

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY" or "CLIENT", and Virgin Pulse, Inc., hereinafter referred to as the "CONTRACTOR" OR "PROVIDER".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR for its wellbeing services; and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Mendocino County ePayables Information
Exhibit E	Virgin Pulse Data Security Exhibit
Exhibit F	Business Associate Agreement.

The term of this Agreement shall be from March 24, 2020 and shall continue through March 23, 2023.

The compensation payable to CONTRACTOR hereunder shall not exceed Two Hundred Thirty Nine Thousand Dollars (\$239,000) for the term of this Agreement.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

Will Schlegel 3/11/2020
DEPARTMENT HEAD DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: PW 4025

Line Item: 862189

Grant: ☐ Yes ☒ No

Grant No.: _____

COUNTY OF MENDOCINO

By: John Haschak
JOHN HASCHAK, Chair
BOARD OF SUPERVISORS

Date: MAR 25 2020

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: Emdey Durb
Deputy MAR 25 2020

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: Emdey Durb
Deputy MAR 25 2020

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management

Date: 3/11/2020

Date: _____

CONTRACTOR/COMPANY NAME

By: SEE ATTACHED
SIGNATURE PAGE

Date: _____

NAME AND ADDRESS OF CONTRACTOR:

Virgin Pulse

75 Fountain Street, Suite 310

Providence, RI 02902

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
Acting County Counsel

Brian Blanton

By: _____
Deputy

Date: 3/11/2020

Date: _____

EXECUTIVE OFFICE/FISCAL REVIEW:

By: Jonelle Rasmussen
Deputy CEO

Date: 3/11/2020

Date: _____

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

DocuSigned by:

Gina Simonelli Baister

886F139814614BA...

Assistant General Counsel

IN WITNESS WHEREOF**DEPARTMENT FISCAL REVIEW:**SEE ATTACHED
SIGNATURE PAGE

DEPARTMENT HEAD _____ DATE _____

Budgeted: ☒ Yes ☐ NoBudget Unit: PW 4025Line Item: 862189Grant: ☐ Yes ☒ No

Grant No.: _____

COUNTY OF MENDOCINOBy: _____
JOHN HASCHAK, Chair
BOARD OF SUPERVISORS

Date: _____

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: _____
DeputyI hereby certify that according to the provisions of
Government Code section 25103, delivery of this
document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy**INSURANCE REVIEW:**By: _____
Risk Management

Date: _____

CONTRACTOR/COMPANY NAME

DocuSigned by:

By: *Kim Stephan*

Kim Stephan

DC1FCE2159E44DA...

General Counsel

Date: 3/6/2020**NAME AND ADDRESS OF CONTRACTOR:**Virgin Pulse75 Fountain Street, Suite 310Providence, RI 02902By signing above, signatory warrants and
represents that he/she executed this Agreement
in his/her authorized capacity and that by his/her
signature on this Agreement, he/she or the entity
upon behalf of which he/she acted, executed this
Agreement**COUNTY COUNSEL REVIEW:****APPROVED AS TO FORM:**CHRISTIAN M. CURTIS,
Acting County CounselBy: _____
Deputy

Date: _____

EXECUTIVE OFFICE/FISCAL REVIEW:By: _____
Deputy CEO

Date: _____

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐ _____Mendocino County Business License: Valid ☐ _____

Exempt Pursuant to MCC Section: _____

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

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 date on page 1 of this agreement.

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 Virgin 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 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.

3.2 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.

3.3 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.

3.4 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.

3.5 Performance in Accordance with Laws. CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

3.6 Conformity with Law and Safety. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act.

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.

5. INDEPENDENT CONTRACTOR STATUS

5.1 INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever.

5.2 CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

5.3 In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

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 19.6, 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 acknowledges 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 CLIENT'S USE OF THE VIRGIN PULSE SURVEYS, THE CONTENT OF THE SURVEY OR CUSTOM HRA QUESTIONS, AND CLIENT'S MISUSE OF ANY INFORMATION OR DATA COLLECTED THROUGH THE VIRGIN PULSE SURVEYS OR HRA.

7.4 Eligibles and Outreach. Client may require Provider to 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.

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 FIVE (5) TIMES 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.

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 (b) Provider's violation of applicable laws, ordinances, codes and regulations; and/or (c) 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; provided that Provider will not settle any third-party claim against Client unless such settlement completely and forever releases Client from all liability with respect to such claim or unless Client consents to such settlement, and further provided that Client 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.

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, provided that Provider will not settle any third-party claim against Client unless such settlement completely and forever releases Client from all liability with respect to such claim or unless Client consents to such settlement, and further provided that Client 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.. 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**”).

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. INSURANCE, PAYMENT, TAXES

10.1 Insurance: CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.

10.2 Worker's Compensation. CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

10.3 California Labor Code. CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractors' employees.

10.4 Payment: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto and subject to the Termination as provided herein. All invoices, receipts, or other requests for payment under this contract must be submitted by CONTRACTOR to COUNTY in a timely manner and consistent with the terms specified in Exhibit B.

10.5 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.

10.6 Late Payments; Interest; Payment in Dollars. Any portion of any undisputed amount payable hereunder that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. All payments to be made under this Agreement shall be made in US dollars. Notwithstanding the foregoing, 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.

11. **CONFLICT OF INTEREST:** The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.

12. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO
501 Low Gap Road, Room 1326
Ukiah, CA 95482
Attn: William Schurtz

To CONTRACTOR: Virgin Pulse, Inc.
75 Fountain Street
Providence, RI 02902
ATTN: Kimberly Stephan

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

13. USE OF COUNTY PROPERTY: CONTRACTOR shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

14. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONTRACTOR certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.

- a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
- b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
- c. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.

15. DRUG-FREE WORKPLACE: CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

16. ENERGY CONSERVATION: CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).

17. COMPLIANCE WITH LICENSING REQUIREMENTS: CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONTRACTOR shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONTRACTOR shall file copies of same with the County Executive Office.

CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

18. AUDITS; ACCESS TO RECORDS:

CONTRACTOR shall make books and records available to the COUNTY for audit to take place (a) no more than once a year; (b) upon sixty (60) days notice to CONTRACTOR; (c) at an agreed upon time place and manner; and (d) at COUNTY's expense. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

19. TERM AND TERMINATION:

19.1 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. 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**").

19.2 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.

19.3 Termination for NON APPROPRIATION: If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon sixty (60) days written notice to CONTRACTOR.

Such notice shall be in writing and may be issued by any county officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. In the event that the COUNTY should terminate in accordance with Section 19.3 the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said, termination. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its wellbeing services shall not exceed \$239,000 payment for services provided hereunder prior to the effective date of said termination for lack of appropriation.

19.4 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.

19.5 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.

19.6 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.

20. CHOICE OF LAW: This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

21. VENUE: All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.

22. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

23. ADVERTISING OR PUBLICITY: CONTRACTOR shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.

24. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.

25. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.

26. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.

27. RESERVED

28. SUBCONTRACTING: With the exception of CONTRACTOR'S Administrative Vendors, CONTRACTOR shall not subcontract, assign or delegate any portion of this

Agreement or any duties or obligations hereunder without the COUNTY's prior written approval as to any optional subcontractor.

- a. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
- b. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.

29. 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.

30. Assignment; Delegation. Except in the case of merger or acquisition, neither party shall assign any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of the other Party, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect.

31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 9), and Conflict of Interest (Paragraph 11), shall survive termination or expiration for two (2) years.

32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

33. **RESERVED**

34. **ELECTRONIC COPIES:**

The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.

35. **COOPERATION WITH COUNTY**

Contractor shall cooperate with County and County staff in the performance of all work hereunder.

36. PERFORMANCE STANDARD

Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

37. ATTORNEYS' FEES

In any action to enforce or interpret the terms of this agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR shall provide the following services:

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 Client may integrate specific benefits and programming made

	available to their population. Configuration of available programs determined by client.
	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.
Habit Building & Behavior Change Tools	Daily trackers, content and activities to help members adopt and maintain healthy daily routines.
	Healthy Habit Trackers Members may self-track wellness behaviors in key wellbeing areas: activity, nutrition, learning, sleep, community, relationships, stress, productivity, financial wellbeing.
	Daily Health Tips Members receive personalized daily wellbeing content (daily cards) based on their individual interests.
	Digital Coaching Self-paced, online education across 9 lifestyle and condition topics.
	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.
	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 Configurable health and lifestyle assessment tools.
	Surveys Client-built custom surveys that can segmented and deployed through VP platform.

Virgin Pulse Live Coaching	<p>Total Population Health Live, telephonic 1:1 coaching. Coaches will proactively reach out to all members - any member can participate. Members are matched to coach via a robust referral process based on member goals and preferences. Coaching is based on what's most meaningful to the member across all lifestyle topics and 22 conditions. Also includes tobacco cessation coaching.</p>
Virgin Pulse Tobacco Cessation	<p>Nicotine Replacement Therapy (NRT) One (1) 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</p>

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.)
Program Reporting & Analytics	On Demand Reporting Program administrators will have 24/7 access to an on-demand analytics dashboard. Aggregate program data is refreshed daily and includes 100+ metrics viewable in a variety of charts, graphs, and tables, revealing outcomes and trends across enrollment, engagement, participation, wellbeing behaviors and interest areas, biometrics, health risk assessments, and external or third-party programs. Business Review Deep dive client reviews led by your client success manager. Reviews include trends over time in enrollment, engagement, and activity, and device usage broken down by several demographic and location/business unit segments.

COMMUNICATIONS

Communications	Standard Member Communications Includes launch campaign options with emails, site pop-up, posters, digital displays, info sheets, 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.
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CLIENT SUCCESS SERVICES

<p>A client success manager will be responsible for proactive program management and client outreach to optimize program performance. Services will include:</p> <ul style="list-style-type: none">• 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) *custom* Basic or Destination challenge per year for clients, as requested. Client supplies custom content and images.
- Ability to *configure* 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

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

- 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
 - Configuration of initial corporate challenge

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

The Initial Term of this Agreement will commence on the Effective Date and will expire on 2/28/2023.

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	3/24/2020	3/23/2023	3 years	Annual minimum platform fee	1,000	1,000	\$ 60,450.00
Engage Platform – Spouses	3/24/2020	3/23/2023	3 years	Annual minimum platform fee			Waived
Total Per Year:							\$60,450.00

Payment Terms and Conditions:

1. Flat rate up until 1,500 lives at which time PEPY rate would become \$43 PEPY.
2. The initial Subscription Services Fees invoice under this Order Form shall be issued on March 23, 2020 (the targeted program launch date). Thereafter, the invoices shall be issued every 12 months following the Initial Order Start Date for the period of the Term.
3. Any increase in the number of Eligible Lives above the invoiced number of Eligible Lives in a given year will result in a pro-rated price for such additional Eligible for that year and will be invoiced quarterly.
4. All Subscription Services fees shall be due and payable within thirty (30) days of the date of the invoice.

Additional Services

Services	Billing Type	Per Unit Price	Estimated Quantity	Total
Implementation	Per Unit	\$5,000.00	1	\$5,000.00
Custom Communications Service Credit	Annual Credit	(\$3,000)	1	\$0

Optional Services

Services	Billing Type	Per Unit Price	Estimated Quantity	Total
Single Sign On – One Way (3 included at no cost)	Per Connection	\$2,500	3	\$0
Single Sign On – Bi-Directional (1 included at no cost)	Per Connection	\$2,500	1	\$0
Total Population Health Coaching	Per Participant Per Year	\$215.00	50 (estimate only)	\$10,750.00
Nicotine Replacement Therapy (NRT)	Per One Month Supply	\$58.00	(Annual estimate)	\$2,900.00
Verified Form Processing	Per Form	\$5.00		Optional
Verified Form Processing Setup	Per Setup	\$2,500.00		Optional
Online Attestation Form	Per Form	\$500.00		Waived

**Client may elect to purchase the equivalent USD value per unit as a subsidy to be applied towards any Activity Tracking Device in the Virgin Pulse store.*

Payment Terms and Conditions:

1. The Implementation fees will be invoiced on the Initial order date.
2. One inbound SSO and 3 outbound SSO's included at no additional cost.
3. The 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.
4. All other Additional Services fees will be invoiced monthly in arrears based on the total number of units completed during the month.
5. Rewards will be invoiced bi-monthly in arrears based on the total value of rewards earned by each Member during the applicable period.
6. All Additional Services fees are due and payable within thirty (30) days of the invoice.

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, Contractor's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

CONTRACTOR shall furnish to COUNTY certificates of insurance evidencing the minimum levels described above.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D

MENDOCINO COUNTY EPAYABLES INFORMATION

The County of Mendocino is currently making credit card payments to all of our vendors and suppliers who qualify. To qualify, vendors need to currently accept credit card payments. To achieve this more efficient form of payment, the County has partnered with Bank of America and their ePayables credit card program. This electronic initiative will yield many benefits to its participants:

- Expedited receipt of cash – electronic credit card payments provide cash flow benefits by eliminating mail and paper check float
- Elimination of check processing costs
- Remittance data transmitted with payment for more efficient back-end reconciliation
- No collection costs associated with lost or misplaced checks
- Reduced exposure to check fraud
- More efficient handling of exception items
- Fits with existing accounting software – requires no purchase of software, no modifications to existing accounts receivable system and no change to bank accounts.
- Going green with paperless electronic credit card payments help conserve the environment by eliminating printing and mailing of paper checks.

For information regarding the payment process, please contact Margaret Yates yatesm@mendocinocounty.org or 707-234-6869.

Additional information regarding the Bank of America Program is also available at:

http://corp.bankofamerica.com/business/ci/landing/epayables-vendors?cm_mmc=sb-general_-vanity_-sg01vn000r_epayablesvendors_-na

EXHIBIT E: VIRGIN PULSE DATA SECURITY EXHIBIT

1. **Scope; Definitions.** Provider shall comply with the requirements set forth in this Exhibit. The Agreement relates to Services whereby Provider collects, accesses, processes, stores, transfers, transmits, uses, discloses or otherwise handles any Client Data or Member Data. In the event of a conflict or inconsistency between any provision of this Exhibit and the Agreement, the more stringent requirement shall prevail. Capitalized terms in this Exhibit not herein defined are defined in the Agreement or have the following meanings:
 - a. "Agreement" shall mean the agreement between Client and Provider to which this Exhibit is attached.
 - b. "PII" shall mean information (i) that identifies an individual, (ii) with respect to which there is a reasonable basis to believe the information can be used to identify an individual, or (iii) is considered personally identifiable information by applicable codes, laws, guidelines, rules or regulations, including, without limitation, industry self-regulation. The term PII shall also include any "Personal Data" as defined in the General Data Protection Regulation (Regulation (EU) 2016/679).
 - c. "Provider" shall have the meaning outlined in Provision 1.12 of the Agreement.
 - d. "Provider Personnel" shall mean each director, officer, manager, employee, representative and each natural person employed or retained by Virgin Pulse.
 - e. "Provider Sites" shall mean locations owned or leased by Provider from which it provides services to its Clients.
 - f. "Security Incident" shall mean any confirmed unauthorized access, disclosure, misappropriation, theft, loss, acquisition, or use of Client Data or Member Data.
 - g. "Services" shall mean the services to be provided and performed by Provider pursuant to the Agreement.
 - h. "Systems" shall mean hardware, software, networks, applications and other equipment that comprise a technical environment.
2. **General.** Provider shall maintain all reasonable security measures appropriate to the nature of Client and Member Data, including, without limitation, electronic, physical, administrative and organizational controls as described in the applicable Documentation.
3. **Privacy and Security Training.** Provider shall maintain a comprehensive privacy and data security training program for all Provider Personnel. Such training program is designed to meet the objectives and requirements of this

Exhibit.

4. **Provider Access to Client and Member Data.** Provider access, by any means or methods, to any Client Data and Member Data collectively, ("Access") is solely for the purpose of and will be limited only to the extent necessary for, performing the Services. Provider will ensure that Access by Provider Personnel is limited to a need-to-know basis. Provider shall comply with and ensure that Provider Personnel comply with such protocols. Without limiting the foregoing, Provider shall also comply with the following:
- a. User IDs must not be shared among Provider Personnel and Provider must not utilize any "generic" or default User IDs or passwords. Any remote access by Provider Personnel (i.e., from outside a Client Site or Provider Site) that is otherwise permitted by the Agreement will be implemented in a manner that prohibits the storage of Client Data or Member Data on the equipment that was utilized for such remote access. Provider shall conduct user access reviews at least semi-annually.
 - b. Provider shall at all times maintain the logical separation of electronic records of Client Data and Member Data from (i) any other data, including Provider data and (ii) the Provider Systems processing, storing, hosting, transporting and/or transmitting such other data. If hard copies of Client Data are provided or created, Provider shall maintain the physical separation of any Client Data within Provider's possession or control. Physical separation of hard copies of Client Data may be maintained by the use of a locked filing drawer or cabinet that does not contain any other data or information.
 - c. Provider will include at least one (1) layer of firewall between (i) Provider Systems used for Access or to provide the Services, and (ii) other networks that Client may permit Provider to connect to or from Provider Sites, if any (including without limitation, if applicable, the Internet or any third-party network).
 - d. Provider shall ensure Provider Personnel to cooperate fully in resolving any confirmed unauthorized Access, acquisition or misuse of Client Data or Member Data that had been in Provider's possession or under its control at the time of the actual unauthorized Access, acquisition or misuse.
 - e. If any Provider Personnel resigns from his or her employment, is terminated, or ceases to perform Services for any other reason, Provider shall promptly (i) terminate such individual's Access (including by shutting down badge/key cards and retrieving SecurID fobs and the like), and (ii) ensure that such individual does not retain any Client Data or Member

Data, in any format.

5. **Provider Security Reviews and Audits.** On an annual basis, for each of the Provider Sites at which Client Data or Member Data is stored, Provider will provide to Client a Statement on Standards for Attestation Engagements No. 16, Service Organization Control 2, Type 2 ("SSAE 16 SOC 2 Type 2") audit as defined by the American Institute of Certified Public Accountants or an audit made pursuant to any other guidance that supersedes or replaces SSAE 16 SOC 2 Type 2 or comparable, industry standard independent audit.
6. **Logical Access Security Log.** Provider shall create, maintain and monitor electronic access security logs for the Provider Systems and network components from and/or through which Provider or any Provider Personnel has Access or that are used to perform the Services.
7. **Changes Log.** To the extent such changes relate to the Services, Provider will create and maintain an electronic log of all changes to the technical and logical architecture of Provider Sites, the physical and electronic access control systems and the logical and physical security standards. Provider's change control procedures shall protect the confidentiality, integrity and availability of Client Data and Member Data.
8. **Patch Management and Anti-Virus Malware Software.** Provider shall ensure patch management solutions provided by an industry recognized vendor, and anti-virus malware software with the latest virus definition update, are configured on all Provider System. Such anti-virus malware software shall include technical controls that provide for automatic updates of the virus definitions.
9. **Payment Card Transactions and Data.** To the extent that the Services include the processing of payment card transactions, Provider shall, at all times during the term of the Agreement, comply with the rules and regulations of the Payment Card Industry's and the card associations (e.g., Visa, MasterCard, American Express, Discover, JCB), including, but not limited to, the data security standards. Without limiting the generality of the foregoing, Provider shall (a) provide data security reports as may be required by the credit or debit or payment card issuer, (b) pay any fines and penalties in the event Provider fails to comply with such data security requirements, and (c) fully cooperate with, and provide access to, the payment card issuer or payment card association to conduct a security review of Provider's policies and procedures.
10. **Encryption.** Any encryption required under the Agreement, including this Attachment, will be in accordance with Advanced Encryption Standards (AES), or any successor standards, and no less than 256-bit.

11. **Back-Ups.** Provider shall utilize a backup procedure for all stored Client Data and Member Data, the backup procedure shall include the provision of back-ups on a periodic basis that is no less frequent than monthly, and all back-ups will be encrypted to the same standards provided above in Provision 10 on Encryption.
12. **Restrictions on Access.** Provider and Provider Personnel shall not Access or display Client Data or Member Data in applications, reports, data transmissions or other outputs unless required by the Agreement and permissible under applicable laws, required to provide the Services or needed to meet a legal or regulatory requirement. Provider and Provider Personnel shall not include Client Data and Member Data in unencrypted emails or files attached to emails that are transmitted unprotected via the Internet. Provider shall employ a tool, such as data loss prevention software, to monitor and prevent the unprotected transfer of PII. All electronic data sources containing PII must be encrypted.
13. **Retired or Reassigned Equipment.** Any equipment, including any Portable Devices or Removable Media, that Provider has retired or reassigned will be wiped or magnetically wiped pursuant to applicable US Department of Defense standards within two (2) weeks of the retirement or immediately before reassignment of such equipment.
14. **Data Retention and Destruction.** Provider shall maintain effective data retention and destruction procedures to ensure records containing Client Data and Member Data are disposed of in a timely manner that does not compromise the security, confidentiality or integrity of the information, in accordance with Provider's records retention guidelines and any requirements in the Agreement.
15. **Authentication.** Provider shall protect authentication credentials, including by:
(a) ensuring that passwords and PINs do not appear in readable form while the user is typing or entering the password or PIN; and (b) storing passwords and PINs in a one-way hashed format, protected with salt. Provider shall prevent users from elevating their own privileges within a System without first re-authenticating as a more privileged user. Where technologically feasible, Provider shall ensure passwords contain at least eight (8) alpha-numeric characters and at least three (3) of the following criteria: (i) upper case letters, (ii) lower case letters, (iii) numbers, and (iv) special characters.
16. **Security Incident.** Provider shall will be responsible for detecting and responding to Security Incidents on Virgin Pulse Systems impacting or potentially impacting Access, or performance of Services, from and/or through Provider Sites. Upon becoming aware of a confirmed Security Incident, Provider will report such Security Incident within five (5) days by providing a written notification the Client General Counsel's. In the event of a Security Incident related to any Client Data or Member Data, (a) Provider will cooperate with Client

to comply with any legal requirement to notify individuals whose PII has been or may have been compromised as a result of a Security Incident; provided that in no event will Provider serve any notice or otherwise publicize a Security Incident without the prior written consent of Client, unless required by applicable laws, and (b) upon Client's request, engage a mutually acceptable, regionally recognized third party to perform or assist with forensic analysis. Provider will deliver the results of any such analysis to Client including its (or their) general counsel or other responsible attorneys, in accordance with the confidentiality and notice provisions of the Agreement, marked "CONFIDENTIAL."

EXHIBIT F: 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 the County of Mendocino (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, 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 Mendocino
501 Low Gap Road, Room 1326
Ukiah, CA 95482-3734
ATTENTION: William Schurtz

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 Rhode Island without regard to its choice of law provisions.

EXHIBIT G: SUPPORT AND SERVICE LEVELS

1. **Availability of Services.** The requirements set forth in subsections 1, 2 and 3 of this Appendix are defined to be the "Service Levels". The Application Services will be available to Members and Client a minimum of 99.5% of the time during any calendar quarter. The sole exceptions are interruptions to data center services that are beyond the control of the Provider, or the following scheduled maintenance periods (as to which Provider shall (a) provide an email to Client at least 72 hours in advance of scheduled downtime notifying Client of the same (except for instances of emergency maintenance), (b) when Members attempt to access the Application Services, notifying Members of the implementation of the scheduled downtime and when the Application Services will be available):

Day of Week	Start Time	End Time
Saturday	12:00 AM EST, Saturday night	8:00 AM EST, Saturday morning
Sunday	12:00 AM EST, Sunday night	8:00 AM EST, Sunday morning

2. **Response Time.** The Application Response timer the Providers website shall maintain an APDEX score of over .95 per quarter, as reported by New Relic.

3. **Service Performance Metrics.** Upon request by Client, and in any event at least quarterly, Provider at its expense will deliver to Client in electronic form acceptable to Client the Service Levels metrics identified in Sections 1 and 2 of this Appendix G.

4. **Remedies.** In addition to any other remedy available to it under law or in equity, Client may immediately terminate the Agreement without a further cure period if: (i) any breach of this Appendix G. is not cured within the next measurable period, (ii) the 99.5% uptime level is not met for two (2) consecutive quarters, (iii) the 99.5% uptime level is not met for any three (3) non-consecutive quarters; or the uptime level falls below 98.5% in any given quarter.

5. **Support.** At no cost during the Term of the Agreement, Provider agrees to:

(a) Ensure that the Application Services continue to perform as required under this Agreement, including any Specifications; and

(b) Provide all, patches, fixes, and the like necessary for the Application Services to remain current and to continue operating in accordance with the Specifications and the above Service Level requirements; and

(c) Provide technical support to members Monday through Friday (except Holidays) between 8:00am and 9:00pm Eastern Standard Time by telephone 866-852-6898 or email at support@virginpulse.com.

Classification	Failure Description	Response Targets
Critical	Fatal, platform is unavailable or unusable, no useful work can be done.	Investigation, immediate upon notification. Action to correct commenced within 2 hours; resources will be dedicated until the issue is resolved.
Major	Severe impact, major functionality disabled. Errors cause intermittent system failure. Performance issues.	Investigation, immediate upon notification. Action to correct commenced within 24 hours; resources will be dedicated until the issue is resolved.
Minor	Degraded operations/minimal impact. Errors causing malfunction of non-critical functionality.	Response within 72 hours; resources will be assigned based on development timelines in QA team queue.

Root-Cause Analysis: Upon any Service Levels not meeting the acceptable threshold values, Provider will perform a root-cause analysis to identify the cause and will perform the following activities in connection with the root cause analysis:

1. Upon request, provide Client with a copy of written report detailing the cause and procedure for correcting such issues.
2. Correct such issues in accordance with the procedure.
3. Provide Client with written confirmation that such issues have been corrected and mitigation steps defined to avoid re-occurrence.

6. Service Credits. In addition to any other remedy available to it under law or in equity, all of which shall be cumulative, Client shall be entitled to a credit against the next payable fee due to Provider hereunder in accordance with the credit provisions set forth below:

Virgin Pulse will provide a guarantee of 99.5% up-time per quarter for access to Virgin Pulse website (except for force majeure outages or related to planned upgrades and maintenance). In the event of a failure to provide this level of uptime, Client will be entitled to a credit in the amount of 1% of the quarterly fees.

Exhibit H: PERFORMANCE GUARANTEES

Virgin Pulse Program Performance Guarantees

We are happy to offer up to **15%** of the annual program fees at risk for meeting agreed upon performance guarantees. We assume that if we are selected as your wellbeing program partner, a final program design and the incentive strategy will be mutually developed as will the guarantee components (metric threshold, measurement timing and process, tracking, reporting, fees at risk, etc.).

In addition to the annual performance guarantees, we would also offer a one-time performance guarantee of 50% of the implementation fee included in our proposal that would be directly tied to achievement of a successful program implementation.

One-Time Performance Guarantees

Implementation Effectiveness

Performance Guarantee Level	The performance guarantee for Implementation Effectiveness will be equally weighted on two measures: <ul style="list-style-type: none">• 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 on 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: <ul style="list-style-type: none">• 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	Total of 50% of Implementation Fee at risk: <ul style="list-style-type: none">• 25% for Implementation Satisfaction• 25% for Implementation Timeliness
Additional Details:	Fees at risk only apply to the first year implementation fees. 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.

Annual Performance Guarantees

Member Service Support

Performance Guarantee Level	The performance guarantee for Member Service Support is defined as follows: <ul style="list-style-type: none"> • Call response times of 80% of all calls answered within 45 seconds for all Virgin Pulse members • E-mail response times of 95% of all e-mails answered within 48 hours (excluding holidays and weekends) for all members
How to Measure Performance Guarantee	Quarterly report provided upon client request
Percent of Fees at Risk	2.5%
Additional Details:	Fees at risk only apply to the annual Virgin Pulse portal costs

Platform Uptime

Performance Guarantee Level	The performance guarantee for Platform Uptime is defined as follows: <ul style="list-style-type: none"> • 99.0% 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 provided upon client request
Percent of Fees at Risk	2.5%
Additional Details:	Fees at risk only apply to the annual Virgin Pulse portal costs.

Member Satisfaction

Performance Guarantee Level	The performance guarantee for Member Satisfaction is defined as follows: <ul style="list-style-type: none"> • At least 80% of respondents indicate they are satisfied or very satisfied with the Virgin Pulse program, by indicating a 8 or above on a 10 point scale during annual Member Satisfaction survey.
How to Measure Performance Guarantee	Survey results
Percent of Fees at Risk	2.5%
Additional Details:	Fees at risk only apply to the annual Virgin Pulse portal costs. Minimum of 30% surveys must be completed for the performance guarantee to apply.

Client Success Satisfaction

Performance Guarantee Level	The performance guarantee for Client Success Satisfaction is defined as follows: <ul style="list-style-type: none"> • At least 80% of wellness program administrators indicate that they are satisfied or very satisfied with the management of the program, by indicating a 8 or above on a 10 point scale on the Client Success survey.
How to Measure Performance Guarantee	Survey results
Percent of Fees at Risk	2.5%
Additional Details:	Fees at risk only apply to the annual Virgin Pulse portal costs. Minimum of 5 surveys must be completed for the performance guarantee to apply.

Annual Program Participation

Performance Guarantee Level	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 Eligibles who are employees of Client that 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%
Additional Details:	<p>Fees at risk only apply to the annual Virgin Pulse portal costs. Fees at risk are only applicable under the condition that you offer a minimum of \$350 annual incentive value and at least 4 of 6 Virgin Pulse best practices are deployed as part of the annual program design. Best practices include:</p> <ul style="list-style-type: none"> • 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 • Senior leadership program support

Annual Program Engagement

Performance Guarantee Level	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%
Additional Details:	<p>Fees at risk only apply to the annual Virgin Pulse portal costs. Fees at risk are only applicable assuming under the condition that you offer a minimum of \$350 annual incentive value and at least 4 of 6 of Virgin Pulse best practices are deployed as part of the annual program design. Best practices include:</p> <ul style="list-style-type: none"> • 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

	<ul style="list-style-type: none"> • Majority of employees have computer or smart phone access to interact with the program • Utilization of onsite Health Stations to support interaction • Deployment of a champions network • Senior leadership program support • Utilization of a quarterly levels game that includes reward triggers to support ongoing engagement
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