DATA SHARING AGREEMENT

This Data Sharing Agreement (the "**Agreement**"), is entered into by and between Virgin Pulse, Inc., a Delaware corporation having its principal place of business located at 75 Fountain Street, Suite 310, Providence, Rhode Island 02902 ("**Virgin Pulse**") and Benefitfocus.com, Inc., a South Carolina corporation having its principal place of business located at 100 Benefitfocus Way, Charleston, SC 29492 ("**Vendor**"), (individually, a "Party" and collectively the "**Parties**") as of the date this Agreement is fully executed ("**Effective Date**"), for the purpose of enabling Virgin Pulse to administer the Virgin Pulse Program as designed by County of Williamson ("**Client**") for the benefit of its participating members ("**Purpose**").

WHEREAS, for purposes of this Agreement, each Party will be considered a "Discloser" with respect to information that it discloses and a "Recipient" with respect to information that it receives;

WHEREAS, Discloser possesses certain information and data lawfully obtained from one or more individuals with whom Discloser has an established relationship (each such individual being referred to herein as a "**Member**", and such Members' information, data and any derivatives or analyses thereof being collectively referred to herein as the "**Covered Data**") and desires to disclose such Covered Data to the Recipient to effectuate the Purpose set forth above;

WHEREAS, Neither Party is willing to disclose any of the Covered Data to the other without the restrictions on use and disclosure contained in this Agreement;

WHEREAS, Discloser has solicited and obtained all necessary authorizations and consents authorizing the disclosure of the applicable Covered Data to Recipient to effectuate the Purpose;

WHEREAS, Recipient agrees to accept the Covered Data from Discloser in accordance with the terms of this Agreement to effectuate the Purpose; and

WHEREAS, Client has requested the sharing of the Covered Data between the Parties and is in receipt of this Agreement as a signatory for acknowledgement purposes only.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree to the following Terms and Conditions:

TERMS AND CONDITIONS

1. <u>Covered Data</u>. Subject to the terms and conditions of this Agreement, Discloser hereby agrees to disclose to Recipient the Covered Data, solely to effectuate the Purpose set forth herein. Recipient hereby acknowledges and agrees that Discloser and those individual Members that are the subject of the Covered Data, retain all right, title and interest in and to the Covered Data in its identifiable form. Recipient will not use, process, or disclose any Covered Data except as expressly permitted by this Agreement. Nothing in this Agreement shall prevent the Recipient from completely de-identifying the data in the normal course of business and use such anonymous data for internal service improvement purposes. This Agreement shall not supersede, modify or negate any Business Associate Agreement. services agreement or any other agreement between the Parties and Client. Any such Business Associate Agreement, services agreement or any other agreement with Client shall continue in full force and effect.

2. <u>Term and Termination</u>. The term of this Agreement shall commence as of the Effective Date and shall expire upon the termination of either Party's relationship with Client of which the other Party shall be duly notified of. Either Party may terminate this Agreement if the other Party breaches a material provision and does not cure such breach within thirty (30) days after receipt of written notice of such breach. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party. Upon termination or expiration of this Agreement Recipient shall destroy or return the Covered Data in its possession or control to Discloser. The provisions of Sections 3, 4, 5 and 6 of this Agreement shall survive any termination or expiration of this Agreement.

3. <u>Recipient Obligations</u>. Recipient shall use the Covered Data solely to effectuate the Purpose as expressly stated in Section 1 and will not disclose or provide the Covered Data to any third party or to Recipient's employees who do

not have a reasonable need to access the Covered Data in order to perform their responsibilities as contemplated by this Agreement. Without limiting the generality of the foregoing, except as expressly required in furtherance of the Purpose, (a) Recipient will not disclose or provide the Covered Data to any employer, health plan, consultant, contractor or subcontractor, unless required to do so by its obligations to Client, without Discloser's express prior written consent; (b) Recipient will not create any derivative of Covered Data; (c) if the Covered Data is de-identified, Recipient shall not attempt to re-identify the Covered Data (i.e., to return the Covered Data to personally identifiable form) or enable any third party to do so and shall take all precautions reasonably necessary to prevent any re-identification of the Covered Data; and (d) in no event will Recipient publicly disclose any Covered Data. Recipient will make only the minimum number of copies of the Covered Data necessary to effectuate the Purposes. Recipient will not use the Covered Data to create a list or otherwise use the Covered Data to mail, telemarket, or otherwise develop or apply a marketing model to Covered Data. Recipient shall not use the Covered Data for commercial purposes, including, but not limited to, making the Covered Data available for sale, rental or lease. Recipient shall issue appropriate instruction to each employee given access to the Covered Data regarding the restrictions set forth in this Agreement and shall provide physical security of the Covered Data to the same or greater degree that Recipient protects its own most sensitive data, but no less than reasonable care. Recipient shall not process any Covered Data for the purpose of determining credit worthiness or insurability. Recipient will not use, disclose, or process any Covered Data in a way or for a purpose that violates applicable law or any person's rights. If at any time Discloser reasonably requests that any Covered Data be returned or destroyed, and such request does not conflict with Recipient's obligations to Client, Recipient will return or destroy the designated Covered Data. Should a request conflict with Recipient's obligations to Client, Recipient shall notify Client of the request and the Parties and Client shall cooperate to resolve the issue. If Recipient reasonably believes that any Covered Data was provided to Recipient in error, Recipient will promptly inform Discloser or such potential error. Recipient will require any third party to which it discloses any Covered Data, to agree to equally restrictive covenants related to Covered Data as those in present in this Agreement.

4. <u>Breach of Covered Data.</u> As soon as practicable, and in no event later than five (5) business days, unless otherwise required by applicable law, upon becoming aware of any compromise of Covered Data Recipient shall notify Discloser in writing of such compromise. Recipient shall investigate such compromise and remediate the effects of such compromise, including providing notice to impacted individuals and/or governmental authorities. If Discloser incurs any direct or indirect costs and expenses as a result of such compromise, including to investigate, remediate, and mitigate the impact of such compromise, Recipient agrees to reimburse Discloser for such costs and expenses. Upon satisfactory redress of any compromise, Recipient agrees to undertake such actions as reasonably necessary to prevent the recurrence of such incident and provide written assurances to Discloser that appropriate measures have been taken to protect Recipient against the threat of a similar compromise occurring.

5.   <u>Warranties; Disclaimer</u>.

   (a) Discloser hereby represents and warrants to Recipient that Discloser has the right and authority to execute this Agreement, disclose the Covered Data to Recipient and that the provision of such Covered Data to Recipient hereunder is not in violation or in breach of any law, regulation, contract, agreement or commitment binding upon Discloser.

   (b) DISCLOSER DOES NOT WARRANT THAT THE COVERED DATA WILL MEET RECIPIENT'S REQUIREMENTS. RECIPIENT AGREES AND ACKNOWLEDGES THE COVERED DATA IS PROVIDED "AS IS". RECIPIENT BEARS ALL RESPONSIBILITY ARISING FROM ANY RELIANCE UPON INFORMATION PROVIDED OR OBTAINED BY USE OF THE COVERED DATA. EXCEPT AS OTHERWISE PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DISCLOSER DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT.

6.   <u>Business Associate Status and Obligations</u>. The Parties acknowledge and agree that: (a) the Covered Data may include protected health information ("PHI"), as that term is defined and used in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at 45 C.F.R. §§ 160-164 (collectively, "HIPAA"); (b) each Party may be the Client's (or Client's health plan's) Business Associate as defined and governed

by HIPAA; (c) to the extent required by HIPAA, Client's health plan has required or will require such Party separately to enter into a Business Associate Agreement with the Client (or the Client's health plan), setting forth its obligations pursuant to 45 C.F.R 164.502(e); and (d) Recipient's use and disclosure of the Covered Data shall be governed by this Agreement; however, Discloser's disclosure of PHI contained in the Covered Data to Recipient and Recipient's subsequent use and disclosure of the PHI separate and apart from the Agreement shall be governed by HIPAA and the Client's health plan's applicable Business Associate Agreements with each Party.

7.   Indemnity. Discloser shall indemnify Recipient from and against any and all liability, damages, loss, fines, penalties or expense awarded or levied against Recipient (including reasonable fees of attorneys incurred by Recipient in connection with such award or settlement) arising from any claim, demand, action or proceeding initiated by any third party based upon Discloser's breach of Section 5(a).

8.   Special Clause. In compliance with Section 201 of the Consolidated Appropriations Act of 2021 (CAA), nothing in this Agreement shall be interpreted as restricting the disclosure of any cost of care or quality of care information from, by or to any group health plan, plan sponsor, or Member associated with the care provided or claims data processed subject to this Agreement.

9.   Miscellaneous. This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Except in the case of merger, acquisition or change in control, neither Party may assign any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of the other Party, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect. In the event of a merger, acquisition or change in control, the assigning Party must provide notice to the other Party of such assignment within twenty (20) business days of such occurrence. This Agreement shall be binding upon the Parties' successors and permitted assignees. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. Virgin Pulse and Vendor shall maintain at their own expense during the term of this Agreement professional liability coverage written on a claims-made basis for one (1) year thereafter, written by insurance companies licensed to issue in the state(s) and jurisdictions where they operate and that have an A.M. Best rating of no less than "A".

10.   Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THIS AGREEMENT. .

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last given below.

[Signatures to Follow]

[VP04.19.19]

VIRGIN PULSE, INC.

By (Signature): _Gina Simonelli Baxter_
7093A0F155EE445...

Name (Printed): Gina Simonelli Baxter

Title: VP, Deputy Head of Legal

Date: 3/1/2023

BENEFITFOCUS.COM, INC.

By (Signature): _Nancy Nunn_
C2FCD423700D422...

Name (Printed): Nancy Nunn

Title: Corporate Controller

Date: January 25, 2023

CLIENT (Signing for acknowledgement)

By (Signature): _____

Name (Printed): _____

Title: _____

Date: _____

[VP04.19.19]