

Vitality Order Form

PARTIES		
Customer Name and Address	Customer Contact	Customer Consultant (if applicable)
City of Manitowoc 900 Quay Street Manitowoc, WI 54220	Jessie Lillibridge Human Resources Director jclillibridge@manitowoc.org	Amy Richter USI Green Bay amy.richter@usi.com
Key Terms		
Launch Date	1/1/2024	Date of intended launch
Payment Terms	Net 30	All payments shall be due within 30 days of receipt of an invoice or a 1.5% interest fee shall apply
Initial Term	Three years	Initial Term of the Agreement shall be Three years from Launch Date.
Termination Fee		Termination Fee Based on time of termination In the event either party terminates the Agreement without cause during the Initial Term, the terminating party shall owe the fee set forth below, based on time of termination. Such calculation of fees shall be based on the then current Administration Fee calculated against the average eligible Member count over the previous 6 months. If termination without cause occurs at end of the first program year: 3-month PEPM termination fee shall apply. If termination without cause occurs at end of the second program year: 1-month PEPM termination fee shall apply.
CORE FEES		
	Unit Cost	Fee Basis
Implementation Fee	\$	One-time fee included in Administration Fee

Administration Fee for 205 eligible Members ¹ during Year 1.	\$3.85	Per Employee Per Month (PEPM) Annual increase capped at CPI-U ²
Physician Form	\$3	Per Paper Physician Form Submitted

OPTIONAL/MISCELLANEOUS FEES

	Unit Cost	Fee Basis
Data Integrations and/or SSO	\$500	Customer's first 3 data integrations or SSO implementations (in the aggregate) shall incur no fee. All additional integrations shall be charged per implementation. ³
Wellness Strategy Manager Onsite Visits	\$850⁴	Per onsite visit to Customer by a Vitality Wellness Strategy Manager. Vitality shall waive the \$850 fee for the first 2 visits.
Mall & Active Rewards	Pass-through cost for rewards redeemed	Incentive management, tracking and fulfillment are included as part of our core services. Monthly pass-through cost of the full value of Vitality Rewards that members redeemed.
Earn Apple Watch Administration	\$30	Per Watch redeemed through Earn Apple Watch program.
Earn Apple Watch Rewards	Varies	Billed for each Watch purchaser each month. Amount billed equals the difference between the maximum monthly payment (e.g., \$14.00 for Apple Watch Series 8) and the payment due from the Member/User.

Amounts shown above do not include any local, state, federal or foreign taxes or levies of any nature. Any such taxes are the responsibility of Customer and will appear on the applicable invoice.

Terms and Conditions:

This Order Form is entered into by The Vitality Group, LLC ("Vitality") and the customer identified above ("Customer") (each a "Party" or collectively the "Parties") and is subject to the Vitality Terms and Conditions ("Agreement") and the relevant Data Processing Terms ("DPA") attached hereto and are considered to be incorporated herein. Intending to be bound, this Order Form is duly executed by the duly authorized representatives of the parties set forth below:

¹

A \$750 minimum monthly fee applies.

² The consumer price index of consumer goods and services of urban households.

³ Biometric screening integrations must be in Vitality's standard format.

⁴ All travel and expenses are not included in this fee and shall be billed in accordance with Vitality's Travel and Expense policy.

City of Manitowoc

THE VITALITY GROUP, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

VITALITY TERMS AND CONDITIONS

This Agreement, including any applicable addenda, annexes, exhibits, or other similar agreements, constitute a legal agreement between Customer and Vitality effective upon execution.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Vitality Services.** During the Term, Vitality shall provide “**Vitality Services**”, which shall include, but not be limited to the following components.
 - a. Access to Vitality’s proprietary online behavior change wellness portal available via the web and mobile application in eligible global territories (the “**Vitality Program**”) which includes health and wellness-oriented activities, clinical goals/measures, educational programs, and other objectives (“**Engagement/s**”) for “**Members**” (those who Customer shall identify as being eligible to receive access to the Vitality Program via the eligibility file) and “**Users**” (any spousal equivalent dependents included on an eligibility file who are over 18 years of age and who shall be granted access to the Vitality Program with no additional fees) to pursue.
 - b. Health risk assessments and other or similar tool(s) to identify current health and wellness levels, conditions, activities, risks, and related factors.
 - c. A designated wellness strategy manager.
 - d. Access to standard, configurable communication templates and other engagement toolkits.
 - e. Provision of the standard reporting package.
 - f. Regular surveys of Members and Users related to the Vitality Services.
 - g. Product development and analytics.
 - h. Various “**Vitality Rewards**” which Members (and in some cases Users, as Customer may so choose) may qualify for through Engagement/s. In addition to Vitality’s standard Vitality Rewards, at the Customer’s option Vitality Rewards may include the following as is agreed in writing, but without amendment to this contract, by and between Vitality and Customer:
 - A. Vitality Active Rewards (available October 1, 2023);
 - B. Earn Your Watch with Apple Watch fulfillment;
 - C. Vitality Mall; and
 - D. Member Incentive Plan.
2. **Vitality Services: Users and Eligibility.**
 - a. Any Member eligible at any point in a month shall be subject to the full Administration Fee as agreed in the Order Form. Individuals under 18 years of age or located in a prohibited country (a list of which can be provided by Vitality upon request at anytime) shall not be eligible for the Vitality Program and Customer shall be solely responsible should they be added to the eligibility file.
 - b. The eligibility file is the sole responsibility of Customer and must be provided on a monthly basis in Vitality’s standard file format. Any consents required to provide Vitality with the information contained in the eligibility file shall be the sole responsibility of Customer. The Customer’s updating of its eligibility file shall serve as notice to Vitality of any additions, changes, deletions or modifications to the list of Members and Users and Vitality shall be entitled to rely on the accuracy and completeness of the enrollment and eligibility data in

providing the Vitality Program. In no event shall Vitality be required to revise the eligibility retroactively. In the event an Eligibility File contains errors, it shall be the Customer's responsibility to review the Vitality provided error reports and make all appropriate changes. Customer shall be responsible for all charges incurred by a Member or User up to two Business Days following the removal of such individual from the eligibility file.

3. **Intentionally Left Blank**

4. **Professional Services.** If Customer wishes to purchase implementation or other professional services from Vitality relating to the Vitality Services ("Professional Services"), such work will be described in one or more separate statement(s) of work ("**SOW**") or Order Form(s), in certain cases and shall be subject to express agreement by the Parties.

5. **Use of the Vitality Services.**

- a. **Customer Responsibilities.** Customer is responsible for all Members and Users. Customer will: (i) have sole responsibility for the accuracy, quality, integrity, and reliability of all electronic data or information submitted by Customer; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Vitality Program, and notify Vitality promptly of any such unauthorized access or use; (iii) comply with all applicable local, state, federal, and foreign laws in using the Vitality Services; and (iv) use the Vitality Services only in accordance with this Agreement.
- b. **Use Guidelines.** At all times, Members and Users shall abide by the terms and conditions of the Vitality Program which shall be available via the portal. Customer remains responsible for Members and Users and their use of the Vitality Services in accordance with the terms of the Agreement. A breach of the Agreement by any Member or User will be considered a breach by Customer hereunder.
- c. **Third-Party Providers.** Certain third-party providers ("**Third-Party Providers**") offer products and services related to the Vitality Services and offerings that work in conjunction with or may be integrated with the Vitality Services. Vitality is not responsible for, and does not warrant any such Third-Party Providers or any of their products or services. Notwithstanding the foregoing, to the extent Customer purchases such third-party products or services directly from Vitality, the providers of such products or services shall not be considered Third-Party Providers hereunder and will be subject to the terms and conditions of the applicable SOW.

6. **Confidential Information and Data Protection.**

- a. Vitality has adopted and will maintain industry-standard administrative, physical, and technical safeguards designed to protect the security and privacy of Customer Data, as further described in the Data Processing Agreement attached hereto. Vitality will not be responsible for loss of data processed, stored or transmitted on systems or networks not owned or operated by Vitality, including the internet.
- b. Vitality agrees that it will not (1) sell Personal Information, (2) retain, use, or disclose Personal Information for any purpose other than for the specific purpose of its performance under this Agreement, including retaining, using, or disclosing Personal Information for any commercial purpose other than the specific purpose of performance of this Agreement; (3) retain, use, or disclose Personal Information outside of the direct business relationship between Customer and Vitality.
- c. Customer shall ensure that it secures all necessary consents from Members prior to providing their Personal Information to Vitality, whether directly or via a third-party.
- d. For purposes of this Agreement, "**Confidential Information**" refers to all financial, business and other information, in whatever form or medium, including, without limitation, any trade secrets, processes, financial data, know how, technical data and documentation, strategic planning, product/service specifications, prototypes, computer programs, drawings, models and marketing data, trademarks and

patents (including applications made) that is furnished or disclosed by a Party (“**Disclosing Party**”) or any of its “**Affiliates**” (with respect to either Party, any individual, company, corporation, partnership or other entity, directly or indirectly, controlling, controlled by, or under common control with, such Party) to the other Party (“**Receiving Party**”) pursuant to the terms of this Agreement, *except that* such term will not include (i) information already known by the Receiving Party without an obligation of confidentiality, (ii) information that is or becomes publicly known other than through a breach by the Receiving Party of any of its obligations under this Agreement, (iii) information received by the Receiving Party from a third party who is not known by the Receiving Party, acting in good faith, to be under an obligation of confidence to the Disclosing Party, and (iv) information that the Disclosing Party has disclosed to other parties without similar obligations of confidentiality.

- e. The receiving Party agrees that the Confidential Information of the Disclosing Party is and will remain the property, and if applicable a valuable trade secret of the Disclosing Party.
- f. Either Party may receive and otherwise be exposed to Confidential Information of the other Party. Each Party acknowledges the confidential and secret character of the Confidential Information and agrees that the Confidential Information is the sole, exclusive and valuable property of the Disclosing Party. Neither Party will reproduce any of the other Party’s Confidential Information except in the performance of this Agreement and will not divulge all or any part of the Confidential Information in any form to any third party, either during or after the term of this Agreement except as may be specifically set forth in this Agreement. Upon termination of this Agreement for any reason, including expiration of its term, each Party will cease using and will destroy or return all whole and partial copies and derivatives of the other Party’s Confidential Information. This obligation to cease using and to return or destroy extends to all Confidential Information that is in the receiving Party’s possession, custody or control, except that the receiving Party may retain one copy of such Confidential Information for archive purposes.
- g. If a Party is requested or required (by oral questions, written interrogatories, requests for information or documents, subpoena, civil investigatory demand or similar process) to disclose any of the Confidential Information of the other Party, it shall provide the other Party with immediate notice of the request or requirement so that the other Party may seek an appropriate protective order or selectively waive compliance with the provisions of this Agreement.
- h. The Receiving Party will notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will reasonably cooperate to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. If a Party or any of its employees or consultants attempt to use or disclose any of the Confidential Information in a manner contrary to the terms of this Agreement, the other Party will have the right, in addition to such other remedies which may be available to it, to seek injunctive relief enjoining such acts or attempts, it being acknowledged that legal remedies may be inadequate.
- i. The terms of confidentiality under this Agreement shall not be construed to limit either party’s right to independently develop or acquire products or services of the same type as may be included within any Confidential Information or to enter into any business transaction with any other customer which owns or has rights to any such similar products or services, as long as such right is exercised without the use of any other party’s Confidential Information in violation of this Agreement.

7. **Fees & Payment.**

- a. **Fees.** Customer will pay all fees specified in all Order Form(s) hereunder. Except as otherwise provided in an Order Form, all fees are quoted in United States dollars. Any fees paid pursuant to an Order Form will not offset any fees due under any other Order Form.
- b. **Invoicing & Payment.** Fees for Vitality Services will be invoiced monthly and otherwise in accordance

with the Order Form. All amounts are due and payable in accordance with timeframe identified in the Order Form from the invoice date. All payments made under this Agreement will be in United States dollars.

- c. Overdue Payments. Unpaid invoices not the subject of a written good faith dispute are subject to a finance charge at the rate identified in the Order Form applied to the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, plus all reasonable expenses of collection.
- d. Suspension of Vitality Services. If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, Vitality reserves the right to suspend the Vitality Services, without liability to Customer, until such overdue amounts are paid in full.

8. **Term & Termination.**

- a. Term of Agreement. This Agreement commences on the execution date shall continue through the Initial Term as defined in the Order Form. Following the Initial Term, this Agreement shall renew automatically for additional one year periods, each a "Renewal Term."
- b. Neither Party shall terminate without cause during the Initial Term. If a party shall attempt do so, the remaining Administration Fee shall apply as a termination fee unless otherwise agreed in the Order Form.
- c. Termination for Cause. A party may terminate this Agreement for cause: (i) upon thirty (30) days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- d. Outstanding Fees. Termination will not relieve Customer of the obligation to pay any fees accrued or payable to Vitality prior to the effective date of termination and/or any termination fees.
- e. Surviving Provisions. The following provisions will survive any termination or expiration of this Agreement: Sections 5, 6, 8, 9, 10, 11 and 12 (h – i).

9. **Proprietary Rights.**

- a. Vitality is the owner of the Services offered, including without limitation, proprietary rights in Vitality methods, software, compilations of technical and non-technical information and records. The Parties agree that, notwithstanding any other statement in this Agreement, (i) the data related to the use of the Services ("Vitality Data") and (ii) the intellectual property related to the Services is the sole and exclusive property of Vitality. Customer and its Affiliates shall acquire no intellectual property rights to the Services, the data related to the use of the Services, or to the marketing and enrollment materials as a consequence of this Agreement and shall maintain the confidentiality of such intellectual property. For the purposes of clarity, Vitality Data does not include any Personal Information nor Customer Confidential Information.
- b. Each party grants to the other a limited license to use of its name, logo(s) and/or other trademark(s) to appear in sales materials, press releases, publicity matters or other promotional materials subject to the following terms:
 - i. All appearances of the other Party's trademark(s) will be done so in a referential manner to show participation in the Vitality Program.
 - ii. Any appearance of the other Party's trademark(s) will be accompanied by a disclaimer of sponsorship, affiliation, and endorsement of the material.
 - iii. Any appearance of the other Party's trademark(s) will be accompanied by a notice of the other Party's ownership of its trademark(s).

- iv. Any other reference to the other Party or use of its name and/or trademarked logo shall only be done with the written consent of other Party, which consent may not be unreasonably withheld.
- c. Restrictions. Customer will not, and will make all reasonable efforts to ensure that its Members and Users do not, directly or indirectly, (i) modify, copy, translate or create derivative works based on the Vitality Services or Vitality Program; (ii) make the Vitality Services, including data contained within Vitality database fields or objects, available to anyone other than Members and Users, or use the Vitality Services for the benefit of any unrelated third party; (iv) disassemble, reverse engineer, decompile or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Vitality Services or any software, documentation or data related to or provided with the Vitality Services; (vi) use or access the Vitality Services to build, support, and/or assist a third party in building or supporting, competitive products or services, or similar ideas, features, functions or graphics of the Vitality Services; or (vii) include the Vitality Services in a service bureau or outsourcing offering.

10. **Warranties; Warranties Disclaimer.**

- a. Mutual Warranty.
 - i. Each party represents and warrants that it has the legal power to enter into this Agreement.
 - ii. The Parties warrant that neither it, nor its directors, officers, employees, agents or subcontractors, is (i) a “specially designated national” or blocked person under U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury; (ii) located, organized, or resident in Iran, Sudan, Syria, Cuba, North Korea or the Crimean region of Ukraine; or (iii) directly or indirectly owned or controlled by or acting on behalf of a person described in (i) or (ii) above.
 - iii. Each Party shall comply with all applicable laws related to money laundering, anti-terrorism, trade embargoes and economic sanctions, now or hereafter in effect.
- b. Vitality Services Warranty. Vitality represents and warrants that the Vitality Services will (i) be provided in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) perform in all material respects in accordance with the applicable Service description(s), as updated from time to time; and (iii) that it owns or otherwise has sufficient rights to the Vitality Services to perform its obligations herein.
- c. Malicious Code. Customer represents and warrants that it will make all reasonable efforts to not upload anything to the Vitality Services that contain any programming routines, code, files, scripts, macros, or other elements that may damage, surreptitiously intercept or expropriate any system, data, or personal information through agents or programs intended to do harm, including for example viruses, worms, time bombs and Trojan horses (“Malicious Code”). Vitality warrants and represents that Vitality shall use all commercially reasonable efforts to prevent the introduction of any Malicious Code to Customer.
- d. Warranties Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE AND IN THE SLA, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, VITALITY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. VITALITY DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE VITALITY SERVICES OR THE RESULTS CUSTOMER MAY OBTAIN BY USING THE VITALITY SERVICES. VITALITY DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE VITALITY SERVICES OR THAT VITALITY WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS. VITALITY DISCLAIMS ALL FAILURES, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET.

11. **Indemnification.**

- a. Each Party shall defend, indemnify and hold the other Party harmless from and against any and all liability, losses, damages, claims, demands, fines, causes of action, suits or proceedings and associated expenses (including reasonable attorneys' fees, reasonable expert witness fees, and court costs) initiated by a third party arising from or related to the other Party's performance, or lack of performance, under this Agreement, including but not limited to a material breach of this Agreement by the other Party or the other Party's negligence, strict liability, violation of state or federal law or any other wrongful act or omission ("Claims").
- b. The aforementioned indemnification obligations are conditioned upon the Party seeking indemnification (the "Indemnitee") from the other Party (the "Indemnitor") doing the following: (i) promptly notifying the other Party of the Claim; (ii) making all relevant records available to the other Party; (iii) affording the other Party the right to assume the defense of or settle the Claim; and (iv) cooperating fully with the other Party.
- c. R
Notwithstanding the foregoing, Vitality shall not indemnify, defend, protect, or hold harmless Customer for any Claim or its associated costs alleged to have been caused by the negligence, malfeasance, intentional acts, or failure of a product or system not supplied by Vitality.
- d. The Customer indemnifies Vitality in respect of any use of the portal where Customer has elected to customize by including its' brands, logos, colors or any other identifying element. Vitality will have no liability in this regard in respect of any Claims.
- e. After receiving written notice of any Claim for which indemnification would be available under this Article, the Indemnitee shall promptly give written notice thereof to the Indemnitor, except that the Indemnitee need not give such notice if the Indemnitor has otherwise received written notice of the Claim. The Indemnitor may at any time, in its sole discretion, assume the defense of the Claim (and be subrogated to the Indemnitee's position) by giving written notice to the Indemnitee. Beginning at the point when the Indemnitor assumes the defense of the Claim, all future Costs relating to the Claim shall be borne by the Indemnitor, provided that the Indemnitee cooperates with the Indemnitor in the defense of the Claim. If the Indemnitor elects to assume the defense of the Claim, the Indemnitee shall be represented by legal counsel chosen by the Indemnitor. This may be the same counsel representing the Indemnitor, unless the Parties cannot appropriately be represented by the same counsel due to actual or potential conflict of interest, in which case the Indemnitor shall choose separate counsel for the Indemnitee. Except to the extent the Indemnitor elects to assume the defense of the Claim as provided in this Section, the Indemnitee shall defend the Claim at its own expense, subject to reimbursement of reasonable expenses by the Indemnitor in accordance with this Section. The Indemnitee shall be entitled to reimbursement of such reasonable expenses as incurred. Customer shall not withhold payment of any compensation due and payable to Vitality hereunder for purpose of set-off against any such reimbursement owed to Customer by Vitality. Notwithstanding any other provision of this Section, no indemnification shall be available hereunder (i) for any settlement to which the Indemnitor did not give prior, express written consent, (ii) for any Claim of which Indemnitor did not receive notice as provided in this Section, or (iii) if the Indemnitee failed to cooperate with the Indemnitor in the defense of the Claim.
- f. LIMITATION OF LIABILITY. In no event shall either party be liable for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature, including loss of profit, whether or not such damages were foreseeable or the other party was advised of the possibility of such damages, whether based in contract, common law, warranty, tort, strict liability, contribution, indemnity, or

otherwise.

12. **General Provisions.**

- a. Relationship of the Parties. This Agreement does not create a franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- b. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- c. Notices. Vitality may give general notices for Vitality Services applicable to all customers by means of a notice on the Vitality Services web portal or via email. Specific notices applicable to Members or Users of the Vitality Services, technical support, system security and other account notices will be given by electronic mail to Customer's e-mail address on record in Vitality's account information. All legal or dispute-related notices will be sent by first class mail, email, or express delivery, if to Vitality, attention Office of the General Counsel, at 120 S. Riverside Drive, Ste 400 Chicago, IL 60606 and if to Customer, to Customer's account representative and address on record in Vitality's account information or such other addresses as either party may designate in writing from time to time.
- d. Force Majeure. Excluding Customer's payment obligations, neither party will be responsible for failure or delay of performance if caused by an act of nature, pandemic, war, hostility or sabotage; an electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.
- e. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- f. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.
- g. Assignment. Other than to an Affiliate, neither Party shall delegate its duties or assign its rights under this Agreement, in whole or in part, without the prior written consent of the other party.
- h. Governing Law. This Agreement will be governed exclusively by the internal laws of the State of Wisconsin without regard to its conflicts of laws rules.
- i. Venue. The state and federal courts located in the State of Wisconsin will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- j. Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms executed hereunder, constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict between the provisions in this Agreement and any exhibit or addendum hereto, or Order Form executed hereunder, the terms of this Agreement will prevail to the extent of any inconsistency, except with regard to any provision of any exhibit, addendum or Order Form that specifically identifies a conflicting provision of this Agreement and states that the conflicting provision of this Agreement does not prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation

(excluding Order Forms) will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void.

EXHIBIT A
DATA PROCESSING AGREEMENT

This exhibit ("**EXHIBIT**") forms part of the Agreement ("**Agreement**") between **THE VITALITY GROUP, LLC** ("**Vitality**") and City of Manitowoc ("**Customer**") (Hereinafter jointly referred to as "the **Parties**" or separately as a "**Party**"). This Exhibit shall be effective on execution date.

The purpose of this Exhibit is to set forth the mutual obligations of the parties regarding the protection of Personal Information in relation to Data Protection Laws.

1. DEFINITIONS

All capitalized terms not otherwise defined herein will have the meaning as defined in the Agreement.

- 1.1. "**Aggregate Member Information**" means information that relates to a group or category of Members, from which individual Member identities have been removed, that is not linked or reasonably linkable to any Member or household, including via a device. "Aggregate Member Information" does not mean one or more individual Member records that have been De-identified.
- 1.2. "**Applicable Law/s**" means (a) Data Protection Laws; and (b) any other applicable law.
- 1.3. "**Data Aggregation Services**" means the combining of Personal Information created or received by Vitality to permit data analyses that relate to the operations of the Customer.
- 1.4. "**Data Protection Laws**" means the data protection and data privacy laws of the United States and its territories which may apply to one or more of Customer's Members.
- 1.5. "**De-identify/ De-identified**" means information that cannot reasonably be used to infer information about, or otherwise be linked to, a particular Member or a members device linked to them, provided that a Party that possesses the information:
 - A. Takes reasonable measures to ensure that the information cannot be associated with a Member or household;
 - B. Publicly commits to maintain and use the information in De-identified form and not to attempt to reidentify the information, except that such Party may attempt to reidentify the information solely for the purpose of determining whether its De-identification processes satisfy the requirements of this sub-clause; and
 - C. Contractually obligates any recipients of the information to comply with all provisions of this clause (A) to (B).
- 1.6. "**Disclose**" or "**Disclosure**" means release, transfer, provision of access to, or divulging in another manner, of information outside the entity holding the personal information.

- 1.7. **"Member"** means those people which Customer deems eligible to receive access to the Vitality Program via the Eligibility File and which may be further defined in a Statement of Work.
- 1.8. **"Personal Information/ Data"** means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, to a Member or as otherwise may be defined by Data Protection Laws. Personal Information may include information relating to the Member's health. Personal Information does not include De-identified information, Aggregate Member Information or information excluded in terms of Applicable Laws. .
- 1.9. **"Processing"** means any operation or set of operations performed, whether by manual or automated means, on Personal Information or on sets of Personal Information, such as the collection, Use, storage, Disclosure, analysis, deletion, or modification of Personal Information.
- 1.10. **"Purpose"** to provide incentive-based wellness rewards program to the Member in line with the Services and to provide analytics services or reporting.
- 1.11. **"Security Incident"** means successful unauthorized access, Use, Processing Disclosure, modification, or destruction of Customer Personal Information or interference with system operations in an information system. Inconsequential incidents that occur on a daily basis, such as scans, pings or unsuccessful attempts to penetrate the Vitality's networks or servers containing electronic Personal Information shall not be considered a Security Incident subject to reporting. Brute force attacks, credential stuffing attacks or fuzzing attacks which arise through no fault of Vitality shall not fall within this definition.
- 1.12. **"Sell,"** mean selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a Member's Personal Information to a third party for monetary or other valuable consideration
- 1.13. **"Use"** means the sharing, employment, application, utilization, examination, or analysis of personal information.

2. APPLICABLE LAW

Unless otherwise stated, the terms and conditions of this Exhibit apply to Personal Information that is subject to the data privacy laws of the United States and its territories. In the event that Customer desires to make Vitality Services available to Members who will access and use Vitality Services in a jurisdiction outside of the United States and its territories, the Parties agree to enter into an addendum to this Exhibit covering any changes, restrictions, and permissions as may be required by the local data privacy laws and regulations of such jurisdiction.

3. OBLIGATIONS AND ACTIVITIES OF VITALITY

- 3.1. Vitality agrees to not Use or further Disclose Personal Information other than as permitted or required by this Exhibit, for the Purpose, or as required by Applicable Law.
- 3.2. Vitality will act as a service provider or processor or equivalent as defined under Applicable Law.
- 3.3. The details of the Personal Data to be processed is set out in Annexure 1 to this Exhibit.

- 3.4. Where required by Applicable Law, Vitality shall provide reasonable assistance to the Customer in order for the Customer to conduct data protection assessments.
- 3.5. Vitality shall ensure that each person processing Personal Information is subject to a duty of confidentiality with respect of the Personal Data.
- 3.6. Vitality shall develop, implement, maintain, and use appropriate safeguards to prevent any Use or Disclosure of the Personal Information other than as provided by this Exhibit, and to implement reasonable administrative, physical, and technical safeguards in order to protect the confidentiality, integrity, and availability of the Personal Information that Vitality creates, receives, maintains, or transmits.
- 3.7. Vitality agrees to mitigate any harmful effect and to report to the Customer any material Use or Disclosure of the Personal Information of which Vitality has actual knowledge and which is not provided for by this Exhibit, as well as any Security Incident of which it becomes aware. Vitality will provide reasonable assistance to the Customer in order to enable it to fulfil any reporting obligations that it may have under Applicable Law.
- 3.8. Vitality will advise the Customer, providing an adequate level of detail as soon as practicable after becoming aware of any Security Incident or breach of its obligations under this Exhibit by Vitality or its subcontractors:
 - A. Provide a report detailing the circumstance and nature of the breach or Security Incident;
 - B. Advise on any mitigating actions taken;
 - C. Detail any remedial steps implemented to ensure that the breach or Security Incident does not reoccur;
- 3.9. In the event of suspicious activity on a Member's account, Vitality shall be entitled to reset a Member's password and notify the user of such reset. An example of the aforementioned would be, including but not limited to a credential stuffing attack which arise through no fault of Vitality. Vitality shall advise the Customer within a reasonable time period after notifying the Member.
- 3.10. Vitality agrees to ensure any agent, including a subcontractor, to whom it provides Personal Information received from, or created or received by Vitality on behalf of the Customer agrees to the terms at least as restrictive as those that apply through this Exhibit to Vitality with respect to such information. Moreover, Vitality agrees to ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect the Customer's Personal Information. Where required in terms of Applicable Law Vitality shall notify the Customer of the appointment of any subcontractor to whom it provides Personal Information. The list of subcontractors applicable at date of signature of this Exhibit is set out in Annexure 2. Vitality may provide future written notification of a new sub-contractor via providing a link to a list of service providers or by way of written notification.
- 3.11. Vitality and its agents or subcontractors, if any, shall only request, use and disclose the minimum amount of Personal Information necessary to accomplish the purpose of the request, Use or Disclosure.

- 3.12. Vitality agrees to restrict the Use or Disclosure of Personal Information, at the request of the Customer, in a prompt and reasonable manner.
- 3.13. Vitality agrees not to sell any of the Member's Personal Information..
- 3.14. Vitality shall provide any changes in, or revocation of, permission by a Member to Use or Disclose Personal Information, if such changes affect Vitality's permitted or required Uses and Disclosures.
- 3.15. Upon Vitality's receipt of Member exercising their rights under an applicable Data Privacy Law or otherwise making a data subject request for the deletion, access, or amendment of Personal Information, Vitality will notify the Customer of the request and work with the Customer in responding to the request.
- 3.16. Upon the reasonable request of the Customer, make available to the Customer all information in its possession necessary to demonstrate Vitality's compliance with the data protection obligations placed on it in accordance with Applicable Laws.
- 3.17. Vitality shall cooperate with, reasonable assessments by the Customer or the Customer's designated assessor, which has signed the required confidentiality provisions; alternatively, Vitality may arrange for a qualified and independent assessor to conduct an assessment of Vitality's policies and technical and organizational measures in support of the obligations contained in this Exhibit. Unless required by law or as a result of a Security Incident, such assessment shall be limited to one per year. Vitality shall make a copy of such assessment available to the Customer on written request.
- 3.18. Vitality shall notify the Customer writing if it is no longer able to meet the obligations under the Applicable Laws.
- 3.19. Vitality must enter into a written contract with a service provider, should Vitality wish to appoint a service provider to further the customer's business purposes. Furthermore, Vitality must take appropriate and reasonable steps to ensure that the service provider will not process Personal Information in contravention of applicable laws.
- 3.20. Vitality must comply with the customer's reasonable request to provide proof that Vitality is not processing Personal Information in a manner that is not consistent with the Customer's business purposes or Applicable Law.
- 3.21. Vitality shall not combine any Personal Information received or obtained in connection with performing the Services under the Agreement with Personal Information which it may otherwise receive, obtain, or collect from or on behalf of a third party or collects from its own interactions with a Member, provided that Vitality may combine Personal Information to perform any business purpose as defined in Applicable Laws or regulations relating thereto.

4. PERMITTED OR REQUIRED USES AND DISCLOSURES BY VITALITY

4.1. General Use and Disclosure.

- A. Except as otherwise limited in this Exhibit, Vitality may Use Personal Information for the proper management and administration of Vitality or to carry out the legal responsibilities.

- B. Except as otherwise limited in this Exhibit, Vitality may Disclose Personal Information for the proper management and administration of Vitality, provided that such Disclosures are required by Applicable Law, or Vitality obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by Applicable Law or for the purpose for which it was disclosed to the person, and the person notifies the Vitality of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. Except as otherwise limited in this Exhibit or by Applicable Law, Vitality may Aggregate Member Information or De-identify Personal Information which shall result in such information no longer being Personal Information and can be used for purposes relating to research, product development or other purpose.
- D. Except as otherwise limited in this Exhibit or by Applicable Law, Vitality may De-identify or otherwise anonymize Personal Information such that the resulting data is no longer Personal Information.
- E. Vitality may Use Personal Information to report violations of law to appropriate Federal and State authorities, consistent with Applicable Law.
- F. Nothing in this Exhibit and the Agreement will prevent Vitality from using the Member Personal Information or data derived from such information for internal use to build or improve the quality of Vitality's services, products or technology.

5. OBLIGATIONS OF THE CUSTOMER

- 5.1. The Customer will act as a business or controller or equivalent as defined under Applicable Law.
- 5.2. The Customer shall notify Vitality of any restriction to the Use or Disclosure of Personal Information that the Customer has agreed to or must comply with in accordance with Applicable Law.
- 5.3. Where the Member submits Personal Information directly to Vitality, in order for Vitality to provide the Services, the Customer hereby instructs Vitality to collect such information as well as the consents relating to the Processing thereof, on behalf of the Customer. Where Vitality collects the above consents on behalf of the Customer, the Customer authorizes Vitality to also collect the withdrawal of such consent as applicable. Vitality agrees to provide the consent and withdrawal records to the Customer on written request. The provisions of this clause shall not relieve the Customer's obligations set out in clause 5.4 below.
- 5.4. The Customer warrants that it has all the necessary rights to provide the Personal Information to Vitality or for the Personal Information to be provided to Vitality for the Processing to be performed in relation to the Services, and that, where required by Applicable Laws, one or more lawful bases supports the lawfulness of the Processing.
- 5.5. The Customer is entitled to take reasonable and appropriate steps to ensure that Vitality is Processing Personal Information that is consistent with the Customer's business purposes and Applicable Laws.

6. PERMISSIBLE REQUESTS BY CUSTOMER

- 6.1. Vitality shall not Use or Disclose Personal Information in any manner that would not be permissible under Applicable Laws if done by Customer, except that Vitality may Use Personal Information in its possession (i) for Vitality proper management and administrative services, or (ii) to provide Data Aggregation Services to the Customer as permitted in terms of Applicable Laws.
- 6.2. Vitality shall only send Personal Information to the Customer that is necessary to administer the program.
- 6.3. All instructions received by Vitality from the Customer will be in compliance with Data Protection Law.

7. TERM AND TERMINATION OF THE EXHIBIT

- 7.1. **Term.** This Exhibit shall be effective as of the date of this Exhibit's execution. This Exhibit shall terminate when all of the Personal Information provided by Vitality, or created or received by Vitality on behalf of the Customer, is destroyed or returned to Customer, or, if it is infeasible to return or destroy Personal Information, protections are extended to such information, in accordance with the termination provisions of this Article.
- 7.2. **Termination for Cause.** Upon Vitality's knowledge of a material breach which it is responsible for, Customer shall provide an opportunity for Vitality to cure the breach or terminate this Exhibit if Vitality does not cure the breach within the time period mutually agreed upon.

7.3. Effect of Termination.

- A. Except as provided in subparagraph (b) of this section, Vitality shall attempt to return or destroy or De-identify all Personal Information received from the Customer or created or received by Vitality within 6 (six) years of Termination.
- B. In the event that Vitality determines that returning or destroying or de-identifying the Personal Information is infeasible, Vitality shall provide to the Customer notification of the conditions that make return or destruction or de-identification infeasible. Vitality shall extend the protections of this Exhibit to such Personal Information and limit further Uses and Disclosures of such Personal Information to those purposes that make the return or destruction or de-identification infeasible, for so long as Vitality maintains such Personal Information.

8. MISCELLANEOUS PROVISIONS

- 8.1. **Amendment.** Vitality and the Customer agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Vitality to comply with the requirements in terms of Applicable Laws. This Exhibit may be amended by Vitality and the Customer by the express mutual written agreement. This Exhibit contains the entire Vitality Privacy and Security Exhibit between the parties and supersedes all other understandings and agreements, oral or written, between the parties regarding Personal Information.
- 8.2. **Survival.** The respective rights and obligations of Vitality under Section 7.3 of this Exhibit shall survive the termination of this Exhibit and the Agreement.
- 8.3. **Interpretation.** Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Vitality to comply with Applicable Law.

- 8.4. This Exhibit shall be governed by the laws of the State of Wisconsin. Where the context of the Exhibit requires, the singular shall include the plural and the masculine gender shall include the feminine. Headings or titles of sections are for general information only and this Exhibit shall not be construed by reference to such titles.
- 8.5. This Exhibit shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If any provision of this Exhibit are held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Exhibit shall be construed and enforced as if such provision had not been included.
- 8.6. Nothing express or implied in this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than Vitality or the Customer and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

INTENDING TO BE BOUND, this Exhibit has been duly executed by the authorized representatives of the parties set forth below.

City of Manitowoc

THE VITALITY GROUP, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

Annexure 1 to Exhibit A

Details of Personal Data and Processing

This Annex forms part of and is incorporated into the Exhibit B (Data Processing Annexure) (“**Exhibit**”) to which it is attached.

Nature and Purpose of Processing

To provide incentive-based wellness rewards program to the Member in line with the Services and to provide analytics services or reporting

Categories of Data Subjects

Vitality’s Processing concerns the following categories of Data Subjects (please specify):

- Current and newly separated employees of the Customer
- Relatives/guardians/family members of the Customer’s current and newly separated employees

Types of Personal Data

Vitality’s Processing, on the instructions of the Customer, includes the following categories of Personal Data

- Name
- Gender
- Address
- Contact details
- Date of birth
- Race
- Program enrollment or Program registration date
- Reporting classifications
- A unique ID
- Dependents / Spouse / Partner (if applicable)
- Eligibility start and end date data (if relevant)
- Cookies
- Log data including IP address
- Answers to questionnaires about your health and well-being
- Program engagement information
- Survey responses, commentary, or feedback
- Reward partner engagement if authorized

- Devices' information such as the type of device, operating system, synced data, which may include health and fitness related information and location data
- Details of rewards earned and reward redemptions
- Financial information such as transactions and payment details
- Health information including biometrics and medical conditions
- Additional information provided by through online form submission or by otherwise contacting Vitality

Special categories of Personal Data (if appropriate)

Vitality's Processing concerns the following special categories of Personal Data (please specify):

- Health data

Annexure 2 to Exhibit A

Service provider, that have access to Personal Information list.

1. Accenture (South Africa) (Pty) Ltd and sub-processors
2. Amazon Web Services and sub-processors
3. Authorize.net
4. Bank of America Corporation
5. BI Worldwide (BIW)
6. Bridge2 Solutions, Inc.
7. BrightDime
8. Clinical Reference Laboratories, Inc.
9. Discovery Group Information Services (GIS)
10. Discovery Limited & Affiliates
11. eHealth Screenings, LLC
12. Englhard Consulting LLC
13. Equinix Operating Co, Inc.
14. ExamOne, Inc.
15. Five9
16. F-Secure
17. Gyft, Inc.
18. Happify, Inc.
19. Health Enhancement Systems, Inc.
20. Expedia
21. LabCorp Employer Services, Inc.'s (fka Wellness Corporate Solutions)
22. Matchup, LLC dba MoveSpring
23. Microsoft Corporation
24. Okta, Inc.
25. Orange Cyber Defence
26. Pardot
27. Productive Edge LLC
28. Quest Diagnostics
29. Salesforce Marketing Cloud
30. Salesforce, Inc.
31. SAP
32. SCIOinspire, Corp., d/b/a SCIO Health Analytics
33. Shopify
34. SimpleTherapy, Inc
35. Solutran, Inc.
36. Spanning a Kaseya Company
37. SurveyMonkey Inc.
38. TrestleTree, Inc.
39. US Preventive Medicine, Inc (USPM)
40. Vida Health, Inc.
41. Vindicia, Inc.
42. Wellbeats, Inc
43. Zensar Technologies S.A (Pty) Ltd
44. Zipongo, Inc.

