

## Navigate Wellness MASTER SERVICES AGREEMENT

THIS Navigate Wellness SERVICES AGREEMENT (this “Agreement”) is entered into effective as of October 17, 2019 (the “Effective Date”) by and between Navigate Wellness, LLC, d/b/a Navigate Wellbeing Solutions an Iowa limited liability company, (“Navigate Wellness”) and Linn Mar CSD, an Iowa organization (“Customer”). Navigate Wellness and Customer shall collectively be referred to herein as “Parties” and individually as a “Party”.

### RECITALS

- A. Navigate Wellness provides wellness education, wellbeing initiatives, health challenges, competitive events, and tracking services through online, web-based tracking tools and related technology and distributes and licenses said products to third parties for use by their employees and participants;
- B. Customer provides wellness programs to its participants;
- C. Navigate Wellness desires to license its wellness and health programs and services to Customer and Customer desires to license the wellness and health programs of Navigate Wellness for use by Customer’s participants.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises contained herein, the Parties agree as follows:

### 1.0 SERVICES

**1.1.** Navigate Wellness hereby licenses to Customer the non-exclusive right to use the Navigate programs set forth and described on Schedule A attached hereto (the “**Navigate Programs**”) for use by the Customer’s participants designated on Schedule A attached hereto. The Navigate Programs will include the Navigate Wellbeing Solutions Web-based health, fitness and wellness portal and programs that motivate and teach individuals and organizations to make positive and lasting changes to achieve a healthy lifestyle through increased physical activity and proper nutrition (the “**Program**”). Navigate Wellness will also provide the services for the development and ongoing operation of the Navigate Programs as described on Schedule A. The license granted to Customer under this Section 1.1 shall not include or apply to any part of any services or programs of Navigate Wellness that is not expressly included and described on Schedule A. Customer is prohibited from rebranding the Navigate Programs or from sublicensing or selling the Navigate Programs to third parties. Navigate Wellness retains all right, title and interest in and to the Navigate Programs, including the Program.

**1.2.** Customer shall purchase as set forth in Schedule A and use the Navigate Programs only in a manner consistent with the terms and conditions of this Agreement and such use shall be limited solely to use of the Navigate programs by the Customer’s participants. Customer shall provide complete and accurate information as requested by Navigate Wellness, including participant information, necessary for Navigate Wellness to perform the Navigate Programs and to perform its obligations under this Agreement. Customer represents and warrants that any deliverables or other items provided to Navigate Wellness for use in the promotion or implementation of the Navigate Programs do not and will not violate or infringe upon the intellectual property right or any other right whatsoever of any person or entity. Customer shall only provide information regarding the Navigate Programs to third parties as agreed to by Navigate Wellness. Customer shall not make

any representations, warranties, claims, or guarantees in addition to or beyond those that have been agreed to by Navigate Wellness.

## **2.0 TERM AND TERMINATION**

**2.1.** This Agreement shall commence on the Effective Date. The Navigate Programs will begin on January 1, 2020 or the portal launch date, whichever comes first, and continue for three (3) years thereafter or as may be extended from time to time as provided in this Section 2.1 (the “Term”). Following the initial Term, this Agreement shall auto-renew for subsequent one (1) year terms subject to the same terms and conditions unless either Party provides the other Party with at least ninety (90) days written notice before the expiration of the then current term stating its intention to modify or terminate the Agreement effective as of the date of expiration of the then current term, in which case the receiving Party shall have sixty (60) days to accept the terms offered, negotiate mutually acceptable alternative terms or acknowledge cancellation of the Agreement at the end of the current term.

**2.2.** Either Party may terminate this Agreement at any time in the event of a material breach of this Agreement by the other Party if such breach is not cured within thirty (30) days of delivery to the breaching Party of written notice describing such breach to the other Party.

**2.3.** Either Party may immediately terminate this Agreement by giving written notice to the other Party if: (a) the other Party becomes insolvent or has a petition brought by or against it under the bankruptcy or insolvency laws of any jurisdiction; (b) the other Party makes an assignment for the benefit of creditors; or (c) if a receiver, trustee or similar agent is appointed with respect to any property or business of the other Party.

**2.4.** Further, either Party may terminate this Agreement without cause upon one hundred twenty (120) days written notice in accordance with the notice provisions set forth in the **Notices** provision herein.

**2.5.** Upon termination or expiration of this Agreement, unless otherwise mutually agreed upon, Navigate Programs for all participants of Customer shall terminate as of the end of the current term. Navigate Wellness will provide final reports using the Navigate standard reporting forms reflecting final activity of the Navigate Programs. Upon termination or expiration of this Agreement, Customer shall have no further access to the Navigate Programs and shall immediately cease use of any Navigate Marks and content provided. Customer shall pay Navigate Wellness all amounts accrued prior to and through the termination or expiration of this Agreement in full within thirty (30) days thereof and shall promptly pay Navigate Wellness all amounts accrued in performing Navigate Programs following termination for Customer participants until the end of their respective term with Customer.

**2.6.** Upon termination or expiration of this Agreement, (a) all rights granted by Navigate Wellness to Customer shall immediately terminate, (b) Customer shall cease using or distributing any materials relating to the Navigate Programs or which use or refer to any Navigate Mark, and (c) Customer shall immediately return or destroy all Confidential Information of Navigate Wellness in the possession of Customer.

**2.7.** Early termination of the contract will result in the customer paying within 30 days from termination date, a prorated cost based upon services utilized.



### 3.0 PRICE, PAYMENT AND PERFORMANCE AND SECURITY GUARANTEES

3.1. Prices and fees for the Navigate Programs and any additional payment requirements shall be as set forth on Schedule A attached hereto.

3.2. Navigate Wellness may increase fees at any renewal of the Term by providing Customer with written notice of the new prices and fees and a new Schedule A.

3.3. Navigate Wellness will commence invoicing Customer for the Navigate Programs as outlined in Schedule A. The invoicing of the monthly portal fee, whether PEPM or flat fee will, commence upon portal launch date or the start date of the Navigate Programs, whichever comes first. Subject to the terms and conditions hereof, Customer shall pay invoices received from Navigate Wellness within thirty days (30) days of the date of receipt by Customer of such invoice and report. Interest shall accrue at the rate of four percent (4%) per annum on the balance of any invoices that remain unpaid within thirty (30) days of the date of the invoice. Notwithstanding any provision in this Agreement to the contrary, and in addition to any other remedies available to Navigate Wellness, Navigate Wellness may cease providing Navigate Programs under this Agreement if any invoice remains unpaid in full sixty (60) days after the date of the invoice. Navigate Wellness shall not be obligated to commence Navigate Programs until all invoices have been paid in full. The Parties shall work together to mutually resolve any disputes arising with respect to any invoice.

3.4. All payments must be made in United States dollars. Customer shall be solely responsible for the payment of any applicable sales, use or similar taxes relating to the Navigate Programs.

### 4.0 PROPRIETARY RIGHTS AND INTELLECTUAL PROPERTY

4.1 All right, title and interest in and to the Navigate Programs and all materials and services provided thereunder, including, without limitation, all text, graphics, animation, audio and/or digital video components and all other components of the Navigate Program and related services, and any website of Navigate Wellness devoted to or used in connection with such Navigate Programs and/or related services (the "**Website**") and the Software (as defined below) (the Website and Software together referred to as the "**Content**"), including without limitation, any copyrights, trade secrets and other intellectual property rights therein, is and shall at all times be owned and held by Navigate Wellness and/or its licensors, as the case may be. Customer shall not create or develop any program or service that uses all or any part of the Content in any manner for any purpose unless expressly granted by Navigate Wellness in writing.

4.2 All right, title and interest in and to any computer code developed by Navigate Wellness (both source and object), including, but not limited to, all interfaces, navigational devices, menus, menu structures of arrangement, icons, help and other operational instructions and the literal and nonliteral expressions of ideas that operate, cause, create, direct, manipulate, access or otherwise effect the Content in the Navigate Programs and the related services (the "**Software**"), including, without limitation, any copyrights, trade secrets and other intellectual or industrial property rights, are and shall at all times be owned and held by Navigate Wellness and/or its licensors, as the case may be. Customer shall not modify, decompile, disassemble, reverse engineer or reconstruct, reconfigure or develop derivative works based upon any of the Software, Content or related documentation or other intellectual property of Navigate Wellness or its licensors, as the case may be.

4.3 All right, title and interest in and to all Navigate Marks are and shall at all times be owned and held by Navigate Wellness and/or its licensors, as the case may be. The term "**Navigate Marks**" shall mean any names, trademarks, trade names, service marks, logos, or similar proprietary rights owned or developed by Navigate Wellness including, without limitation, the tradenames and trademarks set forth on Schedule B.

4.4 Customer shall not use the Navigate Marks for any purpose unless expressly granted by Navigate Wellness in writing. Nothing in this Agreement shall be construed a transfer of grant to Customer any right, title, interest, or license in or to any intellectual property of Navigate Wellness, including the LHA Marks, except as expressly provided in this Agreement.

4.5 Any ideas, discoveries, inventions, patents, products, copyright works or other information (collectively "**Work Product**") developed in whole or in part in connection with the Navigate Programs provided under this Agreement will be and remain the exclusive property of Navigate Wellness.

4.6 Both during the Term and at any time thereafter, Customer agrees to execute and deliver any documents reasonably requested by Navigate Wellness to affect any of the provisions of this Section.

4.7 Customer acknowledges that Navigate Wellness and/or its licensors, as the case may be, retain exclusive rights in and ownership of the Navigate Programs, Content, Software, related services and the Navigate Marks, and all intellectual property and goodwill associated therewith. Nothing in this Agreement shall be construed to transfer or grant to Customer any right, title, interest or license in or to the Navigate Programs, Content, Software or the Navigate Marks.

4.8 Customer acknowledges and agrees that any breach, attempted breach or repudiation of this Section 4.0 (Proprietary Rights and Intellectual Property) by such Party would produce irreparable harm to the other Party, for which no adequate remedy would exist at law. The Parties agree that specific performance and/or injunctive relief shall be remedies available to the Parties to enforce the terms of this Section 4.0 or to prevent the breach, attempted breach or repudiation of any provision of this Section 4.0. Such remedies shall be in addition to any other remedies that the Parties may have under this Agreement, at law, in equity or otherwise.

## 5.0 INDEMNITY

5.1 Navigate Wellness agrees to defend, indemnify, and hold harmless Customer from and against any and all claims, actions, demands, legal proceedings, liabilities, damages, losses, judgments, settlements, costs or expenses, including without limitation reasonable legal fees (the "**Damages**") arising out of or in connection with any of the following:

- (a) any claim in connection with Navigate Wellness's grossly negligent or willful acts or omissions in performing the Navigate Programs; or
- (b) any violation by Navigate Wellness of any applicable governmental laws, rules, ordinances, or regulations.

5.2 Customer agrees to defend, indemnify, and hold harmless Navigate Wellness and its directors, managers, officers, employees, subcontractors, licensors, and other representatives (the "**Navigate Indemnitees**") from and against any and all Damages arising out of or in connection with any of the following:



- (a) any claim relating to the inaccuracy or misleading nature of any information or content provided by Customer for use with or incorporation into the Navigate Programs, the Website, or any other content, deliverables or materials prepared or used in connection with such Navigate Programs or the related services or the Website (the “**Customer Content**”) or any claim relating to the infringement of the Customer Content of any copyright, patent, trademark, industrial design, trade secret or other intellectual or proprietary right of any third Party; or
- (b) any claim relating with any representations, warranties, guarantees, indemnities, similar claims or other commitments with respect to the Navigate Programs made by Customer that are additional to or inconsistent with any than existing representations, warranties, guarantees, indemnities, similar claims or other commitments in this Agreement or any written documentation provided by Navigate Wellness to Customer;
- (c) any breach by Customer of any of its obligations under this Agreement, including, without limitation, those provided in Sections 7.0 and 8.0 of this Agreement; or
- (d) any violation by Customer of any applicable governmental laws, rules, ordinances, or regulations.

**5.3** Notwithstanding anything in this Agreement to the contrary, each Party shall assume full responsibility for any and all Damages related to its indemnification obligations under this Section with respect to claims against the other Party by third parties.

**5.4** In the event of any indemnification claim under this Section, the Party making such claim shall: (a) promptly notify the other Party of such claim; (b) at the indemnifying Party’s expense, reasonably cooperate with the indemnifying Party in the defense thereof (which defense the indemnifying Party shall be entitled to control); and (c) not settle any such claims without the indemnifying Party’s prior written consent, which indemnifying Party agrees not to unreasonably withhold. The indemnifying Party shall: (a) keep the other Party informed at all times as to the status of the indemnifying Party’s efforts and shall consult with the other Party concerning the indemnifying Party’s efforts; and (b) not settle the claim without the other Party’s prior written consent, which shall not be unreasonably withheld.

## **6.0 LIMITATION OF LIABILITY; WARRANTIES**

**6.1 EXCEPT AS SET FORTH IN SECTIONS 5.1 AND 5.2 ABOVE OR SECTION 7.0 BELOW, NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES (WHETHER FORSEEABLE OR NOT), ARISING OUT OF OR IN CONNECTION WITH THE NAVIGATE PROGRAMS OR THIS AGREEMENT. THE TOTAL LIABILITY OF NAVIGATE WELLNESS TO CUSTOMER AND ANY OTHER PERSON UNDER THIS AGREEMENT, IF ANY, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY CUSTOMER TO NAVIGATE WELLNESS FOR THE NAVIGATE PROGRAMS AND SERVICES PERFORMED UNDER THIS AGREEMENT WHEN THE INITIAL EVENT OR OCCURRENCE GIVING RISE TO A CLAIM OCCURRED.**

**6.2 THE NAVIGATE PROGRAMS, CONTENT, RELATED SERVICES AND ANY DELIVERABLES OR OTHER MATERIALS PROVIDED IN CONNECTION THEREWITH ARE PROVIDED “AS IS” AND NAVIGATE WELLNESS MAKES NO**

**REPRESENTATIONS OR WARRANTIES, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS RELATING TO THE NAVIGATE PROGRAMS, CONTENT, RELATED SERVICES AND SUCH DELIVERABLES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

## **7.0 CONFIDENTIALITY**

**7.1** The Parties hereto acknowledge and agree that Customer may, in connection with the Navigate Programs contemplated by this Agreement, be provided with and/or have access to certain Confidential Information (as defined below) of Navigate Wellness. For purposes of this Section, “**Confidential Information**” shall mean any information in any form disclosed by Navigate Wellness to Customer, including, without limitation, the following types of information (whether in oral, written, graphic or electronic form or any document, diagram, drawing, or program in any format, and whether or not marked “confidential”, “proprietary” or the like): know-how, data, processes, techniques, designs, programs, formulas, work in process, inventions, trade secrets, business strategies and methods, records, reports, terms of contracts with third parties, information relative to any past, present or prospective customers or clients (including without limitation any protected health or personally identifiable information therein) and marketing, financial, product, service, pricing, sales, supplier, vendor, client, employee, investor or other business information (hereafter collectively referred to as “Confidential Information”), Notwithstanding the foregoing, Confidential Information shall not include information that: (i) is or becomes generally available to the public through no wrongful act of Customer, (ii) was in the rightful possession of Customer prior to Navigate Wellness’s disclosure (provided that such prior possession can be substantiated by Customer), (iii) was rightfully obtained from a third party having no obligation to Navigate Wellness to maintain confidentiality of such information; or (iv) is independently developed by Customer without reference to or reliance upon the Confidential Information.

**7.2** Customer shall hold the Confidential Information in strictest confidence and exercise commercially reasonable efforts to protect the confidentiality of the Confidential Information and, at a minimum, Customer will take such action to protect the Confidential Information as Customer takes to protect the confidentiality of its own similar confidential information. Unless compelled by legal process (subject to subsection 7.3 below), Customer shall not, at any time, directly or indirectly, disclose any Confidential Information to any third party or use any Confidential Information for its own benefit or the benefit of any third party; provided, however, that Customer may disclose Confidential Information to only those of its directors, officers, employees and representatives who need to know such information for the sole purposes of fulfilling the purposes of this Agreement (but only to the extent strictly necessary to carry out the purposes for which such information is disclosed); provided, further, that Customer shall be liable for any breach of this Agreement by such directors, officers, employees and representatives. Customer and its directors, officers, employees and representatives shall only use the Confidential Information to fulfill the purposes of this Agreement and under no circumstances shall any of them use such information in any manner or for any purpose competitive with Navigate Wellness or the Navigate Programs.

**7.3** If Customer becomes legally compelled to disclose any Confidential Information it shall provide Navigate Wellness with prompt written notice of such requirement prior to disclosure so that Navigate Wellness may seek appropriate relief. If such relief is not obtained, Customer will then furnish only that portion of the Confidential Information that Customer is legally required to furnish and shall use commercially reasonable efforts to assist Navigate Wellness in obtaining assurances that such Confidential Information will be accorded confidential treatment.



7.4 The Confidential Information and all of the rights therein or related thereto are, and shall at all times remain, the property of Navigate Wellness. Nothing in this Agreement shall be construed as granting to Customer any right, title or interest, by license or otherwise, in, to or associated with any Confidential Information.

7.5 Upon the expiration or termination of this Agreement for any reason whatsoever, or upon Navigate Wellness's earlier request, Customer shall promptly return to Navigate Wellness all Confidential Information (including, except as hereafter provided, all copies thereof in any form whatsoever).

7.6 If determined necessary, Customer and Navigate Wellness agree to enter into a mutually agreeable Business Associate Agreement for purposes of setting forth the obligations of the Parties for disclosure and receipt of protected health information in substantially the same form as set forth on Schedule C.

7.7 Each Party acknowledges that any violation of the provisions of this Section by Customer may cause Navigate Wellness immediate and irreparable damage for which Navigate Wellness cannot be adequately compensated by monetary damages. Therefore, in the event of any such breach, Navigate Wellness shall be entitled to seek preliminary or other injunctive relief, an order for specific performance, and any other equitable relief that a court may determine to be appropriate. Navigate Wellness shall not be required to post a bond or any other form of surety upon obtaining such equitable relief. The Parties agree that such equitable relief will be in addition to any damages or other remedies provided by law and otherwise available to Navigate Wellness.

## 8.0 **BRANDING**

8.1 Customer shall not have any right to use any Navigate Marks in any way or in any advertising or other materials provided to third Parties, unless Navigate Wellness provides its prior written consent to the same, and subject at all times to the applicability of Section 4.0. Navigate Wellness will have a reasonable amount of time to review and approve all proposed Website content and advertising or promotional material utilizing the Navigate Marks in connection with the Navigate Programs. Navigate Wellness will have the right to object or correct such Website content and advertising or promotional material within a reasonable amount of time after receiving copies of such materials. Customer shall promptly notify Navigate Wellness in writing of any unauthorized use or infringement of any Navigate Mark of which Customer is or becomes aware. Customer agrees that the Navigate Programs, related services and any related deliverables, the Website, advertising or promotional materials or any other content or materials relating to the Navigate Programs or the related services incorporating any Navigate Mark shall bear such trademark and/or copyright notices as Navigate Wellness may require. Customer shall not alter, amend or remove any such trademark and/or copyright notices from any such related deliverables, Website, advertising or promotional materials or other materials or content relating to the Navigate Programs or the related services without the prior written consent of Navigate Wellness.

8.2 With the prior written consent of Navigate Wellness, Customer may use its own name, trademarks, trade names, service marks, logos or other proprietary designations of Customer ("**Customer Marks**") on any marketing and advertising materials used in connection with the Navigate Programs or Website, as such use is mutually agreeable to the Parties hereto.

8.3 Customer grants to Navigate Wellness a royalty-free, non-exclusive license to use and display, during the Term, the Customer Marks pre-approved by Customer for the purpose of

providing the Navigate Programs; provided, however, such license is limited solely for use in connection with the Navigate Programs and any advertising or other promotional activities relating thereto.

**8.4** Neither Party shall (a) issue any news release or public communication referencing the other Party or its affiliates (or their activities with the other Party), or (b) quote the opinion of any employee, subcontractor and/or other representative of the other Party, and/or (c) disclose the existence of this Agreement or the relationship between the Parties, unless such Party has first provided a copy of the proposed news release, public communication, advertising or other applicable material to the other Party and has obtained the prior written consent of the other Party to the same. In the event that a Party is obligated to issue a press release due to legal or regulatory requirements, the other Party shall not prevent the issuance of such press release provided that such Party has an opportunity to review such press release and that the contents of such press release are factually accurate.

## **9.0 GENERAL**

**9.1** Entire Agreement: This Agreement and the Schedules attached hereto, which are hereby incorporated by reference, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever, whether oral or written.

**9.2** Survival of Terms: Regardless of the circumstances of termination or expiration of this Agreement, the provisions of this Agreement which by its nature extend beyond the termination or expiration hereof will survive according to their respective terms, including, but not limited to, the provisions of: 4.0 (“Proprietary Rights and Intellectual Property”), 6.0 (“Limitation of Liability; Disclaimer of Warranties”), and 9.0 (“General”). Section 7.0 (“Confidentiality”) shall survive indefinitely.

**9.3** Relationship of the Parties: Navigate Wellness, its employees, subcontractors and other representatives (collectively, “Personnel”) shall act solely as independent contractors in relation to Customer and its affiliates. Nothing in this Agreement, any Schedule or other attachment hereto constitutes or should be construed as creating a partnership, joint venture, principal-agent, or an employer-employee relationship between Customer or its affiliates and Navigate Wellness or its Personnel.

**9.4** Non-Solicitation: During the term of this Agreement, and for a period of one (1) year immediately thereafter, Customer agrees not to solicit any employee or independent contractor of Navigate Wellness on behalf of any other business enterprise, nor shall Customer induce any employee or independent contractor associated with Navigate Wellness to terminate or breach an employment, contractual or other relationship with Navigate Wellness.

**9.5** Force Majeure: No Party to this Agreement shall hold the other Party liable for failure to comply with any of the terms or provisions of this Agreement (other than a failure to make any payment due hereunder) where such failure to comply has been caused by a “force majeure” event, which shall mean an act of God, force of nature, fire, or other casualty, expropriations or war-like activity, utility failure, insurrection, or civil commotion, shortage of raw materials or supplies, labor strikes or unrest, or other similar act or event beyond the other Party’s reasonable control.

**9.6** Amendments; Waivers, Assignment: No waiver of any term or condition of this Agreement shall be valid unless in writing and signed by an authorized representative of both



Parties, and will be limited to the specific situation for which it is given. Use of pre-printed forms, including, but not limited to email, purchase orders, shrink wrap or click wrap agreements, acknowledgements or invoices, is for convenience only and all pre-printed terms and conditions stated thereon, except as specifically set forth in this Agreement, are void and of no effect. No amendment or modification to this Agreement shall be valid unless set forth in writing and signed by authorized representatives of both Parties. Neither Party may assign any of its rights under the Agreement, voluntarily or involuntarily, except (a) with the consent of the other Party, which shall not be unreasonably withheld; (b) by merger, consolidation, dissolution, or operation of law; (c) to a person or entity that acquires all or substantially all of its assets; or (d) to a parent company or any affiliate or subsidiary, provided that any such assignee agrees in writing to be bound by the terms of the Agreement. Any purported assignment of rights in violation of this Section is void. Any assignment in violation of the preceding sentence shall be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and permitted assigns.

**9.7** Notices: Any notice required under or permitted by this Agreement must be delivered by certified or registered mail, return receipt requested, postage prepaid or by facsimile transmission and addressed as follows or to such other addresses as may be designated by notice from one Party to the other, all such notices being effective on the date received or, if mailed as set forth above, three (3) days after the date of mailing:

(a) if to Customer:

\_\_\_\_\_  
[Client]  
Attn: [Name, Title]  
[Address]  
[City], [State] [Zip]

(b) if to Navigate Wellness:

Navigate Wellness, LLC  
Attn: Troy W. Vincent  
1300 Walnut Street, Suite 200  
Des Moines, Iowa 50309

With copy to:

Thomas D. Johnson  
BrownWinick Law Firm  
666 Grand Avenue, Suite 2000  
Des Moines, Iowa 50309

**9.8** Severability; Headings: Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is found to be invalid, void or unenforceable, it will be severed from the rest of the Agreement and a new provision will be deemed added to this Agreement to accomplish to the extent possible the intent of the Parties as evidenced by the provision so severed. The headings used in this Agreement have no legal effect and shall not affect the interpretation of this Agreement.

**9.9** Remedies: Except as may be otherwise provided in this Agreement, the rights or remedies of the Parties hereunder are not exclusive, and either Party is entitled alternatively or cumulatively, subject to the other provisions of this Agreement, to damages for breach, to apply for an order from an appropriate court requiring specific performance, or to any other remedy available at law or in equity.

**9.10** Governing Law: This Agreement is governed by and construed in accordance with the applicable laws of the State of Iowa (excluding any conflict of laws rule or principle which might

require application of the laws of another jurisdiction). The Parties consent to the exclusive jurisdiction of the courts of the State of Iowa for the purpose of any action or proceeding brought by either of them in connection with or arising out of this Agreement.

**9.11** Counterparts: This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement. Both Parties agree that the receipt of a facsimile signature or a PDF format signature in the space provided below will represent final execution and acceptance of the terms and conditions contained in the Agreement. Any copy of this Agreement made by reliable means (e.g., photocopy or facsimile) shall be considered an original.

**[Signature Page to Follow]**



[Signature Page for Services Agreement]

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**Navigate Wellness:**  
Navigate Wellness, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Linn Mar CSD:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE A – NAVIGATE PROGRAMS & FEES

### Navigate Wellbeing Solutions – Optimized Program

Navigate Online Platform	Optimized Program	Value Add Options
<p><b>Navigate Program/Portal</b> A robust, interactive web portal that provides our clients the ability to engage local employer groups and their employees in better nutrition, increased physical activity, purpose, social and community wellbeing.</p>	<p><b>Year-round Portal Access:</b></p> <ul style="list-style-type: none"> <li>• Landing/Splash Page to Promote Services</li> <li>• Customized Client Logo</li> <li>• 365 Activity Tracker: Activity Minutes, Nutrition, Steps, Weight, Sleep</li> <li>• Message Center</li> <li>• Activity Feed / Social Integration</li> <li>• Personalized User Experience</li> <li>• Recipe Database, Meal Planner</li> <li>• Local Weekly Food Specials</li> <li>• Leaderboards</li> <li>• Wearable and Application Integration</li> <li>• Fitness Videos</li> <li>• Rewards Mall Access: Optional                             <ul style="list-style-type: none"> <li>• Standard Live Amplified Catalog Included</li> </ul> </li> </ul> <p><b>Benefit Incentive Tracking Table:</b> Ability to show completion status of activities. Tracking options:</p> <ul style="list-style-type: none"> <li>• Simple attestation</li> <li>• Participation file feed from partner                             <ul style="list-style-type: none"> <li>• Must be in approved Navigate standard file layout/format</li> </ul> </li> <li>• Verified activity</li> </ul>	<ul style="list-style-type: none"> <li>• Incentives available. Additional Fees may apply</li> <li>• SSO integration                             <ul style="list-style-type: none"> <li>• SAML 2.0 – Flat Fee \$500</li> <li>• Other requirements will require a quote for scope and effort</li> </ul> </li> <li>• Custom rewards mall catalog (Pricing to be quoted)</li> </ul>
<p><b>Wellbeing Survey (Health Risk Assessment)</b> Navigate’s approach to a Health Risk Assessment. The survey provides a more holistic method of providing actionable information back to the participant and aggregate data back to our clients</p> <p><b>Biometric Data Upload</b> Gives you a convenient, centralized location where your participants can review third-party biometric data</p>	<p><b>Wellbeing Survey:</b></p> <ul style="list-style-type: none"> <li>• Asks a series of questions based upon our Power of 8 philosophy focusing on purpose, physical, brainy, peer-to-peer, balance, nutrition, financial and community.</li> <li>• Survey recommends relevant Individual challenges and information to help drive behavior change</li> <li>• End of year aggregate employer report</li> </ul> <p><b>Biometric data display:</b></p> <ul style="list-style-type: none"> <li>• Display third-party biometrics to participant</li> <li>• Color coded risk level based on National Standards</li> <li>• View information on each measure</li> <li>• End of year aggregate employer report</li> <li>• Display up to 5 years of historical data                             <ul style="list-style-type: none"> <li>• Must be in approved Navigate standard file layout/format</li> </ul> </li> </ul>	
<p><b>Physician Forms</b></p>	<ul style="list-style-type: none"> <li>• Forms to be uploaded onto site                             <ul style="list-style-type: none"> <li>• No Fax / Phone option available</li> </ul> </li> <li>• Complete data will be uploaded into Portal Biometric display for individual within 10 business days.</li> <li>• Forms will be processed “as-is.”</li> </ul>	<p>\$5 per form processing fee</p>



Description of Services

<p><b>Challenges</b> Our wellbeing challenges were designed with comprehensive wellbeing and the Power of 8 philosophy in mind. With a diverse set of options, <b>you choose the right challenges for your audience and your culture.</b></p>	<ul style="list-style-type: none"> <li>• Up to (4) Standard Population-Based Challenges             <ul style="list-style-type: none"> <li>• Custom Dates</li> <li>• Teams or Individual Participation Options</li> <li>• Library of Standard Challenges to Choose From</li> </ul> </li> <li>• Power of 8 Personal Wellbeing Challenges</li> </ul>	<p><b>Custom Challenge Options:</b></p> <ul style="list-style-type: none"> <li>• Custom challenges include any programs selected outside of or significant modification to the library of standard challenges</li> <li>• Custom challenges will be quoted for scope and effort and billed on actual</li> <li>• \$1,500.00 Flat fee minimum</li> </ul>
<p><b>Administrator Resource Center</b> A dashboard within the Navigate Online Platform that provides a set of downloadable reports.</p>	<p><b>Standard Reports:</b></p> <ul style="list-style-type: none"> <li>• Challenge User Report</li> <li>• Device Usage Report</li> <li>• Device Report</li> <li>• Points Report</li> <li>• Team Report</li> <li>• Tracker Report</li> <li>• User Report</li> </ul>	<ul style="list-style-type: none"> <li>• Custom report requests will be handled on a project-by-project basis to define requirements and effort. Additional fees may apply</li> </ul>

**Marketing/ Communications**

	<b>Optimized Program</b>	<b>Value Add Options</b>
<p><b>Challenge/Campaign Marketing Materials</b> Marketing materials and promotional materials to recruit participants in challenges.</p>	<p>Marketing materials are private-labeled with client logo</p> <ul style="list-style-type: none"> <li>• Hype Videos</li> <li>• How to register flyer</li> <li>• Portal overview flyer</li> <li>• Posters (coming soon, challenge)</li> <li>• Recording reminders</li> <li>• Challenge E-newsletters</li> <li>• Supplemental monthly wellbeing communications</li> </ul> <p>Client-branded customization options included</p> <ul style="list-style-type: none"> <li>• Client logo and custom URL (URL will redirect to client portal)</li> <li>• Includes content updates to enhance and promote challenges</li> <li>• Can be customized for requirements and incentives</li> </ul> <p>Pricing includes a standard (2) rounds of revisions. Additional rounds of revisions could result in additional fees</p>	<p><i>Marketing requests above and beyond standard challenge materials will be quoted at \$150.00/hour</i></p> <p><i>Standard delivery of all Navigate marketing materials is through digital format. Should needs for native files or printed materials be required, Navigate will provide scope and quote of said services.</i></p>

**Administrative Support**

	<b>Optimized Program</b>	<b>Value Add Options</b>
<p><b>Call Center Support:</b> A toll-free number and inbound customer service inbox</p>	<p>Available for eligible population who have questions related to use of the wellness portal</p> <ul style="list-style-type: none"> <li>• Hours of operation: 7:00am – 7:00pm CST</li> <li>• Closed standard holidays</li> </ul>	<ul style="list-style-type: none"> <li>• Dedicated customer service 800 number</li> </ul>
<p><b>Account Management Team:</b> Full support from implementation through end of program</p>	<p>Available as dedicated support for program implementation, communication management, administrative portal maintenance and client services</p>	

Description of Services

Overview of Fees	
	Optimized
3-year commitment – Flat Fee annually	\$15,000**
Physician Form (Per Form)	\$5.00
One-time Implementation Fee	waived
<p>*Spouses included at no cost – PEPM fee assumes 1100 eligible employees.                      **Total payment due at launch ( Billing schedule: ½ Implementation and ½ launch)</p>	
<b>Payment Schedule:</b>	<ul style="list-style-type: none"> <li>* Total payment due at launch (Billing schedule: ½ Implementation and ½ launch)</li> <li>* Rewards Mall dollars (optional) that are issued by Customer will be billed in the following month in which the dollars were issued</li> <li>* Per Form Fee will be billed on a monthly basis</li> </ul>



**SCHEDULE B – Navigate Wellness TRADEMARKS**

- A) Live Healthy America
- B) Navigate Wellbeing
- C) Ignite
- D) Power of Eight
- E) Live Amplified

## SCHEDULE C – BUSINESS ASSOCIATE AGREEMENT

### HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) is entered into effective this October 17, 2019 (“Effective Date”) by and between Linn Mar CSD (“**Business Associate 1**”) and Navigate Wellness (“Business Associate 2) each a “**Party**” and collectively, the “**Parties**”.

#### RECITALS

- A. Business Associate 1 is a “Business Associate” as that term is defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, (“**HIPAA**”), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”), including, without limitation, the regulations codified at 45 C.F.R. Parts 160 and 164 (“**HIPAA Regulations**”);
- B. Business Associate 2 performs Services for or on behalf of Business Associate 1, and in performing said Services; Business Associate 2 creates, receives, maintains, or transmits Protected Health Information (“**PHI**”);
- C. The Parties intend to protect the privacy and provide for the security of PHI Disclosed by Business Associate 1 to Business Associate 2, or received or created by Business Associate 2, when providing Services in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005) (“the **HITECH Act**”) and its implementing regulations and guidance issued by the Secretary, and other applicable state and federal laws, all as amended from time to time; and
- D. As a Business Associate 1, Business Associate 1 is required under HIPAA to enter into a BAA with Business Associate 2 that meets certain requirements with respect to the Use and Disclosure of PHI, which are met by this BAA.

#### AGREEMENT

In consideration of the Recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

#### DEFINITIONS

The following terms shall have the meaning set forth below. Capitalized terms used in this BAA and not otherwise defined shall have the meanings ascribed to them in HIPAA, the HIPAA Regulations, or the HITECH Act, as applicable.

“**Breach**” shall have the meaning given under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

“**Designated Record Set**” shall have the meaning given such term under 45 C.F.R. § 164.501.

“**Disclose**” and “**Disclosure**” mean, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate 2 or to other than members of its Workforce, as set forth in 45 C.F.R. § 160.103.

“**Electronic PHI**” or “**e-PHI**” means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.



**“Protected Health Information”** and **“PHI”** mean any information, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (c) shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.

**“Security Incident”** shall have the meaning given to such term under 45 C.F.R. § 164.304.

**“Services”** shall mean the services for or functions on behalf of Business Associate 1 performed by Business Associate 2 pursuant to any service agreement(s) between Business Associate 1 and Business Associate 2(s) which may be in effect now or from time to time (**“Underlying Agreement”**), or, if no such agreement is in effect, the services or functions performed by Business Associate 2 that constitute a Business Associate relationship, as set forth in 45 C.F.R. § 160.103.

**“Unsecured PHI”** shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402, and guidance issued pursuant to the HITECH Act including, but not limited to the guidance issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009) by the Secretary.

**“Use”** or **“Uses”** mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such PHI within Business Associate 2’s internal operations, as set forth in 45 C.F.R. § 160.103.

**“Workforce”** shall have the meaning given to such term under 45 C.F.R. § 160.103.

## **OBLIGATIONS OF BUSINESS ASSOCIATE**

Permitted Uses and Disclosures of Protected Health Information Business Associate 2 shall not Use or Disclose PHI other than for the for the purposes listed on the signature page hereto for performing the Services, as permitted or required by this BAA, or as Required by Law. Business Associate 2 shall not Use or Disclose PHI in any manner that would constitute a violation of Subpart E of 45 C.F.R. Part 164 if so Used or Disclosed by Business Associate 1. However, Business Associate 2 may Use or Disclose PHI (i) for the proper management and administration of Business Associate 1; (ii) to carry out the legal responsibilities of Business Associate 1, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate 2 obtains a written agreement from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and will not Use and further Disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate 2 to such person, and that such person will notify Business Associate 1 of any instances of which it is aware in which the confidentiality of the PHI has been breached; (iii) for Data Aggregation purposes for the Health Care Operations of Business Associate 1. To the extent that Business Associate 2 carries out one or more of Business Associate 1’s obligations under Subpart E of 45 C.F.R. Part 164, Business Associate 2 must comply with the requirements of Subpart E that apply to the Business Associate 1 in the performance of such obligations.

Prohibited Marketing and Sale of PHI Notwithstanding any other provision in this BAA, Business Associate 2 shall comply with the following requirements: (i) Business Associate 2 shall not Use or Disclose PHI for fundraising or marketing purposes, except to the extent expressly authorized or permitted by this BAA and consistent with the requirements of 42 U.S.C. § 17936, 45 C.F.R. §§

164.514(f), and 164.508(a)(3)(ii), and (iii) Business Associate 2 shall not directly or indirectly receive remuneration in exchange for PHI except with the prior written consent of Business Associate 1 and as permitted by the HITECH Act, 42 U.S.C. § 17935(d)(2), and 45 C.F.R. § 164.502(a)(5)(ii).

Adequate Safeguards of PHI Business Associate 2 shall implement and maintain appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this BAA. Business Associate 2 shall reasonably and appropriately protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains or transmits on behalf of Business Associate 1 in compliance with Subpart C of 45 C.F.R. Part 164 to prevent Use or Disclosure of PHI other than as provided for by this BAA.

Mitigation Business Associate 2 agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate 1 of a Use or Disclosure of PHI by Business Associate 2 in violation of the requirements of this BAA.

#### Reporting Non-Permitted Use or Disclosure

Reporting Security Incidents and Non-Permitted Use or Disclosure Business Associate 2 shall report to Business Associate 1 in writing each Security Incident or Use or Disclosure that is made by Business Associate 2, members of its Workforce or Subcontractors that is not specifically permitted by this BAA no later than three (3) business days after becoming aware of such Security Incident or non-permitted Use or Disclosure, in accordance with the notice provisions set forth herein. Business Associate 2 shall investigate each Security Incident or non-permitted Use or Disclosure of Business Associate 1's PHI that it discovers to determine whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI. Business Associate 2 shall document and retain records of its investigation of any Breach, including its reports to Business Associate 1 under this Section 2.5.1. Upon request of Business Associate 1, Business Associate 2 shall furnish to Business Associate 1 the documentation of its investigation and an assessment of whether such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach. If such Security Incident or non-permitted Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate 2 shall comply with the additional requirements of Section 2.5.2 below.

Breach of Unsecured PHI If Business Associate 2 determines that a reportable Breach of Unsecured PHI has occurred, Business Associate 2 shall provide a written report to Business Associate 1 without unreasonable delay but no later than thirty (30) calendar days after discovery of the Breach. To the extent that information is available to Business Associate 2, Business Associate 2's written report to Business Associate 1 shall be in accordance with 45 C.F.R. §164.410(c). Business Associate 2 shall cooperate with Business Associate 1 in meeting Business Associate 1's obligations under the HITECH Act with respect to such Breach. Business Associate 1 shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media, as required by the HITECH Act. Business Associate 2 shall reimburse Business Associate 1 for its reasonable costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

Availability of Internal Practices, Books, and Records to Government Business Associate 2 agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI received from, or created or received by the Business Associate 2 on behalf of Business Associate 1 available to the Secretary for purposes of determining Business Associate 1's compliance with HIPAA, the HIPAA



Regulations, and the HITECH Act. Except to the extent prohibited by law, Business Associate 2 shall notify Business Associate 1 of all requests served upon Business Associate 2 for information or documentation by or on behalf of the Secretary. Business Associate 2 agrees to provide to Business Associate 1 proof of its compliance with the HIPAA Security Standards.

Access to and Amendment of Protected Health Information To the extent that Business Associate 2 maintains a Designated Record Set on behalf of Business Associate 1 and within fifteen (15) days of a request by Business Associate 1, Business Associate 2 shall (a) make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Business Associate 1 for inspection and copying, or to an individual to enable Business Associate 1 to fulfill its obligations under 45 C.F.R. § 164.524, or (b) amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Business Associate 1 to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate 2 shall not Disclose PHI to a health plan for payment or Health Care Operations purposes if and to the extent that Business Associate 1 has informed Business Associate 2 that the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, consistent with 42 U.S.C. § 17935(a) and 42 C.F.R. § 164.522(a)(1)(vi). If Business Associate 2 maintains PHI in a Designated Record Set electronically, Business Associate 2 shall provide such information in the electronic form and format requested by the Business Associate 1 if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Business Associate 1 to enable Business Associate 1 to fulfill its obligations under 42 U.S.C. § 17935(e) and 45 C.F.R. § 164.524(c)(2). Business Associate 2 shall notify Business Associate 1 within fifteen (15) days of receipt of a request for access to PHI.

Accounting To the extent that Business Associate 2 maintains a Designated Record Set on behalf of Business Associate 1, within thirty (30) days of receipt of a request from Business Associate 1 or an individual for an accounting of disclosures of PHI, Business Associate 2 and its Subcontractors shall make available to Business Associate 1 the information required to provide an accounting of disclosures to enable Business Associate 1 to fulfill its obligations under 45 C.F.R. § 164.528 and its obligations under 42 U.S.C. § 17935(c). Business Associate 2 shall notify Business Associate 1 within fifteen (15) days of receipt of a request by an individual or other requesting Party for an accounting of disclosures of PHI.

Use of Subcontractors Business Associate 2 shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate 2, to execute a Business Associate Agreement that imposes on such Subcontractors the same restrictions, conditions, and requirements that apply to Business Associate 2 under this BAA with respect to PHI.

Minimum Necessary Business Associate 2 (and its Subcontractors) shall, to the extent practicable, limit its request, Use, or Disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, Use or Disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

## **TERM AND TERMINATION**

Term The term of this Agreement shall be effective as of the Effective Date and shall terminate as of the date that all of the PHI provided by Business Associate 1 to Business Associate 2, or created or received by Business Associate 2 on behalf of Business Associate 1, is destroyed or returned to Business Associate 1, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with Section 3.3, or on the date that Business Associate 1 terminates for cause as authorized in Section 3.2, whichever is sooner.

Termination for Cause Upon Business Associate 1's knowledge of a material breach or violation of this BAA by Business Associate 2, Business Associate 1 shall either:

- a. Notify Business Associate 2 of the breach in writing, and provide an opportunity for Business Associate 2 to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate 2 fails to cure the breach or end the violation within such time period to the satisfaction of Business Associate 1, Business Associate 1 may immediately terminate this BAA upon written notice to Business Associate 2; or
- b. Upon written notice to Business Associate 2, immediately terminate this BAA if Business Associate 1 determines that such breach cannot be cured.

Disposition of Protected Health Information Upon Termination or Expiration

Upon termination or expiration of this BAA, Business Associate 2 shall either return or destroy all PHI received from, or created or received by Business Associate 2 on behalf of Business Associate 1, that Business Associate 2 still maintains in any form and retain no copies of such PHI. If Business Associate 1 requests that Business Associate 2 return PHI, PHI shall be returned in a mutually agreed upon format and timeframe, at no additional charge to Business Associate 1.

If return or destruction is not feasible, Business Associate 2 shall (a) retain only that PHI which is necessary for Business Associate 2 to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Business Associate 1 the remaining PHI that Business Associate 2 still maintains in any form; (c) continue to extend the protections of this BAA to the PHI for as long as Business Associate 2 retains the PHI; (d) limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible and subject to the same conditions set out in Section 2.1 and 2.2 above, which applied prior to termination; and (e) return to Business Associate 1 the PHI retained by Business Associate 2 when it is no longer needed by Business Associate 2 for its proper management and administration or to carry out its legal responsibilities.

**MISCELLANEOUS**

Amendment to Comply with Law This BAA shall be deemed amended to incorporate any mandatory obligations of Business Associate 1 or Business Associate 2 under the HITECH Act and its implementing HIPAA Regulations. Additionally, the Parties agree to take such action as is necessary to amend this BAA from time to time as necessary for Business Associate 1 to implement its obligations pursuant to HIPAA, the HIPAA Regulations, or the HITECH Act.

Indemnification Business Associate 2 hereby agrees to indemnify and hold harmless Business Associate 1, its affiliates, and their respective officers, directors, managers, members, shareholders, employees and agents from and against any and all fines, penalties, damage, claims or causes of action and expenses (including, without limitation, court costs and attorney's fees) arising from any violation of HIPAA, the HIPAA Regulations, or the HITECH Act or from any negligence or wrongful acts or omissions, including but not limited to failure to perform its obligations, that results in a violation of HIPAA, the HIPAA Regulations, or the HITECH Act, by Business Associate 2 or its employees, directors, officers, subcontractors, agents or members of Business Associate 2's Workforce.

Notices Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by



bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this Agreement or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 4.3. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

Relationship of Parties Business Associate 2 is an independent contractor and not an agent of Business Associate 1 under this BAA. Business Associate 2 has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed all Business Associate 2 obligations under this BAA.

Survival The respective rights and obligations of the Parties under Sections 3.3 and 4.2 of this BAA shall survive the termination of this BAA.

Applicable Law and Venue This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa (without regards to conflict of laws principles). The Parties agree that all actions or proceedings arising in connection with this BAA shall be tried and litigated exclusively in the State or federal (if permitted by law and if a Party elects to file an action in federal court) courts located in Polk County.

The Parties hereto have duly executed this as of the Effective Date.

**Navigate Wellbeing Solutions**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

**For Business Associate 1 Name:**

Organization Name: Linn Mar CSD  
By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

**Notice Address:**

1300 Walnut St., Suite 200  
Des Moines, IA 50309  
attn: Jeremy Knipper  
email: jknipper@navigatewell.com

**Notice Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
attn: \_\_\_\_\_  
email: \_\_\_\_\_



**Iowa State University  
COOPERATIVE AGREEMENT  
by and between**

**IOWA STATE UNIVERSITY AND Linn-Mar Community School District**

This agreement is made and entered into on \_\_\_\_\_ (“Effective Date”) by and between IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY on behalf of its Teacher Education Services (“University”) and Linn-Mar Community School District (hereinafter referred to as the “Clinical Placement Site”).

WHEREAS, University seeks to provide students of the Iowa State University (“Students”) with experience in a setting in which the Students, while under appropriate supervision, learn to apply the methods, skills and standards of licensed professionals.

WHEREAS, Clinical Placement Site seeks to obtain the assistance of Students and also to establish relationships with and contribute to the education of future licensed professionals.

WHEREAS, University and Clinical Placement Site intend to offer clinical experiences to Students to support the Students’ development of applicable knowledge, dispositions, and performances in a variety of settings.

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions of engaging in a cooperative program through which Students may obtain appropriate supervised clinical experience.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the University and Clinical Placement Site agree to cooperate as follows:

**1.0 Rights and Responsibilities of University.**

1.1 The University’s program coordinators shall determine eligibility of Students to participate in the clinical experience.

1.2 The placement of Students shall be accomplished on a cooperative basis involving both the University and the Clinical Placement Site including jointly defined qualifications for Students entering the clinical experience. The University will provide advance information to the Clinical Placement Site concerning the names of Students and dates for the clinical experiences to allow the Clinical Placement Site time and opportunity to prepare for the Students.

1.3 The University reserves the right to decline the services of any Clinical Placement Site’s cooperating staff member, if any, subject to the non-discrimination provisions in Section 6.

1.4 The University’s program coordinators, at any time and immediately in the case of an emergency, may terminate or change the assignment of any Students. Prior to doing so, the University’s program coordinators shall make reasonable efforts to consult with all parties concerned regarding reasons for termination or changes in assignment. University will provide the Clinical Placement Site written notification of such termination or change.

1.5 The University will explain to the Students that, during the clinical experience at the Clinical Placement Site, they will be subject to and expected to comply with the rules and regulations of the Clinical Placement Site, the policies of the University, and the code(s) of ethics of the profession.

1.6 The University, after consultation with appropriate representatives of the Clinical Placement Site, will plan and conduct the educational program for the Students’ experiences. The University will provide the Clinical Placement Site with discipline-specific goals and objectives, including prescribed minimum expectations and responsibilities for the Students, cooperating staff members, the Clinical Placement Site, and individuals supervising the Students.

1.7 The University will provide reasonable opportunities for the staff of the Clinical Placement Site to participate in joint planning and evaluation of Student experiences and to participate in the development of Student schedules at the clinical setting site. The final evaluation of the Student is the responsibility of the University.

1.8 The University will maintain communication and cooperation with the Clinical Placement Site and its cooperating teachers and staff to assure implementation of the goals and objectives of the clinical learning experiences contemplated by this Agreement.

1.9 The University will assign and designate a point of contact that is to be responsible for planning and administering the clinical experience.

1.10 The University will ensure that all Students placed in the Clinical Placement Site have successfully completed a background check using the following: Sexual Abuse Registry, Dependent Adult Abuse Registry, Child Abuse Registry and Criminal Registry.

## 2.0 **Rights and Responsibilities of Clinical Placement Site.**

2.1 The Clinical Placement Site will provide a suitable environment for learning experiences for Students which are planned, organized, and administered by qualified staff in conjunction with designated University personnel, in accordance with mutually agreed upon discipline-specific goals and objectives.

2.2 The Clinical Placement Site and its cooperating teachers and staff will maintain communication and cooperation with the University to assure implementation of the goals and objectives of the clinical learning experiences contemplated by this Agreement.

2.3 The Clinical Placement Site will provide any Students assigned under this agreement with an orientation that includes a tour of its facility, an explanation of any applicable rules, regulations and procedures, and other topics that will assure the Student a quality clinical experience.

2.4 The Clinical Placement Site will provide University with copies of or web-links to any policies or documents that they expect Students to abide by.

2.5 The Clinical Placement Site reserves the right to decline the assignment of any Student or exclude any Student from its premises subject to non-discrimination as in provisions in Section 6.

2.6 The Clinical Placement Site will assign and designate a point of contact that is to be responsible for planning and administering the clinical experience and will serve as the designated point of contact for University communication with the Clinical Placement Site regarding Students' experiences.

2.7 The Clinical Placement Site will communicate in a timely manner with University program coordinators regarding matters relating to Students, including but not limited to any Students' emergency, disciplinary problem, academic problem, and/or concerns expressed by Students regarding the Clinical Placement Site and/or its employees/agents.

2.8 The Clinical Placement Site will provide adequate facilities, equipment, and supplies to meet the educational objectives of the clinical experience. The working and learning environment will be safe and compliant with all applicable professional standards.

2.9 The Clinical Placement Site will provide appropriate supervision of Students. The Clinical Placement Site's employees and/or agents will supervise the work, services, and experiences performed by Students pursuant to this Agreement. Students are trainees and will not be used as a replacement for teachers, administrators or any other staff member of the Clinical Placement Site.

2.10 The Clinical Placement Site acknowledges that Student education records are protected by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232(g) and 34 CFR Part 99, and that Student permission must be obtained before releasing directory or non-directory student data to anyone other than University. The Clinical Placement Site understands that Students' information related to their placement at the site constitutes protected education records. The Clinical Placement Site agrees to keep education records of Students confidential as required by FERPA. The Clinical Placement Site agrees to immediately notify University in the event of an unintentional disclosure of protected education records.

## 3.0 **Liability.**

3.1 The Clinical Placement Site agrees to indemnify and hold harmless University, the Board of Regent's of the State of Iowa, the State of Iowa and their respective affiliates, successors, assigns, officers, employees and agents from any and all claims arising from activities provided or supervised by the Clinical Placement Site and from any and all liability, loss, damage, cause of action, cost and expenses, arising out of or in connection with any activities undertaken by the Clinical Placement Site, including its employees or agents, in performing their duties and responsibilities under this Agreement or arising from a breach of the terms of this Agreement.



3.2 To the extent permitted by Chapter 669 of the Iowa Code and other applicable law, University agrees to indemnify and hold harmless the Clinical Placement Site and its affiliates, successors, assigns, officers, employees and agents for injury to persons or property arising out of or caused by the negligence of University's agents, employees, or officers in the performance of the duties and obligations contemplated in the Agreement. Non-public schools are not covered under the Iowa Tort Claims Act, Chapter 669 of the Code of Iowa.

### 3.3. Student Liability

3.3.1. Clinical Placement Sites within Iowa agree to indemnify and hold Students participating in a clinical experience harmless from any and all tort claims or demands, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their activities under this Agreement to the same extent the Clinical Placement Site shall do so for its officers, agents, and employees, as provided under the Code of Iowa, Sections 272.27 and 670.8 (Tort Liability of Governmental Subdivisions Act) .

3.3.2. Professional liability insurance will be encouraged for all Students participating in in-state (Iowa) clinical experiences. Students, other than for those Students subject to the protections provided under Section 3.3.1 above, shall be required by University to obtain professional liability insurance while participating in an in-state clinical experience. Students participating in clinical experiences out of Iowa will be required to obtain professional liability insurance.

## 4.0 **Compensation.**

### 4.1 Compensation for Cooperating Teachers Supervising Clinical Experiences- Student Teaching.

4.1.1 The University agrees to compensate a cooperating teacher who satisfactorily serves as a cooperating teacher for a Student teacher for the full duration of a student teacher clinical experience.

4.1.2 If a cooperating teacher serves as a cooperating teacher for less than the full duration of a Student's student teaching clinical experience for any reason, their compensation will be prorated.

4.1.3 Upon completion of the student teaching assignments, University will make payment for a cooperating teacher's/staff member's services within a reasonable time after receipt of written evidence from the Clinical Placement Site that a cooperating teacher/staff member has satisfactorily served as a cooperating teacher/staff member for a Student.

### 4.2 Compensation for Cooperating Staff Supervising Clinical Experiences -Non-Student Teaching

4.2.1 University agrees to compensate a cooperating teacher in accordance with the Clinical Placement Site's policies and procedures for non-student teaching supervision. The Clinical Placement Site shall direct the cooperating teacher/staff members assigned to serve as a cooperating teacher/staff member for a Student to provide University appropriate documentation, when direct payment is made to cooperating teacher/staff member for a Student.

4.2.2 If a cooperating staff member serves as a cooperating staff member for less than the full duration of a Student's Clinical experience in school psychology or school counseling for any reason, their compensation will be prorated accordingly in University's sole discretion.

4.2.3 No compensation will be provided to the Clinical Placement Site or any cooperating staff member for any clinical experience other than those specifically provided for herein.

### 4.3 No Compensation for Students

4.3.1 Both parties agree that no Students in the clinical experience program will be compensated for the services contemplated under this Agreement. Students are not employees of either University or Clinical Placement Site and are not required nor entitled to be paid any wage, salary or benefits and will not be covered for Worker's Compensation, Social Security, or Unemployment Compensation programs.



5.0 **Term, Revisions and Termination.**

5.1 This Agreement shall commence beginning on the Effective Date of this Agreement, and shall continue for a period of five calendar years. This contract will end and will need renewal on \_\_\_\_\_.

5.2 This Agreement may be terminated for any reason by either party by giving not less than one hundred twenty (120) days written notice. Early termination of the Agreement will not alter the responsibility of the parties to carry out the terms of the Agreement with respect to any Students who are on-site at the Clinical Placement Site at the time notice of termination is provided.

5.3 Requests for revision of this Agreement or notice of termination to the Clinical Placement Site shall be directed to (if not one of the undersigned):

Name \_\_\_\_\_ Email/Phone \_\_\_\_\_

Name \_\_\_\_\_ Email/Phone \_\_\_\_\_

Name \_\_\_\_\_ Email/Phone \_\_\_\_\_

5.4 Requests for revision of this Agreement or notice of termination to the University shall be directed to:

**Jaime Boeckman**     [boeckman@iastate.edu](mailto:boeckman@iastate.edu)  
Director of Teacher Education Services

**Jack Christensen**     [jackc2@iastate.edu](mailto:jackc2@iastate.edu)  
Field Experiences Coordinator

**Ann Pierce**     [apierce@iastate.edu](mailto:apierce@iastate.edu)  
Field Experiences Coordinator

**Daryl Sackmann**     [sackmann@iastate.edu](mailto:sackmann@iastate.edu)  
Field Experience Coordinator

6.0 **Non-Discrimination.** In connection with this Agreement, neither party will discriminate on the basis of race, color, ethnicity, national origin, religion, age, sex, pregnancy, marital status, sexual orientation, gender identity, genetic information, disability, status as a U.S. veteran or other legally protected status. Each party agrees that it is separately responsible for compliance with all anti-discrimination laws which may be applicable to their respective activities under this Agreement.

7.0 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Iowa, which shall also be venue for any disputes arising hereunder.

8.0 **Entire Agreement.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and supersedes any and all prior understandings and agreements, oral or written, relating hereto. Any amendments hereof must be made in writing and agreed to by the parties.

9.0 **Counterparts; Authorization:** This Agreement may be executed in any number of counterparts and delivered by electronic transmission in PDF format. Each party represents and warrants that the person executing this Agreement on its behalf is authorized to do so.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Agreement.

**CLINICAL PLACEMENT SITE:**

**UNIVERSITY:**

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Printed Name \_\_\_\_\_

Its \_\_\_\_\_

Its Director, School of Education, College of Human Sciences

Date \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Printed Name \_\_\_\_\_

Its \_\_\_\_\_

Its Dean, College of Human Sciences

Date \_\_\_\_\_

Date \_\_\_\_\_