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San Jose Unified School District
July 1, 2024
Second Amendment to Third-Party
Administration Contract

This Second Amendment to the Third-Party Administration Contract (“the Second Amendment”) is made by and between San Jose Unified School District as Plan Sponsor and Plan Administrator (“Plan Sponsor”) and HealthComp Holding Company, LLC and its subsidiaries including HealthComp Integrated Solutions, LLC, HealthComp, LLC and Benefit Administrative Systems, LLC (“HEALTHCOMP”) with respect to the Benefit Plan issued by the Plan Sponsor to the eligible covered employees and dependents. This Second Amendment is to be in effect as of July 1, 2024, and shall continue until terminated as provided in the Third-Party Administration Contract referenced herein.

RECITALS

WHEREAS, Plan Sponsor has established a self-funded employee welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”) as amended, (the “Plan”) for certain employees of Plan Sponsor and for certain dependents of such employees (“Participants”); and

WHEREAS, HEALTHCOMP is in the business of providing administrative services, in conjunction with such Plans;

WHEREAS, the Plan Sponsor and HealthComp are parties to a Third-Party Administration Contract with an effective date of July 1, 2018; and

NOW, THEREFORE, with reference to these recitals and in consideration of the premises and of the mutual promises and covenants contained therein, the parties agree as follows:

Terms of Amendment

1) HealthComp, LLC dba HealthComp Administrators is now HealthComp Holding Company, LLC including its subsidiaries HealthComp Integrated Solutions, LLC and HealthComp, LLC. All prior references to HealthComp, LLC dba HealthComp Administrators are amended to read HealthComp Holding Company, LLC and its subsidiaries HealthComp Integrated Solutions, LLC and HealthComp, LLC (“HEALTHCOMP”).

2) The following is hereby added to the Agreement as a new Section 3.10:

“3.10 Subcontractors. HEALTHCOMP may subcontract its responsibilities to subcontractors subject to agreement terms at least as protective of Plan Sponsor as those contained in this Agreement (“Subcontractors”). HEALTHCOMP remains liable for the performance of all Subcontractors as if such Services were performed directly by HEALTHCOMP. Plan Sponsor may access programs, content, and/or services made available by third-parties (each a “Certified Partner”). Plan Sponsor acknowledges and agrees that Certified Partners do not constitute Subcontractors, and HEALTHCOMP shall have no responsibility for a Certified Partner’s programs or services (“CP Offering”). Each Certified Partner is solely responsible for its content, warranties, and for any claims that Plan Sponsor or its Members may have. HEALTHCOMP shall not have any liability under this Agreement relating to the provision of any CP Offering and all such liability is hereby disclaimed. CP Offerings may be subject to these Terms and to any applicable end user license agreement, terms of use, or similar agreements required by the applicable Certified Partner in connection with the CP Offering (“CP Terms”). To the extent these Terms conflict with the applicable CP Terms, the CP Terms shall govern with respect to the CP

Offering; provided, however, that in no event shall any CP Terms restrict or reduce Plan Sponsor's rights or protections with respect to Plan Sponsor's information unless otherwise agreed to in writing by Plan Sponsor."

3) Additional Services – Carrum Health. Effective as of July 1, 2024, HEALTHCOMP shall make the Carrum Health services, as further described in Section 3)a) below, ("Carrum Services") available to Plan Sponsor. Notwithstanding anything to the contrary set forth in the Agreement between HEALTHCOMP and Plan Sponsor, the Carrum Services shall be governed by the "Exhibit D – Partner Bundled Payment Program – Master Terms and Conditions" attached to this Second Amendment, including liability for the Carrum Services contemplated herein, and shall solely apply as between Plan Sponsor and Carrum Health, Inc. as they pertain to the Carrum Services. For the avoidance of doubt, HEALTHCOMP shall not have any liability under this Agreement relating to the provision of the Carrum Services. The applicable rates for the Carrum Services shall be as set forth in Exhibit B ("Carrum Fees").

a) Carrum Health Centers of Excellence and Bundled Payments Platform ("COE Program"): The COE Program consists of access to the Carrum Health proprietary cloud platform that connects eligible members to the Carrum Health network of participating healthcare providers that have been selected for their ability to provide high-value episodes of care for an array of specified surgeries and procedures offered through bundled payment programs and unrelated covered services.

4) The following language is hereby added to the end of Section (a) of the "Permitted Uses and Disclosures by Business Associate" section of Exhibit A of the Agreement:

"The Parties further acknowledge and agree that Business Associate and its affiliates may disclose Covered Entity's PHI with Certified Partners to fulfill its obligations under this Agreement."

5) Exhibit B Fee Schedule is hereby amended by adding the following at the end of Exhibit B:

Carrum Fees. The applicable rates for the Carrum services contemplated in Section 3 of the Second Amendment shall be in accordance with Sections a) i., ii., and iii. below.

a) Voluntary Model A (Voluntary Model means eligible member participation in the COE Program is optional but incentivized (e.g., member cost share is waived to the extent permissible by law) for all surgeries and treatments offered through the COE Program):

i. Platform Fee: \$0.00

ii. Bundle Access Fee (Percent of applicable bundled service retained by Partner. Only charged when the service (surgery, treatment, etc.), occurs through the COE Program): Not to exceed thirty (30%) percent.

iii. Assessment Bundle (only charged when assessment is conducted through the COE Program, but not surgery or treatment): \$2,500.00.

6) Exhibit D (Partner Bundled Payment Program – Master Terms and Conditions) is hereby added to the Agreement.

7) Except as expressly provided herein, all provisions of the Agreement and prior amendments to the Agreement that are not expressly modified by this Second Amendment shall remain unchanged. In the event of a conflict between this Second Amendment and the Agreement, the terms of this Second Amendment shall prevail.

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment as of the day and year set forth below. The Parties agree that execution of this signature page covers the base Agreement and any applicable Addenda, Schedule and/or Exhibit.

San Jose Unified School District

Name _____

Title _____

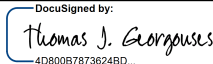
Signature _____

Date _____

HealthComp Holding Company, LLC

Name Thomas J. Georgouses

Title SVP Legal and General Counsel

Signature  _____
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Date 6/6/2024



Exhibit D
 Partner Bundled Payment Program – Master Terms and Conditions
 San Jose Unified School District
 EFFECTIVE: July 1, 2024

The Bundled Payment Program is provided, pursuant to these Carrum Health Bundled Payment Program – Master Terms and Conditions (the “**Agreement**”) by Carrum Health, Inc., a Delaware corporation (“**Carrum**” or “**Partner**”) to the client of HEALTHCOMP, an affiliate of Virgin Pulse, Inc. (“**Company**”) that has elected to participate in Company’s health and wellbeing program and that has completed and executed a written agreement with Company in which client agrees to this Agreement and that is acting respectively as plan sponsor and plan administrator of, and on behalf of the plan (“**Plan**”). Partner and such client, San Jose Unified School District (the “**Participant Employer**”) are referred to herein individually as a “**Party**” and collectively as the “**Parties**”. The effective date of this Agreement is set forth in the Second Amendment (the “**Effective Date**”)

ARTICLE I: DESCRIPTION OF BUNDLED PAYMENT PROGRAM, SERVICES AND DEFINITIONS

- 1.1 Bundled Payment Program. Carrum has entered into certain agreements with Participating Providers (each a “**Contract**”) for the provision of Bundled Services at specific Case Rates (each a “**Bundled Payment Program**”). Carrum shall facilitate, on behalf of the Plan, access to such Bundled Payment Program for each respective Company Participant Employer’s eligible Plan members (“**Participants**”), subject to the terms set forth in the Participant Employer Amendment and the respective Program Notice that relates to an applicable Bundled Payment Program. Under the Bundled Payment Program, an array of specified surgeries and procedures are provided (each, an “**Index Procedure**”). Index Procedures are made available at a fixed price determined in advance (the “**Case Rate**”). The Bundled Payment Program includes an extended period (the “**Episode Period**”) during which certain readmissions or admissions (“**Readmissions**” or “**Admissions**”), or additional procedures (“**Revisions**”) will be included in the Case Rate. The Episode Period generally extends from three days prior to admission to the end of a “**Warranty Period**”, as defined in the applicable Program Notice, following discharge. For a Readmission, Admission, or Revision to be included in the Case Rate, it must be related to the Index Procedure (a “**Patient Complication**”). Services connected with a Patient Complication are only covered by the Case Rate if Participant returns to the Provider of the Index Procedure for those services. They are not included in the Case Rate or subject to this Agreement if Participant obtains the services from another hospital or provider. In that event, they would be billed to the Participant, who may receive coverage for such services received from such other hospital or provider in accordance with the Plan.
- 1.2 Bundled Services. Index Procedures provided at the Case Rate include a group of related medical services (the “**Bundled Services**”) designed to provide medical care for a particular surgery or procedure from the date of the Participant’s admission through the date of his or her discharge.
- 1.3 Unrelated Covered Services. Some Participants may experience certain medical problems during or after admission that are unrelated to the Index Procedure. If the medical problem is an emergency or urgent, it may be necessary to provide treatment at the Facility where the patient is admitted. Services to treat emergent or urgent medical problems that are unrelated to the Index Procedure are “**Unrelated Covered Services**”. An example of an Unrelated Covered Service would be an urgent hernia repair while a Participant is at a Provider for a bariatric Index Procedure. Unrelated Covered Services are reimbursed separately from the Case Rate using a predetermined rate (the “**Default Rate**”).
- 1.4 Follow-up Visits. If a Participant schedules follow-up visits with a Provider that are outside of the Bundled Services, the follow-up visits are not subject to this Agreement and will be billed to Participant, who may receive coverage for such services in accordance with the Plan.
- 1.5 Non-Participating Provider Treatment. Some Participants may need treatment from Non- Participating

Providers related to their surgery that are not part of the Bundled Services. Such treatment may include (but are not limited to) physical therapy, nursing, infusion, respiratory, inpatient rehabilitation, skilled nursing, lab services, and long-term acute care. Such treatment is not included in the Case Rate or subject to this Agreement and will be billed to Participant, who may receive coverage for such treatment in accordance with the Plan.

1.6 Defined Terms. The following defined terms shall have the meanings set forth below:

- 1.6.1 “**Covered Services**” consist of both the Bundled Services and the Unrelated Covered Services.
- 1.6.2 “**Facility**” is defined as an acute-care inpatient hospital facility or an outpatient ambulatory surgery center contracted with Carrum to participate in the Bundled Payment Program.
- 1.6.3 “**Medically Necessary/Medical Necessity,**” shall mean a procedure, service, equipment or supply that is: within the standards of good medical practice and within the organized medical community and the most appropriate (as defined below) procedure, service, equipment or supply that can be safely provided. "Most appropriate" means: (i) there is valid scientific evidence demonstrating that the expected health benefits from the procedure, service, equipment or supply are clinically significant and produce a greater likelihood of benefit, without disproportionately greater risk of harm or complications, for the Participant with the particular medical condition being treated than other possible alternatives; and for hospital stays, acute care as an inpatient is necessary due to the kind of services the Participant is receiving or the severity of the medical condition, and safe and adequate care cannot be received as an outpatient or in a less intensive medical setting. The Plan shall reserve the right to require Provider to provide documentation of Medical Necessity on a case-by-case basis. Participant Employer shall ensure a Provider’s determination of Medical Necessity shall be deemed to satisfy the Plan’s medical necessity requirement.
- 1.6.4 “**Never Event**” means a non-reimbursable serious hospital-acquired condition as defined by the Centers for Medicare and Medicaid Services (CMS). Determination of the occurrence of a Never Event and any reimbursement for Medically Necessary services that may be reimbursable outside the Never Event shall be in accordance with CMS Medicare payment guidelines.
- 1.6.5 “**Non-Covered Service**” means any health care service that is not a Covered Service, including Never Events and any health care service or supply that would otherwise be a Covered Service but has been determined by a Provider to be not Medically Necessary.
- 1.6.6 “**Participating Provider**” or “**Provider**” means (i) a Facility; (ii) an individual who is employed by Facility or Provider or who has contracted (directly or indirectly) with Provider or a Facility to furnish Covered Services to Participants and (iii) in the case of surgeon Participating Providers, has been certified by Carrum for participation in the Bundled Payment Program.
- 1.6.7 “**Program Notice**” means a Participating Provider’s terms, conditions, rates, services and other details unique to a Bundled Payment Program available through such Participating Provider to the Plan and Participants. Carrum will provide such Program Notice to Participant Employer based upon Participant Employer’s Bundled Payment Program elections. In the event of an inconsistency between defined terms or any other provision of this Agreement, the applicable Provider specific Program Notice for a respective Bundled Payment Program will control.

ARTICLE II: THE PROGRAM

- 2.1 Payment for Services. Each Program Notice shall detail the Case Rate for the Bundled Services which shall cover all Bundled Services and Patient Complications. All Bundled Services (as described in the applicable Program Notice) and Patient Complications will be covered by the Case Rate. Unrelated Covered Services will be reimbursed at the Default Rate (as described in the applicable Program Notice).
- 2.2 Provider Selection and Program Notices. Participant Employer shall, on behalf of the Plan, indicate on the Order Form the Bundled Payment Programs that it wishes to offer to its Participants. Carrum will provide

Participant Employer and related Plan with the applicable Program Notices. Thereafter, Carrum will notify and provide to Plan new or modified Program Notices as they may become available. Plan has the right to select Bundled Payment Programs to offer to Participants and must notify Carrum, in writing via an Order Form supplement or amendment, of Plan's selections, and those Program Notices shall become part of this Agreement. Participating Providers have the right to decline or terminate participation with the Plan. Plan shall abide by the terms of the applicable Program Notice(s). Only the specific Covered Services described in the Program Notice(s) will be provided under this Agreement.

- 2.3 Medical Information. Carrum shall assist in obtaining medical information for Participants. Participating Providers will review medical records to determine whether a proposed surgery is Medically Necessary. If a Participating Provider requires an in-person evaluation or additional tests, Participating Provider shall notify Carrum to receive prior approval.
- 2.4 Medicare Secondary Payor. All of the rates, terms and provisions of each Program Notice will apply to all Participants where Plan is the primary payor, including Participants enrolled in a Medicare secondary payor program. Participant Employer shall ensure Plan's payment to Participating Provider shall not be affected by a Participant's status as a beneficiary of Medicare or any other program or health plan as a secondary payor.
- 2.5 Non-Covered Services. If a Participant agrees in writing in advance, Participating Providers may furnish, bill, and collect from a Participant directly for any Non-Covered Services at Provider's usual and customary. Participant may submit to the Plan a claim for benefits for Non-Covered Services. Notwithstanding the foregoing, neither Plan nor a Participant shall be liable for payment relating to a Never Event.
- 2.6 Exclusivity. Plan agrees that its relationship with Carrum is exclusive subject to the terms set forth herein, and that Plan will only offer bundled services with providers based in the United States of America to its Participants through this Agreement. If Plan also is a party to a preferred provider network agreement or an exclusive provider network agreement that includes Participating Providers as providers, this Agreement shall take precedence. This Exclusivity does not restrict Plan with respect to any bundled services or Centers of Excellence Agreements it may currently have with its insurance carrier(s) or Third- Party Administrators.
- 2.7 Responsibility for Covered Services. Participating Providers shall be solely responsible for the delivery of Covered Services to Participants, including but not limited to treatment decisions and the quality of such Covered Services. Carrum shall advise Participating Providers of the Plan's and/or Carrum's administrative eligibility determinations and authorization of payment for Covered Services. Any utilization review functions are payment, not treatment, decisions. Notwithstanding any language to the contrary, Carrum shall not be liable to Participant Employer, the respective Plans, its respective Participants or any other person or entity for any act or omission of Participating Providers, their employees or agents, including but not limited to the failure or refusal to render any Covered Services to a Participant.
- 2.8 Participant Cost Sharing. Plan shall provide Carrum with the Participant's cost sharing obligations at least ten (10) days prior to the date of surgery. Carrum will collect the Participant's portion of the cost and deduct the same amount from the invoice to Plan.
- 2.9 Services Provided to Participants. Carrum shall coordinate any travel logistics for Participant and provide for certain care coordination and concierge services.

ARTICLE III: PARTICIPANT EMPLOYER'S OBLIGATIONS

- 3.1 Communications and Incentives. Participant Employer shall make best efforts to educate all Participants about the availability of Carrum's offerings. As such, Participant Employer shall agree to:
- 3.1.1 Include information in the benefit plan documents regarding travel costs to be paid by the Plan, to the extent constituting medical expenses under the Internal Revenue Code, to cover costs of Participant travel to Provider, and appropriate stipends to cover costs realized during the course

- of care received at Provider, including costs of one travel companion, unless prohibited by law. To the extent reimbursable travel costs or stipends do not constitute medical expenses under the Internal Revenue Code, such costs will be paid by Participant Employer and may constitute taxable income to the Participant.
- 3.1.2 Consistent with applicable law, offer financial incentives or penalties to encourage the use of Bundled Services where appropriate, including: (i) amending the Plan to waive any otherwise applicable co-payments, coinsurance and deductibles (except with respect to HSA-compatible plans) for using Participating Providers for Bundled Services; and, in Participant Employer's discretion (ii) making contributions to health reimbursement arrangements, health savings accounts or health flexible spending accounts to offset out-of-pocket costs of medical care and additional services or (iii) other alternative financial incentives or penalties. Participant Employer will be solely responsible for the payment of any incentives hereunder.
- 3.1.3 Participate in Carrum's precision marketing program and a minimum of four (4) broad, company-wide campaigns per year—timing to be jointly confirmed during implementation planning. At a minimum, this includes, 1) an email announcing Carrum Health sent by the Participant Employer to its eligible employees at launch and annually during open enrollment, 2) a mailer sent to all eligible employees with print and postage fees (not to exceed \$1.50 per piece) passed through to the Participant Employer, 3) inclusion of approved language in benefits guides, online portals, and annual enrollment materials. Company shall ensure that Participant Employer agrees to be responsible for updating its benefit plan documents regarding the COE Program and instructing any applicable third-party administrator(s) to inform eligible members of the COE Program. If Participant Employer selects the Voluntary Model A (\$0 PEPM Platform Fee) and fails to fulfill the aforementioned outreach-related obligations within twelve (12) months of the launch date, a \$1 PEPM Platform Fee will be retroactively charged to Participant Employer. Company shall cause Participant Employer to remit such retroactive Platform Fee to Trusted Supplier within sixty (60) days of Participant Employer's receipt of the invoice.
- 3.2 Prior Authorization. Participant Employer determines which persons are eligible for coverage under the Plan. Participant Employer delegates to Carrum the sole authority to determine which of such persons are administratively eligible to receive Bundled Services. Prior to Participants selecting Participating Providers, Carrum shall attempt to verify Participant's eligibility for benefits with Plan. If Plan confirms Participant eligibility, Plan may not retroactively deny, offset, or seek to recoup payment from Carrum or Provider if it is later determined the individual was not eligible. Participating Providers shall determine an individual's clinical eligibility for Bundled Services and submit a plan of care to Carrum. Such plan of care shall serve to certify the Medical Necessity of the Bundled Services, as determined solely by the Participating Provider, to be provided to the Participant.
- 3.3 Provision of Participant Information. Participant Employer shall provide or cause Plan or its business associates to provide Participant information that is necessary for Carrum to perform its obligations hereunder, and sufficient so that Carrum can identify the Participant. Participant Employer shall provide, or cause Plan to provide, such information in an eligibility file in the format requested by Carrum to Carrum on a monthly basis. Carrum is entitled to rely on the information provided by Participant Employer, Plan or Participants when providing services under this Agreement.
- 3.4 Provision of Plan Information. Participant Employer shall provide copies of Plan documents and Summary Plan Descriptions to Carrum and shall inform Carrum thirty (30) days' in advance of all changes to Plan's benefit design that have a material impact on this Agreement. Participant Employer is responsible for the content of all Plan materials and documents and to ensure their legal compliance.
- 3.5 Compliance. It is Participant Employer's sole responsibility to ensure compliance with laws that apply to it as plan sponsor and plan administrator of the Plan and to ensure the Plan's compliance with applicable law, including but not limited to the Patient Protection and Affordable Care Act, the Health Insurance Portability and Accountability Act of 1996, as amended and including implementing regulations (HIPAA), Title I of the Genetic Information Nondiscrimination Act of 2008 (GINA), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and the Employee Retirement Income Security Act of 1974 (ERISA).

Except with respect to the authority delegated to Carrum in accordance with Section 3.2, Participant Employer acknowledges and agrees that Carrum is not a Plan fiduciary and does not have and shall not exercise any discretionary authority or control with respect to management or administration of the Plan or the funding or disposition of assets under the Plan, and that such authority and control is retained by Participant Employer or one of the other business associates for the Plan.

- 3.6 Participant Employer Information. Carrum shall be fully protected in relying upon representations and communications made by or on behalf of Participant Employer in effecting its obligations under this Agreement. Carrum is not responsible for any acts or omissions it makes in reliance upon the direction or consent of Participant Employer or inaccurate, misleading, or incomplete information from Participant Employer or any agent or representative of Participant Employer. Participant Employer is responsible for the accuracy of information provided by it, or on its behalf, to Carrum.
- 3.7 Payment to Carrum. Participant Employer or Plan, as applicable, shall pay Carrum all i) amounts described in each Program Notice for the particular Bundled Payment Program and any amounts due to Carrum for Participant travel costs; and ii) Platform Fees and Assessment Bundle Fees. Participant Employer or Plan as applicable, will pay Carrum such payments pursuant to Sections 3.8 below. The obligation for payment under this Agreement and the applicable Program Notice is solely that of the Participant Employer and Plan. Neither Carrum nor Participating Providers shall seek reimbursement for Covered Services except in accordance with and subject to the terms of this Agreement and the applicable Program Notice.
- 3.8 Bundled Services. Carrum shall directly invoice Participant Employer on a weekly basis for, without limitation, Bundled Services, Assessment Bundle Fees, Unrelated Covered Services, and any travel expenses (as those terms are defined herein) with payment due on or in advance of five (5) business days following the receipt of the invoice (the Parties agree that this payment made be made through ACH and/or a trust account as agreed to between the Parties). The obligation for payment under this Agreement and the applicable Program Notice is solely that of the Participant Employer and the applicable Plan.

ARTICLE IV: GENERAL TERMS AND CONDITIONS

- 4.1 Mutual Representations and Warranties. Carrum and Participant Employer each respectively represents and warrants i) that it shall each act in accordance with all applicable laws and regulations; and ii) the information that each provides is accurate. Carrum makes no representations or guarantees concerning the number of Participating Providers or Bundled Payment Programs it can or will provide to a Plan as options to participate in under this Agreement.
- 4.2 THE PARTIES AGREE THAT CARRUM IS NOT A HEALTH CARE PROVIDER AND DOES NOT PROVIDE DIAGNOSTIC SERVICES, TREATMENT OR MEDICAL ADVICE. THE SERVICES PROVIDED BY CARRUM, ARE NOT, NOR ARE THEY INTENDED TO BE, A MEDICAL EVALUATION, MEDICAL EXAMINATION, MEDICAL ADVICE, MEDICAL CONSULTATION, MEDICAL DIAGNOSIS OR MEDICAL TREATMENT. EXCEPT AS PROVIDED HEREIN, CARRUM SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION THE SERVICES PROVIDED BY PARTICIPATING PROVIDERS, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE OF A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING, OR COURSE OF PERFORMANCE.
- 4.3 Indemnification.
- 4.3.1 Participant Employer Indemnity. Participant Employer on behalf of itself and the Plan agrees to defend, indemnify and hold harmless Carrum and its respective affiliates, employees, directors, officers, owners and representatives (collectively, the “**Carrum Indemnitees**”) from and against any and all third party loss, fines, penalties, expenses, damages, injuries, claims, liabilities, demands, governmental actions, costs, settlements or judgments (including, but not limited to, reasonable attorneys’ fees and costs) (“**Claims**”) that are suffered or incurred by a Carrum

- Indemnitee to the extent arising out of or otherwise related to (i) this Agreement or the Plan as relates to such Participant Employer and related Plan or (ii) a material breach of this Agreement by, or the gross negligence, fraud, criminal acts, omission, or willful misconduct of Participant Employer or Plan. The indemnity will survive the termination or expiration of this Agreement.
- 4.3.2 Carrum Indemnity. Carrum agrees to defend, indemnify and hold harmless Participant Employer and its respective affiliates, employees, directors, officers, owners and representatives (collectively, the “**Participant Employer Indemnitees**”) from and against any and all Claims that are suffered or incurred by Participant Employer Indemnitee to the extent arising out of or otherwise related to (i) a material breach of this Agreement by Carrum or (ii) the gross negligence, fraud, criminal acts, omissions, or willful misconduct of Carrum. The indemnity will survive the termination or expiration of this Agreement.
- 4.4 Limitation on Liability. THE PARTIES AGREE THAT NEITHER CARRUM NOR PARTICIPANT PROVIDER NOR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AND OWNERS, LICENSORS, AND REPRESENTATIVES WILL BE LIABLE, WHETHER OR NOT SUCH LIABILITY IS BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES THAT MAY ARISE OUT OF OR RELATE TO THE SERVICES PROVIDED UNDER THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, DAMAGES OR COSTS RESULTING FROM THE USE OF OR INABILITY TO USE THE CARRUM PLATFORM OR APP(S), LOSS OF TIME, LOSS OF DATA, LOSS OF PROFITS AND LOSS OF GOODWILL, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. Notwithstanding any other provision of this Agreement to the contrary, the total cumulative liability of Carrum to Participant Employer under this Agreement for all Claims however caused arising out of or in connection with this Agreement shall be limited to direct damages and shall not exceed the amount of fees Carrum received from Participant Employer for the twelve (12) months prior to the occurrence of the event giving rise to such Claims.
- 4.5 Limitation. No action under this Agreement may be brought by any Party under this Agreement more than two (2) years after the cause of action has accrued. A “cause of action” shall be deemed to accrue when the claimant sustains injury and becomes aware or reasonably should have become aware, of the circumstances giving rise to the claim.
- 4.6 Use of Name. Carrum, Participant Employer, and respective Plans shall not use another’s name, copyrights, symbols, trademarks or service marks (collectively, “**Marks**”) or the Marks of Participating Providers in advertising, promotional materials or otherwise, without the prior written consent of such other Party or the Participating Providers, as applicable; provided, however, that this prohibition shall not apply to (i) Carrum’s use of Participant Employer’s or respective Plan’s Marks in lists of participating plans in the Bundled Payment Program or commercial materials for the Bundled Payment Program provided by Carrum, a respective Plan, or the Provider to Participants or (ii) Carrum’s inclusion of Marks in its non-public facing informational materials used with prospective plans.
- 4.7 Independent Contractor; No Third-Party Beneficiaries. The relationship of the Parties is that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither Party shall be construed to be the agent, employee or representative of the other. This Agreement will be construed to confer no rights whatsoever on any third parties, including Participants, Participating Providers, Accolade or other individuals or entities, unless specifically provided herein.
- 4.8 Governing Law, Arbitration and Injunctive Relief. This Agreement shall be construed and enforced in accordance with the laws of the State of California to the extent not preempted by ERISA or other law. All disputes that the parties cannot resolve through good faith discussions, shall be subject to resolution exclusively by final and binding arbitration in San Francisco, California, in accordance with the rules and procedures of the Judicial Arbitration and Mediation Service (JAMS) – before three arbitrators selected in accordance with such rules and procedures. The decision of the arbitrators will be enforceable by any court

of competent jurisdiction. If a claim cannot legally be arbitrated, the claim will be subject to the sole and exclusive jurisdiction of, and venue in, the courts located in San Francisco, California. Notwithstanding the foregoing, claims for injunctive or other equitable relief may be brought by either party, immediately at any time, in any court of competent jurisdiction.

- 4.9 Miscellaneous. The Parties agree that the applicable Company Order Form which references the Carrum offering and to which this Agreement is an exhibit or attachment thereto is incorporated by reference into this Agreement. It is agreed that Carrum is a third-party beneficiary to this Agreement notwithstanding any language to the contrary. Notices required pursuant to this Agreement shall be in writing and shall be sent by certified or registered mail, return receipt requested, or commercial overnight delivery service to the Parties at the addresses set forth below. Notices shall be effective on the date received or refused. Such addresses may change from time to time by written notice to the other Party delivered in accordance with this provision. To Carrum: Carrum Health, Inc., 100 1st Street Suite 350 San Francisco, CA 94105, Attn: Legal. To Participant Employer: Contact information on Company Order Form. Carrum shall have the right to subcontract any of its obligations under this Agreement to one or more third parties. This Agreement, the Program Notice(s) and the applicable Company Order Form constitute the entire understanding between Carrum and Participant Employer concerning the subject matter of this Agreement and supersede all other prior agreements between the Parties in respect of this Carrum offering. In the event any term of this Agreement is rendered invalid or unenforceable by any state, local or federal law, regulation or court, the remainder of the terms shall remain in full force and effect. This Agreement may only be amended by a written amendment signed by Carrum and Participant Employer; moreover, any changes to the Company Order Form shall be subject to written approval of Carrum. Waiver of breach of any term or provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision. The failure to exercise any right hereunder shall not operate as a waiver of such right. All rights and remedies provided herein are cumulative. If this Agreement is terminated or expires, its provisions that are intended by the Parties to continue will continue in effect. Except for payment obligations, neither Party shall be liable for failure or delay of performance under this Agreement arising from an force majeure occurrence including, without limitation, act of God or other events beyond the reasonable control of such Party, such as the acts of a regulatory agency, fires, floods, pandemics, explosions, strikes, labor stoppages, and acts of terrorism, war or rebellion.