



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 05/17/2022

* = Mandatory, information must be provided

or Procurement Director Award: ☐

***Contractor/Vendor Name/Grantor (DBA):**

Virgin Pulse, Inc. (Providence, RI)

***Project Title/Description:**

Employee Wellness Service

***Purpose:**

Award: Master Agreement No. MA-PO-22-137. This Master Agreement commences on May 17, 2022, and will terminate on December 31, 2022, in the not-to-exceed contract amount of \$800,000 with three (3) one-year renewal options. Administering Department: Information Technology.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.24.010, Cooperative procurement authorized, for Requisition No. 22-139, the Procurement Director approved the use of State of Arizona Agreement CTR052905, effective December 8, 2020, which was awarded through competitive procedures reasonably similar to those set forth by Pima County Procurement Code.

PRCUID: 441793

Attachment: Cooperative Procurement Agreement.

***Program Goals/Predicted Outcomes:**

The goal is to provide employees with a comprehensive program for health and wellness initiatives.

***Public Benefit:**

To have a healthy workforce that will be ready to serve the public.

***Metrics Available to Measure Performance:**

Employee engagement and decreased medical claims.

***Retroactive:**

No.

To: COB 5-04-22⁽¹⁾
Vers: 1
pgs: 20

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 22-137
 Commencement Date: 05/17/2022 Termination Date: 12/31/2022 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount \$ 800,000.00 * ☐ Revenue Amount: \$ _____

***Funding Source(s) required: Health Benefit Self-Insurance Fund**

Funding from General Fund? ☒ Yes ☐ No If Yes \$ _____ % 100

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☐ Yes ☒ No
 If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No
 If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Commencement Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ _____

Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

***Funding Source(s) required: _____**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required: _____**

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Brandon Morgan, Procurement Officer Brandon Morgan Digitally signed by Brandon Morgan Date: 2022.05.03 10:43:33 -07'00' Division Manager Ana Wilber Digitally signed by Ana Wilber Date: 2022.05.03 10:47:05 -07'00'
 Department: Procurement Director Terri Spencer Digitally signed by Terri Spencer Date: 2022.05.03 12:06:45 -07'00' Telephone: 520.724.9510
 Department Director Signature: _____ Date: 5/3/2022
 Deputy County Administrator Signature: _____ Date: _____
 County Administrator Signature: _____ Date: 5/3/2022

Pima County Procurement Department
Administering Department: Human Resources

Project: Employee Wellness Service

Contractor: Virgin Pulse, Inc.
75 Fountain Street Suite 310
Providence, RI 02902

Amount: \$800,000.00

Contract No.: MA-PO-22-137

Funding: Health Benefit Self-Insurance Fund

COOPERATIVE PROCUREMENT AGREEMENT

1. Parties, Background and Purpose.

- 1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona ("County"), and Virgin Pulse, Inc. ("Contractor")
- 1.2. Purpose. The Pima County Human Resources Department is seeking a service provider for the promotion of employee wellness. It is County's goal to continue to actively engage and promote wellness activities and solutions to improve the health and wellbeing of its workforce.
- 1.3. Authority. County is authorized by Pima County Code § 11.24.010 and A.R.S. § 41-2632 to enter into cooperative purchasing arrangements. County has entered into such an agreement with State of Arizona
- 1.4. Contract.
 - 1.4.1. The State of Arizona entered into a contract CTR052905 for specified goods and services with Virgin Pulse Inc. ("Contractor"), which is currently in effect. The State of Arizona Agreement CTR052905 is incorporated into this Contract by this Attachment A: State of Arizona Contract CTR052905. Unless and to the extent the terms of this Contract conflicts with the State of Arizona Agreement CTR052905, the Parties hereto shall possess the same rights and obligations as expressed under the State of Arizona Agreement CTR052905 with respect to the Services provided hereunder. For avoidance of doubt, and for the purposes of such incorporation of rights and obligations, (i) any reference to contractor, provider, vendor, or similar designation in the State of Arizona Agreement CTR052905 shall mean Contractor for the purposes of this Contract, and (ii) any reference to the State, State of Arizona, or similar designation in the State of Arizona Agreement CTR052905 shall mean the County for the purposes of this Contract.
 - 1.4.2. Section 1.11 of the State of Arizona solicitation BPM002797 (the "Solicitation") provides that another governmental entity with which the State of Arizona has a cooperative purchasing agreement may, with Contractor's approval, purchase products and services under the same terms as in the State of Arizona Contract.

2. Term.

- 2.1. Initial Term. The term of this Contract commences on May 17, 2022 and will terminate on December 31, 2022 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.
- 2.2. Extension Options. Contingent upon (i) a mutually agreeable increase to the NTE Amount specified hereunder, and (ii) Contractor's receipt of each corresponding Delivery Order (DO) document (see Section 26 below), County may renew this Contract for up to three (3) additional periods of up to 1 year each (each an "Extension Option" and collectively with the Initial Term, the "Term") provided that any Extension Option may not result in the Term of this Contract exceeding the term length of The State of Arizona Agreement CTR052905. An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

3. Scope of Services.

- 3.1. Contractor will provide County with the services described in **Exhibit A** (7 pages) (the "Services").
- 3.2. Order of Precedence. In the event of conflicting terms between the incorporated documents, the following order of precedence, superior to subordinate, dictates the order in which these conflicts will be resolved.
- 3.2.1. Amendments to this Contract.
- 3.2.2. This Contract.
- 3.2.3. The State of Arizona Agreement CTR052905.
- 3.2.4. Exhibit B

4. Key Personnel. Not applicable to this Agreement.

5. Compensation and Payment.

- 5.1. Rates; Adjustment. In exchange for the Services, County will pay Contractor at the rates set forth in **Exhibit B** and otherwise in conformance with the additional payment terms and conditions as stated in Exhibit B.
- 5.2. Not-To-Exceed (NTE) Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$800,000.00 per year (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.
- 5.3. Taxes. Prices do not include any sales, use, excise, transaction, or other similar taxes. If such taxes are applicable, Contractor will separately state them on the invoice and County shall be responsible for payment. To the extent such statutory taxes are not

included in an invoice and are later determined to be due, Contractor will notify and separately invoice for taxes and County will be responsible for payment. County will make all required payments to Contractor free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Contractor will be County's sole responsibility, and County will, upon Contractor's request, provide Contractor with official receipts issued by the appropriate taxing authorities, or such other evidence as Contractor may reasonably request, to establish that such taxes have been paid. Contractor has no obligation to pay, nor render any tax advice with regard to, any taxes or fees that are: (i) based on County's (a) federal, state and local income taxes; (b) payroll, employment and self-employment taxes of any kind, or (c) contributions imposed or required for social security, national insurance, medical insurance, or other applicable laws, rules or regulations with respect to any services or benefits received during the performance of this Contract; (ii) franchise taxes or other taxes based on County's corporate existence or status; (iii) due in whole or in part because of any failure or delay by County 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. County shall reimburse Contractor for any penalties or interest actually levied upon Contractor only if County's acts or omissions solely caused the interest or penalty to be levied. Contractor shall, upon written request of County, furnish statements of taxes and assessments for which County is responsible and Contractor has paid.

5.4. Content of Invoices. Contractor will include reasonably detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.

5.5. Invoice Submittal. Invoices are to be sent to:

Pima County Finance & Risk Management – Accounts Payable
P.O. Box 791
Tucson, AZ 85701

5.6. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 23 below, question any payment under this Contract. If County raises a good faith question about the propriety of a past payment, Contractor will reasonably cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

6. **Insurance**. The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

6.1. Minimum Scope and Limits of Insurance. Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary,

Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

- 6.1.1. Commercial General Liability (CGL). Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.
- 6.1.2. Business Automobile Liability. Bodily Injury and Property Damage for any owned, leased, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.
- 6.1.3. Workers' Compensation (WC) and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers' Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person - disease.
- 6.1.4. Professional Liability (E&O) Insurance. This insurance is required when the Professional Liability or any other coverage is excluded from the above CGL policy. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The insurance policy shall cover professional misconduct or negligent acts of anyone performing any services under this Contract.
- 6.1.5. Network Security (Cyber)/Privacy Insurance – Coverage shall have minimum limits not less than \$2,000,000 Each Claim with a \$2,000,000 Annual Aggregate. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
The policy shall be endorsed, as required by this written agreement, to include the County and its Agents, as additional insureds with respect to vicarious liability of the insured arising out of the activities performed by or on behalf of the Contractor. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of Pima County and its Agents for losses arising from work performed by or on behalf of the Contractor.

- 6.1.6. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" section.
- 6.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.
- 6.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- 6.2.2. Additional Insured Endorsement. The General Liability, Business Automobile, Professional E&O, Network Security & Privacy Liability policies must each be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to vicarious liability arising out of the activities performed by or on behalf of the Contractor.
- 6.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability, Workers' Compensation and Professional E&O Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- 6.2.4. Primary Insurance Endorsement. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).
- 6.2.5. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 6.3. Notice of Cancellation. Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice must be mailed, emailed, hand-delivered or sent via facsimile transmission to the County Contracting Representative, and must include the County project or contract number and project description. However, this requirement shall not apply to Professional E&O and Network Security (Cyber)/Privacy Insurance.
- 6.4. Verification of Coverage. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Contract. An authorized representative of the insurer shall sign the certificates. Each certificate must include.

- 6.4.1. The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate.
 - 6.4.2. A notation of policy deductibles or SIRs relating to the specific policy.
 - 6.4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.
- 6.5. All certificates and endorsements, as required by this written agreement, are to be received and approved by County before, and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 6.6. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- 6.7. Approval and Modifications. The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.
7. **Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnatee") to the same extent Contractor has agreed to defend, indemnify, and hold harmless the State of Arizona under The State of Arizona Agreement CTR052905.
8. **Laws and Regulations.**
 - 8.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, and regulations, solely to the extent any of the foregoing are applicable to the Services.
 - 8.2. Licensing. Contractor warrants that it is appropriately licensed to provide the Services under this Contract and that its subcontractors will be appropriately licensed.
 - 8.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.
9. **Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any

protections, under County's Merit System. Contractor is responsible for paying all federal, state and local income taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

- 10. Subcontractors.** Contractor is fully responsible for all acts and omissions of any partner service provider (see Exhibit B) for which County contracts directly with Contractor for such services, and of persons directly or indirectly employed by any such partner service provider, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
- 11. Assignment.** Except in the case of merger, acquisition or sale of all, or substantially all, of a Contractor's assets or capital stock, Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion. In the event of a merger, acquisition or sale of substantially all of a Contractor's assets, Contractor must provide written notice to the County of such assignment within twenty (20) business days of such occurrence and the County may terminate this Contract with no less than 30 days written notice to Contractor.
- 12. Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
- 13. Authority to Contract.** Both Parties warrant that it has the right and power to enter into this Contract.
- 14. Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
- 15. Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
- 16. Termination by County.**
 - 16.1. With Cause.** Either Party may, at its option, terminate this Contract 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. If the breaching Party fails to timely cure such breach or breaches, the non-breaching Party may

terminate this Agreement effective immediately upon written notice to the breaching Party. Notwithstanding the foregoing, Contractor may immediately terminate this Agreement without prior notice or the opportunity to cure if the County's material breach results in a violation US Export Controls and Trade Sanctions law.

16.2. Without Cause. County may terminate this Contract at any time, without cause, following the first twelve (12) months of the Term by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.

16.3. Suspension of Access. Contractor may suspend access to the Services in the event any undisputed amount due under this Contract is not received by Contractor within thirty (30) days from invoice unless Contractor is at fault for payment delays.

16.4. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

17. Notice. Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Terri Spencer, Procurement Director
Pima County Procurement
150 W Congress, 5th Floor
Tucson, AZ 85701

520-724-8198
terri.spencer@pima.gov

Contractor:

Rachel Grossman, Enterprise Sales Director
Virgin Pulse
75 Fountain Street
Suite 310

Providence, RI 02902
206-550-3133
rachel.grossman@virginpulse.com

18. Non-Exclusive Contract. Contractor understands that this Contract is nonexclusive. County reserves the right to obtain like services from other sources for any reason.

19. Remedies. Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract. For avoidance of doubt, The Parties hereto acknowledge that this Contract shall be subject to any limitation of liability as may have been agreed to by and between Contractor and the State of Arizona in The State of Arizona Agreement CTR052905.

20. Severability. Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

21. Use of County Data. Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to

County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).

22. Books and Records. Contractor will keep and maintain proper and complete invoicing and billing books, records and accounts, which will be open to reasonable inspection and audit by duly authorized representatives of County. County will provide, at a minimum, a 60-day notice of its intent to audit and such audit shall be conducted no more than once per year, at a time, place and manner so as not to disrupt Contractor's business and solely at County's expense. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

23. Public Records.

23.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

23.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

24. Legal Arizona Workers Act Compliance.

24.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.

24.2. Books & Records. County has the right at any time to inspect the books and records of Contractor in order to verify such party's compliance with the State and Federal Immigration Laws.

24.3. Remedies for Breach of Warranty. Any breach of Contractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.

25. Grant Compliance. Not applicable to this Agreement.

26. Written Orders. County will order services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail. Except to the sole extent necessary to document the services to be performed by Contractor and payment obligations of the County, any and all other terms and conditions stated in a Delivery Order (DO) document shall be null and void with no effect upon either Party under this Agreement. Contractor must not provide services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for services not documented by a County Delivery Order (DO). The Parties recognize that a valid copy of the Delivery Order (DO) document, which shall bind the Parties with respect to their respective obligations under this Agreement for the Initial Term,

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any items provided in excess of that stated in this Contract are at Contractor's own risk.

27. Counterparts. The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

28. Israel Boycott Certification. Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

29. Amendment. The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

30. Entire Agreement. This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, the parties have approved this Cooperative Procurement Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

PIMA COUNTY

Chairman, Board of Supervisors


Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM

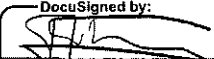


Deputy County Attorney

Neil Poston
Print DCA Name

4/28/2022
Date

CONTRACTOR

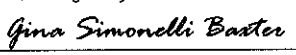
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Authorized Officer Signature

Rik Thorbecke Chief Financial Officer

Printed Name and Title

5/2/2022
Date

Approved by: 

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APPROVED AS TO CONTENT



Department Head

5/2/2022
Date

EXHIBIT A: DESCRIPTION OF SERVICES (7 PAGES)

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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.

PRODUCT CAPABILITIES

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

	activity, nutrition, learning, sleep, community, relationships, stress, productivity, financial wellbeing, safety, sustainability, diversity, inclusion, effectiveness and health conditions.
	Digital Coaching Virgin Pulse Journeys® are daily, self-guided courses that help employees successfully form and adopt new healthy habits. Each Journey breaks a key behavior or a larger goal into smaller achievable steps, helping people improve their health literacy and form new habits as they go. They cover a variety of lifestyle and health related topics including topics such as, nutrition, stress, finance, tobacco, and diabetes.
	Guides and Resources Personalized plans that provide practical guidance and a framework to adopt healthy habits with tracking tools, resources and tips, & reminders.
	Challenges Corporate and Peer competitions that drive step increases and/or healthy habit development. Also includes promotions and configuration options. Supported challenge types include: destination, staged, basic, charity, spotlight, cross-sponsor, family and healthy habits.
	Social Connections Members can connect with colleagues, leverage a leaderboard to show activity among friends and join groups based on interests. Additionally, members can invite up to 10 Friends & Family to participate in a limited experience.
	Shoutouts An employee and peer recognition tool to facilitate a culture of recognition and appreciation and drive engagement with company values.
	Tools to help survey the member population as well as help members assess their health status and risks
	Health Assessment – Health Check Flagship assessment that leverages NCQA-certified content to offer members a fresh look at their lifestyle choices and personal health.
	Surveys Client-built custom surveys that can segmented and deployed through VP platform. Surveys include reporting to help clients take action on the insights provided by their population.
	Resources to support members in addressing and preventing potential conditions
Assessment & Measurement	
Condition Management	My Care Checklist My Care Checklist provides personalized reminders based on data and HEDIS measures to help members stay on top of condition-specific and preventive care actions throughout the year.

VIRGIN PULSE LIVE SERVICES

Virgin Pulse Live Coaching	Total Population Health Live, telephonic 1:1 coaching Members are matched to a coach 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. Coaching may include proactive outreach to eligible members based on program design – any member can participate.
	Condition Management Live, telephonic 1:1 coaching. Member enrollment options include coaching topics covering 22 conditions. Members will work with clinicians who specialize in their condition of focus. Coach and member will co-create a holistic plan of care using evidence-based clinical guidelines to address the individual member's condition-relevant goals.
	Lifestyle Management Live, telephonic 1:1 coaching. Members will work with a lifestyle management coach to address goals like preventative care compliance, health literacy, and lifestyle improvement. Also includes tobacco cessation coaching.

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Coaching may include proactive outreach to eligible members based on program design – any member can participate.

VIRGIN PULSE PARTNERS – ADD-ONS AND OPTIONS

Certified Partner

VP+

VP+ features <<four or seven>> integrated partners in a one-contract buying solution at considerable cost savings. VP+ partners are pre-selected and vetted through a high level of security, data sharing and privacy standards for ease and efficiency.

Aaptiv

Aaptiv is a mobile application offering hundreds of fitness and wellness audio classes on-demand. Aaptiv classes can be taken at-home, at the gym, or anywhere in between. All you need is your phone and a pair of headphones. Aaptiv's classes, led by expert trainers, are available across a wide range of categories, including cardio, sleep, meditation, strength training and more.

Enrich

Enrich is a personalized financial literacy digital solution. It provides financial management education, increases employee productivity, reduces employee financial stress and measures financial literacy efficacy.

Kaia Health

The Kaia Program is an app based on multimodal pain management therapy; it delivers daily, personalized physical exercises, behavioral therapy exercises, and patient education on an enrolled user's own smart device, and includes access to our human Health Coaches through text. Kaia's proprietary AI engine enables real-time user motion tracking and feedback, built in order to ensure users perform their physical exercises correctly. The primary objective is pain level reduction among users and improvement. Kaia is accessed by end users via an iOS/Android native application for smartphone or tablet for is available for 6 weeks total, per individual, in a given year.

EX Program by Truth Initiative

Empower employees to quit tobacco with the only program that combines Mayo Clinic's proven treatment model with scientific leadership in digital tobacco solutions from Truth Initiative®. Truth Initiative is America's largest nonprofit public health organization committed to ending tobacco use. The EX Program provides quit support for all tobacco use, including smoking, vaping, and chewing/dipping, and also provides support for parents to help their child quit vaping.

Wellbeats

Wellbeats offers 30 channels and hundreds of virtual fitness classes with something for every age, stage and ability. User-friendly filters make it easy to find exactly what members are looking for. Tutorial, Basic, and other classes are offered, with classes ranging from 1 to 60 minutes in length. Channels include TKO, Zumba, Pregnancy Express, Bar Strong, Bosu, Circuits, Recovery, and Strides.

Whil

Whil is the leading digital training platform for mindfulness, stress resilience, sleep and mental & emotional wellbeing. With VP+, enjoy 3 of Whil's 12 training collections to help employees learn to meditate, reduce stress and be happier with daily sessions and science-based mini courses seamlessly integrated into the Virgin Pulse experience.

Foodsmart by Zipongo

Zipongo's Foodsmart addresses nutrition as the foundational health issue your population faces by helping your members make sustainable changes to eating behaviors. Foodsmart provides personalized tools to make healthy eating convenient, delicious, and affordable for your entire population, in a manner that creates positive outcomes.

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 on-demand, self-serve analytics dashboard to configure and access a range of reports, track member engagement, measure outcomes, and tailor content and programming in real-time. Refreshed daily, metrics may be filtered by organizational hierarchy, rewards segmentation, and many other attributes, providing all the information necessary to manage diverse populations. Reports can be explored as Excel, CSV, and PowerPoint files for easy viewing and additional analysis. On-Demand Reporting Dashboards Include: <ul style="list-style-type: none"> • Participation: Easy to access and highly visual key metric overview gives you the pulse of your program and your workforce with real-time participation, engagement and location-specific reporting that help you put your data to work for your organization. <ul style="list-style-type: none"> ○ At-a-Glance Executive View ○ Enrollment ○ Engagement • Risk: Virgin Pulse Analytics eliminates data silos by bringing all your biometric solutions together on one platform for a complete view into your population's risk profile. <ul style="list-style-type: none"> ○ HRA ○ Biometrics • Utilization: Deep engagement and participate metrics deliver valuable insight into the wellbeing areas of highest interest to your employees. <ul style="list-style-type: none"> ○ Levels and Incentives ○ Corporate Challenges ○ External Programs ○ Topics
	Self-Serve Data Extracts Monthly member-level reporting automatically uploaded to Program administrators account to support internal reporting needs. <ul style="list-style-type: none"> • Eligibility Report • Member Activation • Billable Cash Earned Report • Non-Billable Cash • Device Subsidy Orders Month End <i>(if applicable)</i> • Coaching Month End <i>(if applicable)</i>

	Standard Data Extracts Monthly member-level reporting available upon request. Delivered for current reported month and in standard file format only. Client Success Manager will work with Program Administrator to determine applicable reports and cadence. <ul style="list-style-type: none"> • Challenge Activity • Healthy Habit Tracking • Levels & Points • Activity Complete • Aggregated Rewards Trigger • Device Subsidy and Shipping • Reward and Incentive • Drawing File • Billable Cash • Tobacco Non-standard data feeds that require customization may incur a professional services rate of \$200 per hour.
	Claims Reporting Medical and pharmaceutical PDF report aggregating claims risk, conditions, gaps and gaps in closure for participants and non-participants within cohort and total population.
	Client Reviews Strategic review of all programming delivered with insightful recommendations. The Virgin Pulse Client Success team follows a consultative and collaborative support methodology. The Client Review is a critical part of the process and a key time for an in-depth analysis of data sets and KPIs relevant to your organization. Your Client Success Manager (CSM) will present an exhaustive, detailed analysis across all your program data, evaluate and uncover program highlights, trends, insights and opportunities, review strategic recommendations, detailed plans and Virgin Pulse product roadmap.
	Custom Reporting Services Credit The Custom Reporting Service Credit is annual and expires at the end of each program year. Clients may apply the credit towards the creation of any custom report type not available as standard. Any custom reporting outside of the credit will be billed at \$200/HR.

COMMUNICATIONS

Communications	Standard Member Communications Includes launch campaign options with emails, posters, digital displays, and leadership kit to support enrollment. Additionally, on-going auto-generated comms are delivered to individuals based on their interactions with the platform via email and/or mobile app.
	Custom Communications Services Credit The Communications Service Credit is annual and expires at the end of each program year. Applicable examples of custom deliverables include: <ul style="list-style-type: none"> • Modification of Catalog Email • Multi-channel Custom Comms Campaign • New Custom Email • Site Pop-Ups • In-app messages / Mobile Push Notifications • Print-Ready Posters / Digital Displays • Print-Ready Post Card • Content for Custom Challenges, Healthy Habits, and Daily Cards • Custom Video Work (travel expenses billed separately) • Third Party Expenses, such as travel, printing and translation, will be billed separately

CLIENT SUCCESS SERVICES

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"> • Monthly program strategy calls with client success manager • Comprehensive bi-annual program reviews with focus on mutually agreed upon KPI's • Comprehensive annual planning process • Annual review of Virgin Pulse Product Roadmap • Access to Client Service Portal, a self-service ticketing tool where clients can request feature configuration changes, custom content and support on member issues • Ability to create one (1) <i>custom</i> Basic or Destination challenge per year for clients, as requested. Client supplies custom content and images. • Ability to <i>configure</i> up to two (2) 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 • Three passes to the annual Virgin Pulse Thrive conference • Monthly newsletter including new feature announcements and engagement promotion updates • Two passes to the annual Virgin Pulse Thrive conference
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MEMBER SERVICES SUPPORT

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

IMPLEMENTATION SERVICES

Implementation Services	<p>All clients have a designated Implementation Project Manager who is responsible for facilitating and coordinating execution of program launch. Services include:</p> <ul style="list-style-type: none"> • Designated Implementation Project Manager • Scheduled implementation meetings with client and any 3rd party vendors • Platform and incentive design consulting & forecasting • Facilitation of IT requirements review and validation • Setup, mapping, and testing of initial eligibility file and ongoing eligibility file process • Configuration and QA of Virgin Pulse platform and client's program design • Setup of applicable reward redemption options and ecommerce store • Coordination, setup and testing of file integrations with client's 3rd party vendors • Coordination of communications strategy; delivery of Launch Comms & Champions pre-launch <i>[if applicable]</i> • Configuration of initial corporate challenge • Coordination of device fulfillment & logistics if applicable
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OPTIONAL PROFESSIONAL SERVICES (ADDITIONAL FEES APPLY)

Inbound Single Sign-On Connection	Identity Provider (IdP) initiated SAML 2.0 SSO implementation
Outbound Single Sign-On Connection	SAML 2.0 SSO implementation from Virgin Pulse platform to client's third-party partner for authentication purposes (passing unique member ID and company identifier in token).
Custom Data Integration	Development of data integrations with 3 rd parties as requested by client.

Verified Form Processing	Includes verification of provider signature/stamp and triggering of associated reward for single activity, multiple activities, or PCP/biometrics intake.
Do-It-Yourself Event	Do-it-Yourself event kit for 500 people. Everything a client needs to host an event for 500 people, including prizes, collateral, posters, etc.

OPTIONAL VIRGIN PULSE HARDWARE – ACTIVITY TRACKERS & HEALTH STATIONS

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

In addition to the above items are required:

Contractor must hold all state and federal licenses legally required in order to perform and provide the Virgin Pulse Engage platform and otherwise perform its services on behalf of the County.

All external communications regarding the County's use of the Virgin Pulse services shall be reviewed by County prior to distribution.

Contractor shall assign appropriately credentialed, licensed, qualified and/or certified professionals for coaching services.

Annual enrollments in coaching may be limited by County at their discretion.

EXHIBIT B:

PRICING AND ADDITIONAL PAYMENT TERMS AND CONDITIONS: VIRGIN PULSE ENGAGE (2 PAGES)

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Subscription Services							
Services	Initial Order Start Date	Initial Order End Date	Initial Order Term (years)	Per Eligible Per Month	Minimum Eligible Lives	Estimated Eligible Lives	Total Price per Year
Engage Platform – Employees	6/15/2022	12/31/22	6.5 months	\$2.77	4,410	4,900	\$162,876
Engage Platform – Spouses + Domestic Partners	6/15/2022	12/31/22	6.5 months	Fee Waived	TBD	TBD	\$0
Total Per Year:							\$162,876

Subscription Services: Payment Terms and Conditions:

1. The Subscription Services Fees will be invoiced monthly (pro-rated for any partial months) based on the greater of the (a) Minimum Number of Eligible Lives as of Effective Date; or (b) the actual number of Eligible Lives on record in Provider's system at the time of invoice.
2. 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	Fee Waived	1	\$0
Custom Communications Service Credit	Annual Credit	(\$15,000)	Annual Credit	(\$15,000)
Custom Communications Services	Hourly	\$150	TBD, if requested	\$0
Custom Reporting Service Credit	Annual Credit	(\$8,000)	Annual Credit	(\$8,000)
Custom Reporting Services	Hourly	\$200	TBD, if requested	\$0
Total Population Health Coaching (Beginning 7.1.2023)	Per Participant Per Year	\$215	245	\$52,675

Additional Selected Services

Services	Billing Type	Per Unit Price	Estimated Quantity	Total
Single Sign On (above the 10 included)	Per Connection	\$2,500	0	\$0
Health Stations (2 included at no cost)	Per Unit	\$529	2	\$0

Partner Services

Services	Billing Type	Per Unit Price	Estimated Quantity	Total
VP+: Truth Initiative Whil Kaia Zipongo Foodsmart Enrich Wellbeats Aaptiv	Per Eligible Per Year	\$19.99	4,900	\$97,951

Additional Services: Payment Terms and Conditions:

1. 10 SSO's (inbound or outbound) included at no additional cost.
2. 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, or language translation services.
3. The Custom Reporting Service Credit is annual and expires at the end of each program year. Unused credit cannot be carried over each year.
4. Unless otherwise noted all Partner Service fees will be invoiced annually in advance in accordance with the Subscription Service fees.
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.