter, Client shall provide Provider, consistent with state privacy laws, with accurate information including the number and names of Eligibles, contact information for such Eligibles such as an email address, and an initial eligibility file thirty (30) days prior to the Initial Order Start Date that discloses the Eligibles and includes at least the following information: the Eligibles’ last name, first name, date of birth, gender, unique employee identifying number, if applicable, and any other information necessary to enable Provider to administer the Virgin Pulse Program and to provide the Application Services required by this Agreement. Provider, under certain limited circumstances, may be required to share this information for the provision of biometric services to fulfill its obligations under this Agreement or any additional Statement of Work. Provider may be further required to share this information to Authorized Partners, Connected Partners and Certified Partners to fulfil its obligations under this Agreement or any additional Statements of Work. This information and any Eligible additions and terminations shall be kept current on at least a monthly basis and, unless otherwise agreed upon by the Parties, shall be provided by Client to Provider by the fifteenth (15) day of each month during the Term. Client shall be responsible for any errors with respect to the information provided, including any failure to report employee terminations, or termination of an Eligible from participation in the Virgin Pulse Program. The Parties acknowledge and agree that such information set forth above shall be deemed Client Data and shall be treated as Client’s confidential information under this Agreement.

4.4 Client Data. Client shall be responsible for all changes to and/or deletions of Client Data and the security of all passwords and other Access Protocols required in order to access the Application Services. Client hereby represents and warrants that it owns or otherwise has sufficient right to grant Provider access to and use the Client Data in accordance with the terms of this Agreement. Client will be solely responsible for the accuracy and completeness of the Client Data. Client acknowledges and agrees that Provider’s obligation to maintain any Client Data obtained in the course of performance of the Application Services shall not extend beyond the Term of this Agreement.

4.5 Member Data. Members will have access solely to their individual Member Data and such data will be protected in accordance with applicable laws and the terms of the Member Policies.

4.6 Browser Requirements. Provider will share any applicable information pertinent to Browser Requirements as part of its IT Specifications Documentation.

4.7 New Versions. Provider shall, within its sole discretion, release new versions of the Virgin Pulse Platform, which the Client, at the sole discretion of the Provider, must transition to within six (6) months of said release, unless otherwise agreed to in writing by the Parties.

5. FEES AND EXPENSES; PAYMENTS.

5.1 Fees. In consideration for the access rights granted to Client and the services performed by Provider under this Agreement, Client will pay to Provider, without offset or deduction, all fees as may be determined by reference to the pricing proposal, as described below and as attached hereto as the Order Form. All fees shall be due and payable within thirty (30) days of the date of Provider's invoice.

a) Subscription Services Fees. Unless otherwise specified on the Order Form, all Subscription Services Fee invoicing shall commence upon the earlier of (a) Initial Order Start Date, or (b) the date that is one hundred and twenty (120) days following the Effective Date.

b) Implementation Services Fees. Unless otherwise specified on the Order Form, all Implementation Services Fee invoicing shall commence on the Effective Date.

c) Professional Services Fees shall be due and payable as detailed in the applicable SOW.

5.2 Client Operating Expenses. Client will bear all expenses incurred in performance of its obligations hereunder, including, without limitation, through use by Client and/or any Member of the Application Services, and/or through provision of support to Members with respect to such use of the Application Services.

5.3 Taxes. Prices do not include any Sales, use, excise, transaction, or other similar taxes. If such taxes are applicable, Provider will separately state them on the invoice and Client shall be responsible for payment. Client will make all required payments to Provider free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Provider will be Client's sole responsibility, and Client will, upon Provider's request, provide Provider with official receipts issued by the appropriate taxing authorities, or such other evidence as Provider may reasonably request, to establish that such taxes have been paid. Client has no obligation to pay any taxes or fees that are: (i) based on Provider's (a) federal, state and local income taxes; (b) payroll, employment and self-employment taxes of any kind, and (c) contributions imposed or required for social security, national insurance, medical insurance, or other applicable laws, rules or regulations with respect to Provider's performance of this Agreement; (ii) franchise taxes or other taxes based on Provider's corporate existence or status; (iii) due in whole or in part because of any failure or delay by Provider or its agents to file any return or information required by law, rule, or regulation; or (iv) retroactive or withholding taxes assessed by a non-United States jurisdiction. Client shall reimburse Provider for any penalties or interest actually levied upon Provider only if Client's acts or omissions solely caused the interest or penalty to be levied. Provider shall, upon written request of Client, furnish statements of taxes and assessments for which Client is responsible and Provider has paid.

5.4 Late Payments; Interest; Payment in Dollars. If Provider does not receive payment of any sum due to it within thirty (30) days of the invoice, Provider reserves the right to suspend accrual and redemption of rewards by Members until such time as the default has been cured to Provider's satisfaction.

5.5 Texas Prompt Payment Act Compliance. Fee payments shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the date the Williamson County Auditor receives an invoice by Provider. Interest charges for any overdue payments shall be paid by Client in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Client's fiscal year in which the payment becomes due. The said rate in the effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

6. TREATMENT OF CONFIDENTIAL INFORMATION.

6.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

6.2 Mutual Confidentiality Obligations. Each Party agrees as follows: (a) to use Confidential Information disclosed by the other Party only for the purposes described herein; (b) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (c) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (d) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (e) to return or destroy, pursuant to Section 10.5, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement. Notwithstanding the foregoing, Client agrees that Provider may utilize de-identified, aggregated statistical data regarding Client's use of the Service solely for the purposes of planning future development of the platform and services. Other than for purposes of providing services to Members under this Agreement (i.e. biometrics screenings or HRA), in no event shall Provider provide to third parties specific data regarding Client or Client's Members.

6.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 6.1 and 6.2 will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing Party without

restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do. Client also acknowledges and agrees that Provider may freely use any comments, ideas and/or error reports provided by Client to Provider and such comments, ideas and/or error reports shall not be considered proprietary to Client.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Representations; Warranties. Each Party hereby represents and warrants (a) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (b) neither it nor its owners are Blocked Persons or are located in an Embargoed Jurisdiction; (c) that the execution and performance of this Agreement will not conflict with or violate any provision of law having applicability to either Party (including but not limited to US Export Controls and Trade Sanctions); and (d) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms. In addition, Client hereby represents and warrants (x) that, unless required for the operation of the Virgin Pulse Program, it shall not provide Provider with any individual's social security number, unique national identifier or tax number; and (y) that it shall only use the data received from Provider in accordance with this Agreement. Client further acknowledge that the wellness program design, inclusive of incentive structure, is the sole responsibility of the Client.

7.2 Exclusion as Care Provider. The Parties agree that Provider is not a care provider and does not provide medical advice. The products and services are not, nor are they intended to be, a medical evaluation, medical examination, medical advice, medical consultation, medical diagnosis or medical treatment.

7.3 Virgin Pulse Health Risk Assessment ("HRA") custom questions and Surveys; Warranties and Exclusion of Liability. If applicable, Client represents and warrants that it will comply with all applicable laws in its use of the Virgin Pulse Surveys and custom questions added to Client's HRA. Client is solely responsible for the content of each individual survey or custom question. Provider will provide Client with anonymous and aggregated reports reflecting the data collected through the Virgin Pulse Surveys and HRA. Client shall notify its Members that any open text contribution may be visible to Client and may allow Client to identify the participating Member. Client acknowledges that the Virgin Pulse Surveys and HRA service are not designed or intended to be used to elicit racial, medical or genetic information. Client further affirms that in no event will a Member's choice to participate in the Virgin Pulse Surveys or HRA, or any data collected through the Virgin Pulse Surveys or HRA, be used to influence or guide the Client's employment decisions. TO THE EXTENT ALLOWED BY APPLICABLE LAW, CLIENT AGREES TO INDEMNIFY AND HOLD HARMLESS VIRGIN PULSE, ITS EMPLOYEES, OFFICERS, DIRECTORS AND SHAREHOLDERS FROM AND AGAINST ANY AND ALL CLAIMS OF ANY KIND, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING FROM THE USE OF THE VIRGIN PULSE SURVEYS, THE CONTENT OF THE SURVEY OR CUSTOM HRA QUESTIONS, AND THE MISUSE OF ANY INFORMATION OR DATA COLLECTED THROUGH THE VIRGIN PULSE SURVEYS OR HRA.

7.4 Eligibles and Outreach. Provider may engage in active promotion of the Virgin Pulse Program, including but not limited to its telephonic and other live coaching services, including via the use of active telephonic or text outreach. Client represents and warrants that any contact information of Eligibles provided to Provider to conduct such active outreach was collected by Client and provided to Provider in compliance with applicable laws, including but not limited to the Telephone Consumer Protection Act (TCPA), and that Client properly notified and obtained consent from Eligibles for Provider's outreach.

8. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.

The indemnification obligations by Client shall apply to the extent authorized by Texas Law TEX. CONST. art. III, §52.

8.1 Disclaimer. EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 7, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION SERVICES, THE DOCUMENTATION, AND ALL SERVICES PERFORMED BY PROVIDER ARE PROVIDED "AS IS," AND PROVIDER DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. PROVIDER DOES NOT WARRANT THAT THE APPLICATION SERVICES OR ANY OTHER SERVICES PROVIDED BY PROVIDER WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. PROVIDER'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. NEITHER PROVIDER, NOR ITS THIRD-PARTY HOSTING SERVICE OR SOFTWARE PROVIDERS, SHALL HAVE ANY LIABILITY WHATSOEVER FOR THE ACCURACY, COMPLETENESS, OR TIMELINESS OF THE CLIENT DATA, OR FOR ANY DECISION MADE OR ACTION TAKEN BY CLIENT IN RELIANCE UPON ANY CLIENT DATA.

8.2 Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL PROVIDER BE LIABLE TO CLIENT FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

UNLESS PROHIBITED BY LAW, THE CUMULATIVE LIABILITY OF PROVIDER TO CLIENT FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE FEES PAID TO PROVIDER BY CLIENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

8.3 Essential Basis of the Agreement. Client acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 8 form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions and limitations of liability in negotiating the terms and conditions in this Agreement, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

9. INDEMNIFICATION.

The indemnification obligations by Client shall apply to the extent authorized by Texas Law TEX. CONST. art. III, §52.

9.1 General Indemnity of Client – Provider agrees to indemnify, defend and hold harmless Client from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party arising out of or related to (a) death, personal injury and damage to tangible personal property and/or (b) Provider's willful misconduct or fraud; provided that Client promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim. IN NO EVENT SHALL PROVIDER'S LIABILITY UNDER THIS SECTION 9 EXCEED CAP ON LIABILITY SET FORTH IN SECTION 8.2. THIS SECTION STATES PROVIDER'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INDEMNITY.

9.2 Indemnification of Client – Intellectual Property. Provider agrees to indemnify, defend and hold harmless Client from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Application Services and/or the Documentation infringes such third party's U.S. patents issued as of the Effective Date, or infringes or misappropriates, as applicable, such third party's copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America, provided that Client promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim. If such a claim is made or appears possible, Client agrees to permit Provider, at Provider's sole discretion, to enable it to continue to use the Application Service or the Documentation, as applicable, or to modify or replace any such infringing material to make it non-infringing. If Provider determines that none of these alternatives is reasonably available, Client shall, upon written request from Provider, cease use of, and, if applicable, return, such materials as are the subject of the infringement claim. This Section 9.1 shall not apply if the alleged infringement arises, in whole or in part, from (a) modification of the Application or the Documentation by Client, (b) combination, operation or use of the Application with other software, hardware or technology not provided by Provider, (c) use of a superseded or altered release of the Application or the Documentation, if such infringement would have been avoided by the use of a then-current release of the Application or the Documentation, as applicable, and if such then-current release has been made available to Client, or (d) related to the Client Data or Client Brand (any of the foregoing circumstances under clauses (a), (b), (c), or (d) a **"Client Indemnity Responsibility"**). IN NO EVENT SHALL PROVIDER'S LIABILITY UNDER THIS SECTION 9 EXCEED CAP ON LIABILITY SET FORTH IN SECTION 8.2. THIS SECTION STATES PROVIDER'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

9.3 Indemnification of Provider. Client agrees to hold harmless, indemnify, and, at Provider's option, defend Provider from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from: (a) a Client Indemnity Responsibility, (b) Client's breach of any of its representations, warranties or covenants with respect to compliance with US Export Controls and Trade Sanctions, or (c) data sharing with Client vendors at the direction of Client, provided that Provider promptly notifies Client in writing of the claim, cooperates with Client, and allows Client sole authority to control the defense and settlement of such claim; provided that Client will not settle any third-party claim against Provider unless such settlement completely and forever releases Provider from all liability with respect to such claim or unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice.

10. TERM AND TERMINATION.

10.1 Term. The term of this Agreement will commence on the Effective Date and will expire on the Initial Order End Date (the **"Initial Term"**), unless earlier terminated in accordance with this Section 10. Neither Party will be allowed to terminate this Agreement for convenience during the first year of the Initial Term, thereafter either Party shall be allowed to terminate this Agreement for convenience upon ninety (90) days written notice to the other Party. Following the Initial Term, Provider's standard renewal rates are as follows; 3-year renewal with a 3% increase on the Subscription Fees; 2-year renewal with a 5% increase on the Subscription Fees; and 1-year renewal with a 7.5% increase on the Subscription Fees (each, a **"Renewal Term"**). In the event Client does not provide Provider with its preferred Renewal Term option, the Agreement will automatically renew for a period of one (1) year at the end of the then-current term, at a 7.5% increase on the Subscription Fees, unless either Party provides written notice of its desire to terminate at least ninety (90) days prior to the expiration of the then-current term (the Initial Term and any Renewal Terms, collectively referred to herein as the **"Term"**).

10.2 Termination for Breach. Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. Such termination may be affected only through a written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement will terminate in the event that such cure is not made within such thirty (30) day period. Notwithstanding the foregoing, Provider may immediately terminate this Agreement without prior notice or the opportunity to cure if the Client's material breach results in a violation US Export Controls and Trade Sanctions law.

10.3 Suspension of Access. Provider may suspend access to the Application Services in the event any undisputed amount due under this Agreement is not received by Provider within thirty (30) days from invoice.

10.4 Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate this Agreement immediately upon written notice to the other Party, in the event (a) that the other Party becomes insolvent or unable to pay its debts when due; (b) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (c) the other Party discontinues its business; or (d) a receiver is appointed or there is an assignment for the benefit of such other Party's creditors.

10.5 Effect of Termination. Upon any termination of this Agreement: (a) Client will immediately discontinue all use of the Application Service, the Documentation, and any Provider Confidential Information; (b) Client will delete any Provider Confidential Information from Client's computer storage or any other media including, but not limited to, online and off-line libraries; (c) Provider will delete any Client Confidential Information and Client Data from Provider's computer storage or any other media including, but not limited to, online and off-line libraries; (d) return to Provider or, at Provider's option, destroy, all copies of the Documentation and any Provider Confidential Information then in Client's possession; and (e) promptly pay to Provider all amounts due and payable hereunder. Notwithstanding the foregoing, Members may redeem their rewards under the Virgin Pulse Program for a period of thirty (30) days following the termination of this Agreement, provided, however that this Agreement is not terminated for nonpayment, in which case Members will not be able to redeem their rewards upon termination.

10.6 Non-Appropriation and Fiscal Funding. The obligations of the Parties under this Agreement do not constitute a general obligation or indebtedness of either Party for which such Party is obligated to levy, pledge, or collect any form of taxation. It is understood and agreed that Client shall have the right to terminate this Agreement at the end of any Client fiscal year if the governing body of Client does not appropriate sufficient funds as determined by Client's budget for the fiscal year in question. Client may effect such termination by giving written notice of termination at the end of its then-current fiscal year.

10.7 Survival. The provisions of Sections 2.4, 6, 7, 8, 9, 10.5, 10.7, and 11 will survive the termination of this Agreement.

11. MISCELLANEOUS.

11.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for herein.

11.2 Independent Contractors. In making and performing this Agreement, Client and Provider act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

11.3 Third Party Providers. Provider and Client acknowledge and agree that various types of third-party providers may be involved in the provision of Provider's Software or support the Virgin Pulse Program. Provider shall remain liable for the acts and omissions of its Administrative Vendors and Certified Partners. In the event that Client leverages any Authorized Partners or Connected Partners and requests that such services be integrated to support the Virgin Pulse Program, Client and Provider acknowledge and agree that Client shall contract separately with such third-parties for the provision of such service. Provider shall not be held liable for the acts or omissions of Authorized Partners and Connected Partners, nor will such third-parties' conduct affect any agreed upon performance guarantees between Client and Provider.

11.4 Notices. All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to the Parties at their respective addresses set forth in the Order Form, or addressed to such other address as the receiving Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by facsimile and/or other electronic communications provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices will be effective on the date indicated in such confirmation. In the event that either Party delivers any notice by means of facsimile transmission or other electronic means in accordance with the preceding sentence, such Party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving Party, addressed as set forth above or to such other address as the receiving Party may have previously substituted by written notice to the sender.

11.5 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

11.6 Assignment. Neither party shall assign any of its rights under this Agreement without the express, prior written consent of the other Party, and, absent such consent, any attempted assignment will be null, void and of no effect.

11.8 No Third-Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

11.8 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

11.9 Waiver. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

11.10 Force Majeure. Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, Internet access outside of Provider's control, war, terror, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate this Agreement upon thirty (30) days' written notice.

11.11 Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMPETENT JURISDICTION OF THE CLIENT UNLESS OTHERWISE AGREED TO BY THE PARTIES (STATE OF TEXAS) WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. Nothing in this agreement will be deemed to constitute a waiver of sovereign immunity or powers of licensee, the Williamson County Commissioners Court, or the Williamson County Judge.

11.12 Mediation. In the event of a dispute or controversy between the parties arising under or in connection with this Agreement and prior to commencing any litigation or other legal proceeding, a party shall, by giving written notice to the other party ("Dispute Notice"), request a meeting of authorized representatives of the parties for the purpose of resolving the dispute. The Dispute Notice shall provide sufficient details on the dispute in controversy to apprise the other party of the basis for the disputant's claims. The parties agree that, within thirty (30) days after the Dispute Notice is given, each party shall designate a representative to participate in and undertake dispute resolution discussions, which will be held at a mutually acceptable time and place (or by videoconference or telephone) for the purpose of resolving the dispute. Each party agrees to negotiate in good faith to resolve the dispute in a mutually acceptable manner. If the dispute or controversy is resolved by these negotiations, the parties shall confirm the resolution in writing signed by both parties and amend this Agreement as necessary or appropriate.

11.13 U.S. Government End-Users. Each of the Documentation and the software components that constitute the Application Service is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Application Service and the Documentation with only those rights set forth therein.

11.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

11.15 Headings. The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement.

11.16 Right to Audit. Provider agrees that Client or its duly authorized representatives shall have access to and the right to examine and photocopy any and all books, documents, papers and records of Virgin Pulse which are directly pertinent to the services.. Any such audits shall be limited to once per calendar year. Client shall provide at least thirty (30) days prior written notice to Provider of its intent to audit. The audit shall be carried out on dates mutually agreed upon by the Parties, remotely or, if necessary for the audit to be onsite, at Provider's primary place of business, during regular business hours, in compliance with Provider's health, safety, security and confidentiality requirements and in a manner that shall not disrupt or unduly burden Provider's daily business operations.

11.7 Proprietary Information and Texas Public Information Act. All material submitted to the Client presumptively becomes public property and subject to the Texas Public Information Act upon receipt. If Provider does not desire proprietary information to be disclosed, each page must be clearly identified and marked proprietary at time of submittal or, more preferably, all proprietary information may be placed in a folder or appendix and be clearly identified and marked as being proprietary. The Client will, to the extent allowed by law, endeavor to protect from public disclosure the information that has been identified and marked as proprietary. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to clearly identify and mark information as being proprietary as set forth under this provision will result in all unmarked information being deemed non-proprietary and available to the public. For all information that has not been clearly identified and marked as proprietary by Provider, the Client may choose to place such information on the Receiving Party's website and/or a similar public database without obtaining any type of prior consent from Provider.

To the extent, if any, that any provision in this contract is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Receiving Party, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to Client as to whether or not the same are available to the public. It is further understood that Receiving Party's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Receiving Party, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to Client by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

APPENDIX D: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement governing use and disclosure of Protected Health Information (the “Agreement”) is made and entered into by and between **County of Williamson, TX** (the “Employer” and the “Plan Sponsor”) on behalf of its group health plans (such plans being collectively referred to as the “Covered Entity”) and Virgin Pulse, Inc. with an address at 75 Fountain Street, Suite 310, Providence, RI 02902, on behalf of itself and its affiliates (“Business Associate”) (collectively, the “Parties” or individually, a “Party”).

Recitals:

Whereas, Business Associate renders wellness services that may be for, or on behalf, of Covered Entity that may involve the use, disclosure and/or creation of certain Protected Health Information (“Protected Health Information” or “PHI”), as defined below; and

Whereas, the Parties now desire through this Agreement to provide provisions intended to comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by the Health Information Technology for Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV Division B of the American Recovery and Reinvestment Act of 2009, as set forth in Title 45, Parts 160, 162 and 164 of the Code of Federal Regulations (“CFR”), in each case only as of its applicable compliance date (the “Omnibus Regulations”) that apply to covered entities and business associates.

Now, therefore the Parties agree as follows:

In the event, and only to the extent, Business Associate creates, maintains, receives or transmits any PHI on behalf of Covered Entity, Business Associate will maintain the security and confidentiality of the PHI as required by this section and applicable laws and regulations.

1. **Term:** This Agreement shall continue in effect, unless earlier terminated in accordance with Section 18 of this Agreement; provided that all of the PHI provided by the Covered Entity to Business Associate, or created or received by Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or if it is infeasible to return or destroy PHI, protections are extended to such information as set forth in Section 19 herein. This Agreement supersedes and replaces any business associate agreement previously put in place between the Parties.
2. **Definitions:** Capitalized terms not otherwise defined shall have the same meaning as those terms in 45 CFR Parts 160-164 and are incorporated herein by reference.
 - a. “HIPAA Rules” means the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR Part 160 and Part 164, and as further amended from time to time.
 - b. “Protected Health Information” (“PHI”) and “Electronic Protected Health Information” (“Electronic PHI”) shall have the same meaning as such terms as defined in the HIPAA Rules, but limited to such information created or received by Business Associate in its capacity as a business associate (and not a pharmacy or other health care provider) on behalf of Covered Entity.
3. **Use and Disclosure of PHI:** Business Associate shall use and/or disclose Protected Health Information only to the extent necessary to perform its duties, to comply with its obligations or as otherwise permitted under this Agreement, or as required by law and in compliance with each applicable requirement of 45 CFR §164.504(e). In addition to the uses and disclosures permitted below, Business Associate may also use and disclose PHI: (i) to create a limited data set in accordance with 45 CFR §164.514, which limited data set may be used and disclosed by Business Associate as permitted by law, including HIPAA; (ii) to respond to requests for PHI either accompanied by an authorization that meets the requirements of 45 CFR §164.508 or from a covered entity or health care provider in accordance with 45 CFR §164.506(c) and (iii) as otherwise authorized in writing by Covered Entity or Plan Sponsor on its behalf.

Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except as permitted in Section 5 and 6 of this Agreement.

4. **Prohibition on Unauthorized Use or Disclosure of PHI:** Business Associate shall not use or disclose any PHI received from or on behalf of the Covered Entity, except as required to perform its duties or as otherwise permitted under this Agreement, as required by law or as otherwise permitted herein or authorized in writing by the Covered Entity. Business

Associate shall comply with: (a) the applicable provisions of Title 45, Part 164 of the CFR and (b) applicable State privacy laws, rules and regulations not preempted pursuant to Title 45, Part 160, Subpart B of the CFR or the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended.

5. Business Associate's Operations: Except as otherwise limited in this Agreement, Business Associate may use PHI it creates, maintains or receives for or from the Covered Entity to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities. Business Associate may disclose such PHI as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities provided that:
 - a. The disclosure is required by law; or
 - b. Business Associate obtains reasonable assurance from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:
 - (i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
 - (ii) Notify Business Associate (who shall in turn promptly notify the Covered Entity) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
6. Data Aggregation Services: Business Associate may use and disclose PHI to provide Data Aggregation Services related to the Covered Entity's Health Care Operations.
7. De-Identification: On behalf of Covered Entity, Business Associate may use and disclose PHI to de-identify any and all Protected Health Information obtained by Business Associate under this Agreement, and use such de-identified data on Business Associate's own behalf, all in accordance with the de-identification requirements of the Privacy Rule.
8. Violations of Law: Business Associate may use and disclose Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).
9. Safeguards: Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement.
10. Security: Business Associate shall use commercially reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and disclosures of such PHI. In addition, Business Associate will:
 - a. implement Administrative Safeguards, Physical Safeguards and Technical Safeguards to the extent required of Business Associates by Subpart C of Title 45, Part 164 that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity;
 - b. report to the Covered Entity any use or disclosure of PHI not provided for by the Agreement of which Business Associate becomes aware and any successful Security Incidents that result in the unauthorized access, use, disclosure, modification or destruction of Covered Entity's Electronic Protected Health Information of which Business Associate becomes aware; and
 - c. ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits PHI on behalf of Business Associate agrees to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information.
11. Breach Notification and Periodic Reports to Plan: Following the discovery by Business Associate of any Breach of Unsecured PHI by Business Associate or its Subcontractors, Business Associate agrees to notify Covered Entity of such Breach without unreasonable delay and in no case more than 30 calendar days after discovery of the Breach. Such notification shall include, to the extent available, the identity of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during the Breach and an advance sample of the notification to be provided by Business Associate for review and approval by Covered Entity, and a reasonable estimate of the total number of individuals whose PHI may be involved in the Breach. At the time of

notification or promptly thereafter as such information becomes available, Business Associate shall also provide Covered Entity with such other reasonably available information as is required for Covered Entity to notify an individual of the Breach as required by 45 CFR § 164.404(c). Except for notifications to the Secretary, which must be done by Covered Entity, Business Associate agrees that to the extent the Breach is a result of Business Associate's failure to implement reasonable and appropriate safeguards as required by this Agreement, Business Associate will provide the notifications required under 45 CFR 164.404 and 45 CFR 164.406 after reviewing the content of such notifications with Covered Entity, subject to any delay required by law enforcement pursuant to 45 CFR 164.412.

12. Security and Privacy Requirements: Business Associate agrees to comply with Sections 164.308, 164.310, 164.312 and 164.314 of the Omnibus Regulations applicable to Business Associates. The Parties hereto agree that the requirements of the Omnibus Regulations relating to security and privacy that are made applicable to Covered Entities shall also be applicable to Business Associate under the Agreement to the extent required by the Omnibus Regulations. Except as expressly provided herein, Business Associate has not assumed any obligations of Covered Entity under the HIPAA Rules.
13. Accounting of Uses or Disclosures: Upon a written request from the Covered Entity, Business Associate agrees to document within thirty (30) days of such request disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. to the extent such request relates to PHI in the possession of the Business Associate. Upon Covered Entity's written request, Business Associate will provide to Covered Entity the information required by 45 CFR § 164.528 or the following information with respect to such disclosure:
 - a. The date of the disclosure;
 - b. The name and, if known, the address of the recipient of the PHI;
 - c. A copy of the request for disclosure, accompanied by any necessary consents or authorizations;
 - d. A brief description of the PHI disclosed; and
 - e. A statement that would reasonably inform Covered Entity of the purpose of the disclosure.
14. Access by Workforce: Business Associate agrees to require its Workforce who access PHI in performing services to adhere to the restrictions and conditions regarding PHI contained herein to the extent applicable to their job functions. Business Associate will not provide access to PHI to any member of its Workforce unless Business Associate has advised such member of Business Associate's HIPAA obligations and the consequences for violation of these obligations to the extent applicable to their job functions. Business Associate will take reasonably appropriate disciplinary action against any member of its Workforce that uses or discloses PHI in violation of this section, as required by applicable law or regulation.
 - a. Disclosures outside of the workforce. Business Associate will not disclose PHI to any other person or entity without the written approval of Covered Entity, except as otherwise permitted by applicable law or in this Agreement including but not limited to Sections 5 (Business Associates Operations) and 10(c) (Subcontractors) above.
 - b. All disclosures. Any use or disclosures of PHI to Business Associate's Workforce or Subcontractors must be limited to the minimum necessary to achieve the purpose for the use or disclosure in accordance with and subject to the exceptions in 45 CFR §164.502(b).
15. Access to Records: To the extent Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate will provide access, at the written request of Covered Entity, and in a time and manner mutually agreed, to any PHI in that Designated Record Set, to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.524. If an individual in writing requests access to his or her PHI directly from Business Associate, Business Associate shall promptly forward such request to Covered Entity and Covered Entity shall be responsible for responding to such request in order to meet the requirements under 45 CFR §164.524.
16. Amendment of PHI: To the extent Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees to make any amendment to PHI in that Designated Record Set that the Covered Entity directs or agrees to pursuant to HIPAA and 45 CFR § 164.526 at the written request of Covered Entity. Such amendment shall be made within thirty (30) business days of such request. If an Individual in writing requests an amendment of his or her PHI directly from Business Associate, Business Associate shall promptly forward such request to Covered Entity and Covered Entity shall be responsible for responding to such request.

17. Government Access to Records: Business Associate agrees to make available its policies, books and records related to the use and disclosure of PHI received or created by Business Associate on behalf of the Covered Entity to the Secretary of the U.S. Department of Health and Human Services or his or her designee for the purpose of determining whether Business Associate and/or Covered Entity is in compliance with HIPAA requirements.
18. Termination: Without limiting any other rights of the Parties, if either Party materially fails to adhere to its obligations under this Agreement, the other Party may terminate this Agreement if such failure is not cured within thirty (30) calendar days to the reasonable satisfaction of the other party.

Additionally, in accordance with 45 CFR §164.504(e)(1), if either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this Agreement, then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) business days after receipt of the written notice. In the absence of a timely cure reasonably satisfactory to the non-breaching Party, or in the event that the Parties agree that cure is not possible, then the non-breaching Party may immediately terminate this Agreement if feasible.

19. Disposition of Records upon Termination: Business Associate agrees to return or otherwise destroy all PHI created, maintained or received under this Agreement upon termination of this Agreement. If such return or destruction of records is not feasible, Business Associate will continue to extend the protections of this Agreement to such PHI and limit any further use of PHI to those purposes that make the return or destruction of the PHI infeasible. Covered Entity agrees that it is infeasible for Business Associate to return or destroy the PHI reasonably needed to be retained by Business Associate for its own legal and risk management purposes.
20. Amendments: This Agreement may not be modified, nor shall any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Upon any change or modification of applicable state or federal law that would require modification to this Agreement, the parties shall mutually agree to make such modification.
21. Obligations of Covered Entity
 - a. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to that notice.
 - b. Covered Entity shall promptly provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
 - c. Covered Entity shall notify Business Associate, in writing and in a timely manner, of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.
 - d. Covered Entity acknowledges that it shall provide to, or request from, the Business Associate only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
 - e. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity except as provided herein in accordance with 45 CFR §164.504(e). Covered Entity shall disclose or provide access to Business Associate only the minimum PHI necessary for Business Associate to perform its obligations as required by the Privacy Rule and 42 U.S.C. § 17935(b).
 - f. Covered Entity in performing its obligations and exercising its rights under this Agreement shall use and disclose PHI in compliance with the HIPAA Rules.

Notwithstanding the above, Covered Entity acknowledges that it remains responsible for obtaining such consent, authorization or permission that may be required by law or regulation (as opposed to individual consents or authorizations that may be required from plan participants in certain circumstances) for Business Associate to provide its services on behalf of Covered Entity and that Covered Entity shall provide Business Associate with advance written notice of any restrictions or changes to Covered Entity's Notice of Privacy Practices that would limit the uses and disclosures of PHI otherwise permitted herein. Covered Entity acknowledges that Business Associate shall only be required to comply

with such changes to its Notice of Privacy Practices which are known to Business Associate and to the extent required by applicable law or regulation.

Covered Entity shall provide to Business Associate a written list of the names of those individuals in its Workforce that are authorized to receive or access PHI on its behalf, and to provide reasonable prior written notice to Business Associate of any changes to such list. In the absence of Covered Entity providing such list, Business Associate may assume, consistent with 45 CFR §164.504(f), that those individuals that are members of the Workforce of Covered Entity or, if applicable, Plan Sponsor, who request or receive PHI from Business Associate are performing plan administration activities for Covered Entity, and are authorized to receive or access PHI on its behalf.

23. No Third-Party Beneficiaries: Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, Plan Sponsor and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
24. Notice: All notices, requests, and demands or other communications to be given hereunder to a Party shall be made via first class mail, registered or certified mail or express courier to such Party's address given below and/or via facsimile numbers at the facsimile numbers listed below:

To Covered Entity:

County of Williamson, TX
100 Wilco Way, Suite HR101 - Georgetown, TX 78626
ATTENTION: **County to insert correct contact name**

To Business Associate:

Virgin Pulse, Inc.
75 Fountain Street, Suite 310
Providence, RI 02902
Attention: General Counsel

25. Independent Contractor. Business Associate is performing services pursuant to this Agreement and, for all purposes hereunder, Business Associate's status shall be that of an independent contractor.
26. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with the HIPAA Rules. This Agreement shall only apply to the extent Virgin Pulse, Inc ("VP"). is a Business Associate under HIPAA and nothing in this Agreement shall limit or restrict VP's ability to maintain that under the relevant facts and circumstances it is not such a Business Associate.
27. Governing Law; Venue. To the extent not governed by federal law, this Agreement shall be governed by, construed, interpreted and enforced under the laws of the State of Texas without regard to its choice of law provisions.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties have executed this Agreement as of **[VP TO INSERT DATE]**.

By: Covered Entity

_____ (Signature)

_____ (Print Name)

_____ (Title)

Date: _____

By: Employer and Plan Sponsor

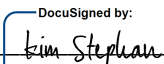
_____ (Signature)

_____ (Print Name)

_____ (Title)

Date: _____

By: Business Associate:

DocuSigned by:
 _____ (Signature)

DC1FCE2159E44DA...
Kim Stephan _____ (Print Name)

General Counsel _____ (Title)

Date: 6/20/2021

APPENDIX E: PERFORMANCE GUARANTEES

Virgin Pulse will provide a comprehensive set of performance guarantees to Williamson County across a variety of key areas including:

- Implementation
- Member Support
- Technology
- Product
- Client Success

Performance guarantees are provided assuming that the final program design and the associated incentive strategy will be developed collaboratively, leveraging proven best practices.

Virgin Pulse will report on above performance guarantees when requested by Williamson County, but not more frequently than quarterly (or annually in the case of annual surveys). If a guarantee is not met, Virgin Pulse will credit the applicable amount towards the next client invoice.

Implementation: Virgin Pulse will provide a one-time performance guarantee equal to 50% of the implementation fees that would be directly tied to achievement of a successful program implementation as outlined in Section 1 below.

Platform and Program Support: Virgin Pulse will provide annual performance guarantees equal to 15% of the annual subscription services fees for meeting agreed upon performance guarantees as outlined in Section 2 below.

SECTION 1: IMPLEMENTATION

Performance Guarantee – Implementation – Implementation Effectiveness	
Performance Guarantee Level	The performance guarantee for Implementation Effectiveness will be equally weighted on two measures: • Implementation Satisfaction: achieving an average of 8 or above on a 10-point satisfaction scale, where 10 is very satisfied and 1 is very dissatisfied. • Implementation Timeliness: the program will launch within 5 business days of the agreed upon Launch Date, which is signed off by the client after the Implementation Kickoff.
How to Measure Performance Guarantee	Implementation performance guarantees will be measured as follows: • Implementation Satisfaction – A satisfaction survey will be sent to Client stakeholders within 30 days of the Launch Date. A minimum of three (3) responses must be completed for results to count toward Performance Guarantee evaluation. • Implementation Timeliness – All key deliverables and milestones will be monitored through the Virgin Pulse’s project management tool and reported to the Client on a periodic basis. Changes to the Launch Date must be agreed upon by both parties and confirmed in writing during the implementation process.
Percent of Fees at Risk	50% of Implementation Fee at risk: • 50% for Implementation Satisfaction: credited in full at less than or equal to 6/10; credit pro-rated for 7.9-6.1/10 • 50% for Implementation Timeliness
Additional Details:	• Fees at risk only apply to the first-year implementation fees as outlined in the client Order Form. • Any missed deadlines caused by delays by the customer e.g. failure to deliver the required eligibility file will make this performance guarantee null and void. Additionally, if client chooses not to complete the satisfaction survey within 30 days of receipt this performance guarantee will be considered null and void. • This Performance Guarantee will be reviewed within 90 days of the initial full program launch. Any fees due to client will be credited against the next invoice.

SECTION 2: PLATFORM & PROGRAM SUPPORT

Performance Guarantee – Member Support – Member Service Support	
Performance Guarantee Level	The performance guarantee for Member Service Support is defined as follows: • Call response times within 45 seconds for 80% or more of all calls answered from all Virgin Pulse members • E-mail response times within 48 hours for 95% or more of all e-mails answered for all members (excluding holidays and weekends) • Satisfaction survey response of Satisfied or better by at least 80% of survey respondents. Survey is specific to the Virgin Pulse Member Services' experience and measured via the post-transaction Member Satisfaction survey
How to Measure Performance Guarantee	• Phone response time is calculated by dividing the number of phone calls answered with 45 seconds by the total number of phone calls answered for the time period • Email response time is calculated by dividing the number of emails responded to by a live agent within 48 hours (excluding holidays and weekends) by the total number of emails received for the time period • Quarterly report which will be provided upon client request.
Percent of Fees at Risk	• 2.0% of annual platform subscription service fees. • 1% to be paid for call response times; 1% to be paid for e-mail response times. • Each will be assessed Quarterly with .25% at risk per measure, per quarter.
Additional Details:	Fees at risk only apply to the annual platform subscription service fees. The following requirements must be met: • Call response PG is only applied if the minimum # of calls answered for the quarter is reached. The minimum is defined as 1% of the eligible population or 100 total calls answered per quarter, whichever is greater. • Email response PG is only applied if the minimum # of emails received for the quarter is reached. The minimum is defined as 1% of the eligible population or 100 total emails received per quarter, whichever is greater. A Member Services Satisfaction survey is automatically sent to a member when a service ticket is closed. The survey is binary (Satisfied/Not Satisfied) and provides the member an opportunity to provide open feedback as well.
Performance Guarantee – Technology – Platform Uptime	
Performance Guarantee Level	The performance guarantee for Platform Uptime is defined as follows: 99.9% up-time per quarter for access to Virgin Pulse website except for outages as a result of planned upgrades and maintenance.
How to Measure Performance Guarantee	Quarterly report which will be provided upon client request.
Percent of Fees at Risk	2.0% of annual platform subscription service fees; Credited as 0.50% per quarter, wherein uptime is not achieved.
Additional Details:	Fees at risk only apply to the annual platform subscription service fees.

Performance Guarantee – Technology – Data File Accuracy and Timeliness	
Performance Guarantee Level	The performance guarantee for Data/File Accuracy and Timeliness is defined as follows: 98% of eligibility/participation files with valid records and in previously agreed upon file specifications will be loaded within 2 business days of receipt. Within one business day of detecting file errors Virgin Pulse will generate error report and send to appropriate vendor.
How to Measure Performance Guarantee	Quarterly report which will be provided upon client request.
Percent of Fees at Risk	1.0% of annual platform subscription service fees; pro-rated across all files received in program year.
Additional Details:	Fees at risk only apply to the annual platform subscription service fees.
Performance Guarantee – Technology – Report Timeliness	
Performance Guarantee Level	The performance guarantee for Report Timing of Delivery is defined as follows: Standard Reports: Delivered within 15 business days after the end of the month or the quarter. Ad-Hoc Reports: Reports that are captured in Statement of Work's (SOWs), which are signed off by both client and Virgin Pulse, will be delivered in the timelines defined within the signed SOW for each ad-hoc report.
How to Measure Performance Guarantee	Quarterly report which will be provided upon client request.
Percent of Fees at Risk	1.0% of annual platform subscription service fees. 0.5% to be paid for Standard Reports; 0.5% to be paid for ad-hoc reports. - Each will be assessed Quarterly with .125% at risk per measure, per quarter.
Additional Details:	Fees at risk only apply to the annual platform subscription service fees and assume the following: Fees at risk would not apply should there be unforeseeable circumstances such as client's inability to receive the reports (for example, if there are network issues) or force majeure that prevent us from delivering the reports as promised.
Performance Guarantee – Product – Member Product Satisfaction	
Performance Guarantee Level	The performance guarantee for Member Satisfaction is defined as follows: Members will indicate they are satisfied or very satisfied with the Virgin Pulse program, by indicating a 3 or above on a 5-point scale during annual Member Satisfaction survey. 70% or more will respond within this standard.
How to Measure Performance Guarantee	Member satisfaction survey results.
Percent of Fees at Risk	2.0% of annual platform subscription service fees. - Credited in full at less than or equal to 2/5; credit pro-rated for 2.1-2.9/5.
Additional Details:	Fees at risk only apply to the annual platform subscription service fees and assume the following: Minimum of 30% surveys must be completed for the performance guarantee to apply.

Performance Guarantee – Client Success – Client Satisfaction	
Performance Guarantee Level	The performance guarantee for Client Success Satisfaction is defined as follows: Wellness program administrators will indicate that they are satisfied or very satisfied with the management of the program, by indicating an 8 or above on a 10-point scale on the Client Success Satisfaction survey. 70% or more will respond within this standard.
How to Measure Performance Guarantee	Client Success Satisfaction survey results.
Percent of Fees at Risk	2.0% of annual platform subscription service fees. - Credited in full at less than or equal to 6/10; credit pro-rated for 7.9-6.1/10.
Additional Details:	Fees at risk only apply to the annual platform subscription service fees and assume the following: Minimum of 5 surveys must be completed for the performance guarantee to apply.
Performance Guarantee – Client Success – Program Participation	
Performance Guarantee Level	The performance guarantee for Annual Program Participation is defined as follows: At least 50% of all Eligible employees of Client will be enrolled in the Virgin Pulse Program at the end of the annual period.
How to Measure Performance Guarantee	Enrollment is defined as eligible employees of Client who have enrolled in the Virgin Pulse Program. A comparison of enrolled employees to total eligible employees as included on the appropriate eligibility file.
Percent of Fees at Risk	2.5% of annual platform subscription service fees. - Credited in full at less than or equal to 30%; credit pro-rated for 30.1-49.9%.
Additional Details:	Fees at risk only apply to the annual platform subscription service fees and assume the following: - You offer a minimum of \$350 annual incentive value; and - At least 6 of 8 Virgin Pulse best practices are deployed as part of the annual program design. Best practices include: - Access to email addresses for the majority (greater than 80%) of eligible employees and implementation of an agreed upon strategic communications plan. - Virgin Pulse will have the ability to continually communicate to the member base on a regular basis in order to meet engagement target metrics. - Include a device subsidy during enrollment. - Majority of employees have computer or smart phone access to interact with the program. - Deployment of a champions network to include identification of champions throughout company footprint, regular meetings (monthly or similar) and regular education activities such as participation in the VP webinars. - Utilization of onsite Health Stations to support interaction. - Utilization of a quarterly levels game that includes reward triggers to support ongoing engagement - Senior leadership program support to include supportive policies (such as paid time to participate in program) and/or supportive messages (such as letter/email) from C-suite executive(s).

Performance Guarantee – Client Success – Program Engagement	
Performance Guarantee Level	The performance guarantee for Annual Program Engagement is defined as follows: On average at least 40% of enrolled employees will have earned points during a given month.
How to Measure Performance Guarantee	Engagement is defined as a comparison of members earning points in a given month to total enrolled employees in that month. Engagement will be measured as the average monthly engagement during a defined 12-month period.
Percent of Fees at Risk	• 2.5% of annual platform subscription service fees. • Paid in full at 30%; pro-rated 30.1-39.9%.
Additional Details:	Fees at risk only apply to the annual platform subscription service fees and assume the following: • You offer a minimum of \$350 annual incentive value; and • At least 6 of 8 Virgin Pulse best practices are deployed as part of the annual program design. Best practices include: 1. Access to email addresses for the majority (greater than 80%) of eligible employees and implementation of an agreed upon strategic communications plan. 2. Virgin Pulse will have the ability to continually communicate to the member base on a regular basis in order to meet engagement target metrics. 3. Include a device subsidy during enrollment. 4. Majority of employees have computer or smart phone access to interact with the program. 5. Deployment of a champions network to include identification of champions throughout company footprint, regular meetings (monthly or similar) and regular education activities such as participation in the VP webinars. 6. Utilization of onsite Health Stations to support interaction. 7. Utilization of a quarterly levels game that includes reward triggers to support ongoing engagement. 8. Senior leadership program support to include supportive policies (such as paid time to participate in program) and/or supportive messages (such as letter/email) from C-suite executive(s).