

MASTER PROFESSIONAL SERVICES AGREEMENT

THIS MASTER PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into the 17th day of August, 2017, by and among the Village of Lombard, a(n) Illinois Municipal Corporation, located at 255 East Wilson Road in Lombard, Illinois ("Customer") and PUSH Wellness SOLUTIONS, INC., a Delaware Corporation ("PUSH"). (Customer and PUSH are individually referred to herein as the "Party" and collectively as the "Parties.")

WHEREAS, Customer desires to engage PUSH to perform certain services for Customer as more particularly described in Section 1 below (the "Services"); and

WHEREAS, the Parties acknowledge that in the course of providing the Services under Work Orders (as defined below) entered into under this Agreement, the Parties may be interacting with health care providers and staff, patients and third party payors, and that such interactions must be in compliance with all applicable laws and regulations.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the Parties agree as follows:

SECTION 1 SERVICES

- 1.1 Engagement. PUSH agrees to use its reasonable commercial efforts and professional expertise to provide the professional services defined by a specific work order ("Work Order") signed by both Parties and attached as an addendum to this Agreement. This Agreement documents the terms and conditions under which Customer agrees to purchase and PUSH agrees to provide such services under each Work Order that is signed by the Parties. Each Work Order will detail, at a minimum: (a) the specific project or other services to be performed or provided by PUSH, (b) the obligations of both Parties with respect to regulatory and health care compliance requirements, (c) a timeline for project performance, and (d) a payment schedule, with milestone payments where applicable. The Work Order attached hereto as Exhibit A sets forth the initial Work Order agreed to as of the commencement date set forth above.

SECTION 2 PAYMENT TERMS

- 2.1 Compensation. Fees shall be as set forth in each applicable Work Order. Exhibit A sets forth the compensation agreed to as of the commencement date set forth above.
- 2.2 Work Order. A Work Order must be executed by both Parties prior to the commencement of work on behalf of Customer.
- 2.3 Out-of-Pocket Expenses All itemized, documented, reasonable, or out-of-pocket expenses incurred by PUSH will be billed to and paid for by Customer ("Expenses").

2.4 Payments/Billing

- (a) Invoice payments are due upon receipt.
- (b) All invoices will include documentation of fees and Expenses invoiced.

SECTION 3
COMPLIANCE, AUDIT, TRAINING AND DOCUMENT RETENTION

3.1 Compliance with Laws and Policies. The Parties understand and agree that the Services will be provided in compliance with all laws and regulations applicable to such Services, including, but not limited to, the following:

- (a) Health Care Compliance Laws. Laws, regulations, including safe harbor regulations, and official guidance pertaining to state and federal anti-kickback laws (42 U.S.C. §§ 1320a-7b(b), et seq. and its implementing regulations), and laws prohibiting the submission of false claims to governmental or private health care payors (31 U.S.C. §§ 3729, et seq. and its implementing regulations).
- (b) Patient and Individual Privacy Protections. Laws and regulations relating to the protection of individual and patient privacy.
 - (i) Protected Health Information under HIPAA. In the event that any Services provided under this Agreement or connected Work Orders, involve the use or disclosure of Protected Health Information (as defined under the U.S. HIPAA Privacy Requirements) by health care providers, the Parties shall ensure that the use of the Protected Health Information complies with any HIPAA Privacy Requirements that apply to such Protected Health Information, including the execution of a business associate agreement, if required. The "HIPAA Privacy Requirements" refer collectively to the applicable provisions of the Administrative Simplification section of HIPAA - the Health Insurance Portability and Accountability Act of 1996 (as codified at 42 U.S.C. § 1320d - d-8) and any regulations promulgated thereunder, including without limitation, the federal privacy regulations (45 CFR Parts 160 and 164) and the federal security standards (45 CFR Part 142).
 - (ii) Consent to Use and Disclose Information. When the Services provided under this Agreement or connected Work Orders, involve direct interactions with patients, consumers or caregivers, the Parties shall obtain applicable written consent from any such persons allowing the Parties the right to use and disclose the information collected from such persons.

3.2 Debarment/Exclusion.

- (a) PUSH shall not employ, contract with or retain any person directly or indirectly to perform Services under this Agreement if such a person is:
 - (i) excluded from a Federal health care program as outlined in Sections 1128 and 1156 of the Social Security Act (see the Office of Inspector General of the Department of

Health and Human Services List of Excluded Individuals / Entities at <http://www.oig.hhs.gov/FRAUD/exclusions/listofexcluded.html>);

- (ii) debarred by the Food and Drug Administration under 21 U.S.C. 335a (see the FDA Office of Regulatory Affairs Debarment List at http://www.fda.gov/ora/compliance_ref/debar/); or
 - (iii) excluded from contracting with the federal government (see the Excluded Parties Listing System at <http://epls.arnet.gov>)
- (b) In the event that PUSH is so excluded or debarred during the term of this Agreement, PUSH shall immediately notify Customer and cease all work hereunder. PUSH acknowledges that exclusion or debarment may result in immediate termination of this Agreement.

3.3 Review by Customer Advisors. The Parties acknowledge that the subject matters of this Agreement are governed by a variety of existing and proposed federal and state statutes and regulations. Customer acknowledges that it has had the opportunity to seek independent counsel from its benefit and legal advisors regarding this Agreement and that it is relying solely on such counsel to ensure that this Agreement and the Services comply with all applicable statutes and regulations. Customer also acknowledges that PUSH is not providing benefit or legal advice in connection with this Agreement or the Services to be provided hereunder.

SECTION 4 TERM AND TERMINATION

- 4.1 Term of Work Order. The term for individual projects shall be as set forth in the Work Order.
- 4.2 Termination. This Agreement shall terminate if Customer does not have any Work Orders with PUSH for a continuous period of twelve (12) months. This Agreement may also be terminated upon the mutual agreement of the Parties. Upon termination, the associated Work Orders also terminate, subject to the payment of all fees, Expenses or other compensation set forth in this Agreement or the associated Work Orders.

SECTION 5 CONFIDENTIALITY AND OWNERSHIP RIGHTS

- 5.1 Confidentiality. Customer agrees that all information received by it from PUSH and all data and other information developed by PUSH with respect to this Agreement are, and will be considered throughout the term of this Agreement and subsequently, to be the Confidential Information of PUSH (the "Confidential Information"). Customer agrees to release such Confidential Information to its agents, employees and subcontractors only on a need-to-know basis and will ensure that these agents, subcontractors and employees agree to abide by the confidentiality provisions set forth in this Section 5. Customer agrees that it will not disclose or use for any purpose other than as expressly contemplated by this Agreement any of the Confidential Information until such time as the information becomes part of the public domain as a result of an action or disclosure by PUSH and is not the result of any unauthorized disclosure by Customer or

upon the specific written authorization from PUSH with respect to such disclosure. These limitations of confidentiality shall not apply to information which is already available to the public or which subsequently becomes publicly available through no fault of Customer. In addition, nothing in this Section 5 shall preclude Customer from disclosing Confidential Information to legal counsel for the purpose of monitoring regulatory compliance pertaining to this Agreement. Customer agrees that, upon termination or expiration of this Agreement, it will not retain information in any form relating to PUSH and the substance of the work performed pursuant to this Agreement. Except for any disclosures as are required by law, regulation or court order, Customer agrees to keep the terms of this Agreement confidential. In the event any disclosures are required by law, regulation or court order, Customer shall, immediately and in no event after such disclosure, inform PUSH of such required disclosure and the basis therefor so that PUSH may have the opportunity to contest such disclosure.

Notwithstanding the foregoing, the Parties acknowledge that Customer is a "Public Body" subject to the provisions of the Illinois Freedom of Information Act, 5 ILCS 140, hereinafter the "Act". Therefore, PUSH shall produce, without cost to the Village of Lombard, any records which are responsive to a proper and lawful request received by Customer under the Illinois Freedom of Information Act so that Customer may provide records to those requesting them within the timeframes required. If additional time is necessary to compile records in response to a request, then PUSH shall so notify Customer and if possible, Customer shall request an extension so as to comply with the Act.

In the event that PUSH maintains that the document(s) are exempt from disclosure, PUSH may, at its sole cost, seek a determination that the document(s) are exempt, provided that PUSH shall indemnify and hold harmless and pay all amounts determined to be due including but not limited to fines, costs, reasonable attorney fees and penalties arising out of PUSH's failure to provide such document(s), as determined by a court or governing body of competent jurisdiction. If Customer is found to have not complied with the Open Records Law, based upon PUSH's failure to produce documents or otherwise appropriately respond to a request under the Act, then PUSH shall indemnify and hold harmless and pay all amounts determined to be due including but not limited to fines, costs, attorney fees and penalties.

The obligations to treat Confidential Information as secret and confidential hereunder shall not apply: (1) to any information known to Customer or its members prior to its receipt from the PUSH; (2) to any information becoming generally known to the public through no fault of Customer or its members, as of the date and to the extent that such information becomes so generally known; (3) to any information not considered "exempt" from disclosure under the provisions of the Act; (4) to any information received Customer or its members from identified third parties not bound to maintain such information confidential, as of the date and to the extent that such information is received from a third party; and (5) reports and marketing materials delivered from PUSH to Customer or its members, specifically identified by PUSH as non-confidential.

Within ten (10) days of being so requested by the PUSH, all of the Confidential Information, if any, shall be returned, and all Confidential Information prepared by Customer or its members or by its representatives or otherwise, and all copies, summaries, extracts or other reproductions and notes of the contents or parts thereof shall be destroyed, with such return and destruction being confirmed in writing to PUSH. No Confidential Information in written or tangible form shall be retained by Customer or its members, its agent or employees, in any form for any reason. Any Confidential Information that cannot be returned or destroyed (such as oral Confidential Information) shall remain confidential and subject to this Agreement.

The obligations of this section shall survive expiration or termination of this Agreement.

- 5.2 Copyrightable Work. Work created by PUSH in connection with or during the performance of the Services under this Agreement shall be the property of PUSH, author and owner of the copyright in such work unless otherwise specified.

SECTION 6 INDEMNIFICATION

6.1 Indemnification.

- (a) PUSH shall and hereby does indemnify, defend and hold harmless Customer, and its directors, officers, agents, independent contractors and employees, from and against all claims, demands, liabilities, losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees, resulting in any manner, directly or indirectly, from PUSH's negligent provision of the Services, willful misconduct or other breach of its duties and obligations under this Agreement.
- (b) Customer shall and hereby does indemnify, defend and hold harmless PUSH, and its directors, officers, agents, independent contractors and employees, from and against all claims, demands, liabilities, losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees, resulting in any manner, directly or indirectly, from Customer's willful misconduct or other breach of its duties and obligations under this Agreement.
- (c) Except as may be limited by applicable law, each of the Parties hereto shall promptly notify the other of, and cooperate, and cause its directors, officers, agents, independent contractors and employees, to cooperate, in responding to or defending any inquiry, investigation, claim, suit or other cause of action instituted, asserted or threatened against either Party hereto or any of their directors, officers, agents, independent contractors or employees and arising out of or relating to either Party's obligations under this Agreement or any other matter contemplated hereby.

SECTION 7 MISCELLANEOUS

- 7.1 Modification and Waiver. No modification of this Agreement will be deemed effective unless in writing and signed by each of the Parties, and no waiver of any right included here will be deemed effective unless in writing and signed by the Party against whom enforcement of the waiver is sought.
- 7.2 Assignment. Neither party shall assign this Agreement or any part hereof without the prior written consent of the other party. Subject to this Section 7.2, this Agreement is binding upon and is for the benefit of the Parties, and their respective successors and permitted assigns.
- 7.3 Applicable Law. This Agreement will be governed and construed in accordance with the laws of the State of Illinois without regard to its conflict of law provisions.

- 7.4 Counterparts. This Agreement may be executed in two (2) counterparts, each of which will be deemed an original but both of which together will constitute one and the same instrument.
- 7.5 Notices. All notices and other communications required under this Agreement will be in writing and will be either deposited in the United States mail, certified mail, return receipt requested with postage paid, or personally delivered by FedEx or other like courier as follows:

if to Customer address to: Village of Lombard
255 E. Wilson Ave.
Lombard, IL 60148

Attention: Scott Niehaus
Village Manager

if to PUSH address to: PUSH Solutions, Inc.
180 N. LaSalle, Suite #2305
Chicago, IL 60601

Attention: Gregory Vachon, MD, MPH
President


or to such other persons or addresses as any Party may request by notice given as set forth above. Notices will be deemed given at the earlier of the time of personal delivery or two (2) business days after the date mailed in the manner set forth in this paragraph.

- 7.6 Survival. Notwithstanding expiration or termination of this Agreement for any reason, rights and obligations which by their nature should survive will remain in full force and effect.
- 7.7 Severability. If any of the provisions or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions will not be affected.
- 7.8 Integration of Agreement. This Agreement represents the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements, written or oral, regarding the Services to be provided by PUSH. In the event of any conflict between the terms and conditions of this Agreement and those of any Work Orders entered into pursuant to this Agreement, the terms and conditions of the specific Work Order will control.

IN WITNESS HEREOF, the undersigned agree to the terms and conditions of this Agreement and the Work Order attached hereto as Exhibit A.

SIGNATURES

For the Village of Lombard :

By: 
Name: Scott Niehaus
Title: Village Manager
Date: August 17, 2017

For PUSH Solutions, Inc.:

By: _____
Name: _____
Title: _____
Date: _____

IN WITNESS HEREOF, the undersigned agree to the terms and conditions of this Agreement and the Work Order attached hereto as Exhibit A.

SIGNATURES

For Village of Lombard:

By: *Scott Niehaus*

Name: Scott Niehaus

Title: Village Manager

Date: August 17, 2017

For PUSH Wellness Solutions, Inc.:

By: *[Signature]*

Name: Charles Zei

Title: Chief Revenue Officer

Date: 10/15/17

WORK ORDER

Service and Payment Agreement between Village of Lombard (“Customer”), and PUSH Wellness Solutions, Inc. (“PUSH”)

Term:

PUSH will begin work on September 1, 2017. Initial work will include opening the “Incentives Account” for Customer, assisting with employee communications, and accepting a data file on all eligible employees. Biometric testing and activation of accounts will begin in late September, 2017, with exact dates to be determined by PUSH leadership and Customer Human Resources leadership. The first incentive payment will be paid to participating employees on or around November 1, 2017. This “Work Order” will be in effect for a period of three (3) years, unless earlier terminated by Customer and PUSH. Customer will be responsible for all fees and expenses, including without limitation, all payments made to employees, as of the effective termination date.

PUSH Responsibilities:

PUSH will assess height, weight, blood pressure, fitness, cholesterol, glucose, and nicotine status for all employees who enroll in the “PUSH for Wellness Incentive Program” (this assessment takes approximately 20 minutes of employee time). Through a website requiring a secure sign on, PUSH will give each employee a “PUSH Score”, education on the meaning of the PUSH Score, and analysis of incentives that the employee can attain with specific wellness improvements. Employees will receive a payment from PUSH each month based on their PUSH Scores and the health changes that they have made. PUSH will provide a website (with a link within Customer’s benefits page, if desired) with secure authenticated access for each employee and including employees’ current account balance, wellness score, and the individualized changes that they could make, linked to the dollars that they could earn by making these changes. PUSH will pay a specific dollar amount to each eligible employee each month based on their wellness score and health changes, either by direct deposit or by mailed paper check, which shall be reimbursed by Customer, without any right of set-off, as set forth in greater detail below. PUSH will indemnify Customer and its members against any claims arising from the PUSH wellness incentive program.

The closing date is the last day on which there can be testing for the monthly incentive payments (i.e., the date on which the PUSH Score for the next incentive is final). For Customer, the closing date will be the 22nd of each month. Depending on the testing schedule, the actual last day of

testing opportunity for the employees may be earlier than the closing date. Two business days after each closing date, PUSH will electronically notify Customer of the amount of incentives that the employees have earned in total with a breakout by Customer member, if requested.

PUSH will pay employees on or around the first day of each month starting in November 2018. In the case that an employee has a disagreement regarding the amount of incentive payment that should be paid, because of an error or any other cause, PUSH will be the sole arbiter of restitution payments and indemnify Customer and its members regarding the same. PUSH will notify Customer of any change in payment amounts.

PUSH will provide on-site testing per the following schedule:

- For program implementation (September - October 2017):
 - One to three days
- Following program implementation:
 - Visit frequency and duration will vary depending on need
 - Participating employees will have access to follow-up testing via partner testing locations, including kiosks in retail pharmacy locations

Within the frequency and total times represented above, PUSH will be flexible in changing the testing schedule to meet the needs of Customer with at least one (1) month notice of schedule change requests.

In compliance with the Patient Protection and Affordable Care Act, PUSH will accept doctors' notes for any of the wellness parameters and will eliminate from the score any parameter for which a doctor has determined that it would be inadvisable or unreasonable to improve. A default score is given for the excluded parameter, such that in the case that an individual had a note for every one of the five parameters, that individual would receive 100% of the incentive.

PUSH will provide de-identified (HIPAA compliant) summary of participation reports broken down by Customer member.

PUSH will provide de-identified (HIPAA compliant) aggregate summary report (broken down by Customer member, if requested) to Customer to include the following (if greater than five people in any denominator):

- Number and percent of nicotine users
- Percent of nicotine users that have quit
- BMI distribution among classifications
- Weight loss in the overweight, obese and morbidly obese categories
- Percent of employees in each blood pressure category

- Cholesterol risk categories
- PUSH Score distribution and change in PUSH Score

In compliance with Health Information Portability and Accountability Act (HIPAA):

- PUSH will not disclose any health information to the employer, including the dollar amount of incentives for individually identifiable employees.
- PUSH will disclose to employees all uses of Protected Health Information (PHI)
- PUSH will maintain Health Information Technology (HIT) fully HIPAA compliant
- PUSH will notify Customer and each employee promptly in the case of disclosure of any information, whether intended or unintended.

In the case that total incentives exceed \$600 for an individual in one calendar year, PUSH will send a 1099 tax form to each employee by January 31st of each year with instructions on completion of tax returns with the 1099. PUSH will indemnify Customer and its members from any claim related to any PUSH data breach.

Fees

The following tests will be offered with the following fee schedule.

Service	Maximum Frequency	Minimum Interval
Full Assessment	2 per year	11 months
Blood Pressure	N/A	1 week
Weight	N/A	1 week
Fitness	14 per year	4 weeks
Cholesterol	5 per year	12 weeks
Nicotine test	3 per year	1 week

Customer will pay PUSH \$100 per enrolled participant. This amount will be invoiced in June of each year. Customer will also pay PUSH implementation fees and annual program fees as described in the program proposal. This amount will be invoiced and paid in the first month of the program each year. These fees cover the cost of meetings/presentations, travel, equipment setup, marketing materials and database programming.

Other responsibilities of Customer:

As stated above, two business days after each closing date Customer will receive notice of the amount needed to pay the incentives to all employees. Customer will pay the incentive amount, without any right to set-off, within five business days of the electronic notification.

If Customer would like PUSH to contact non-enrolled employees, then Customer will send a list of all eligible employees. The list will contain the following information:

- Last Name
- First Name
- Birthdate
- Address
- Email address

Customer will be responsible for notifying PUSH whenever an employee becomes newly eligible (by sending the information to PUSH via email) and whenever an employee becomes ineligible (again by direct entry or communicating to PUSH). PUSH will send a file with all the employees to be paid each month on the closing date. Customer will have sole responsibility for verifying that the list of eligible employees is accurate.

Miscellaneous:

In the event that new clinical data becomes available, or for other reasonable justification, PUSH will reserve the right to modify its system for measuring employee wellness. If and when this occurs, Customer and its employees who participate in the PUSH program will be notified via email of any such changes to the system.


At which time an employee becomes ineligible for health benefits, any incentive they were eligible for or about to be paid becomes zero (there is no carry over to next employment time period). COBRA participants are not eligible for participation in Customer wellness program and not eligible for PUSH incentives. If Customer decides to change the eligibility to its wellness programs, Customer and PUSH will attempt, in good faith, to negotiate the revision of this Work Order. Neither Customer nor PUSH shall be required to change eligibility without reaching an agreement. Any unpaid incentive balance that has been collected for ineligible employees will be returned to Customer. Therefore, the amount available to employees after Customer notifies PUSH of an end to the benefit is zero in all cases. However, PUSH will continue to allow employees to access their data and the individual services, at a current price of \$0 but subject to change.

All employees who agree to participate in the PUSH incentive program will have use of the other services that PUSH offers now or in the future, such as, but not exclusively:

- Links to services to assist with attainment of wellness goals
- Ability for individuals to self-incentive by making change contracts
- Ability to join competitions individually or with teams to make health changes
- Other services that enhance individuals' ability to attain a state of wellness

SIGNATURES

For Village of Lombard:

By: 

Name: Scott Niehaus

Title: Village Manager

Date: August 17, 2017

For PUSH Wellness Solutions, Inc.:

By: 

Name: Charles Zei

Title: Chief Revenue Officer

Date: 10/15/17