

RESOLUTION NO. 22-29

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH TELADOC HEALTH, INC. FOR VIRTUAL HEALTH SERVICES AT A BASIC MONTHLY RATE OF \$7.00 PER EMPLOYEE.

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that Agreement between the City and Teladoc Health, Inc., for the provision of virtual health services, in the basic monthly rate of Seven Dollars (\$7.00) per employee, in substantially the form **attached** and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED, APPROVED AND ADOPTED in special session this 10th day of November, 2021.

CITY OF PANAMA CITY BEACH

By: 

Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk



TELADOC HEALTH SERVICES AGREEMENT

This Teladoc Health Services Agreement ("Agreement") is entered into on January 1, 2022 ("Effective Date"), by and between Teladoc Health, Inc. ("Teladoc Health") and City of Panama Beach ("Employer"). Teladoc Health and Employer shall be referred to herein as the "Parties" and each individually as a "Party".

Introduction

A. Teladoc Health provides (i) a suite of telehealth services offered under the Teladoc® and HealthiestYou® brands, (ii) a suite of expert medical information services offered under the Teladoc®, Best Doctors®, and Advance Medical® brands, and (iii) a suite of online health coaching programs related to the management of chronic health conditions under the Livongo® brand, as more fully described in the Exhibit(s) incorporated in this Agreement (collectively, the "Services").

B. Employer desires to purchase the Services for use by certain of its employees ("Employees") and their eligible dependents ("Eligible Dependents") as an additional benefit in connection with Employer's employee benefits program. "Eligible Dependent" means a "dependent," as defined under the Internal Revenue Code, I.R.C. § 152, or as may be mutually agreed between the Parties. Employees and Eligible Dependents are collectively and each referred to as "Member(s)".

Terms and Conditions

1. Scope.

This Agreement sets forth the terms and conditions under which Teladoc Health will provide the Services to Employer. Employer agrees to provide access to the Services to all Members and to inform the Members regarding the availability of the Services as provided in this Agreement. The specific Services that Employer has engaged Teladoc Health to provide, as well as the specific terms and conditions applicable to the provisions of those Services, are described in the attached Exhibit(s), which are incorporated by reference and made a part of this Agreement.

Capitalized terms used but not separately defined in the Exhibits shall have the meanings assigned to them in this Agreement. In the event of a conflict between terms set forth in this Agreement and the terms of an Exhibit or Attachment to the Agreement, the terms of the Exhibit or Attachment will govern.

2. **Term and Termination; Survival.** This Agreement commences on the Effective Date and will continue in force until all Exhibits have terminated or expired ("Term"), unless terminated earlier as outlined below; *provided, however*, that the provisions of Section 3 (*Intellectual Property Rights*), Section 5 (*Protected Health Information; Confidential Information*), and Section 7 (*Indemnification; Limitations of Liability*) shall survive any expiration or termination of the Agreement. Either Party may terminate this Agreement (a) for the other Party's material breach of the Agreement, which breach has not been cured, or cannot reasonably be cured, within 30 days after receipt of written notice by the non-breaching Party; or (b) for the other Party's insolvency. For the purposes of this Agreement, "insolvency" means that the other Party files or is subject to any voluntary or involuntary bankruptcy, receivership, or assignment for the benefit of creditors or similar proceeding.

3. Intellectual Property Rights.

3.1 Employer acknowledges that all materials relating to the Services that are developed by or on behalf of Teladoc Health or provided to the Employer by Teladoc Health (including, without limitation, any Communication and/or Member Engagement materials referred to in the attached Exhibit(s)), and all trade names, service marks, trademarks and logos that are used by Teladoc Health, and such other trade names, trademarks and logos as hereinafter may be designated by Teladoc Health in connection with its business (the "Teladoc Health Marks") are the unique intellectual property of Teladoc Health (the "Intellectual Property"), and the Employer agrees that: (i) the Employer will not duplicate the Services in any format that would, in whole or in part, infringe upon the intellectual property rights of Teladoc Health, and will not use or disclose the Intellectual Property in any manner other than pursuant to this Agreement; (ii) the Employer will not distribute, rent, sell, lease, or grant a sublicense or otherwise display, disclose, transfer, or make available the Services in any manner other than pursuant to this Agreement; (iii) the Employer will not modify, change, reverse assemble, reverse compile or reverse engineer the software underlying the Services or otherwise attempt to discover any such software source code or underlying Confidential Information; (iv) the Employer will not remove, efface, or obscure any copyright notices, logos, or other proprietary notices or legends (whether Teladoc Health or its licensors) from the Services; and (v) on termination of this Agreement, the Employer shall return to Teladoc Health all of the Intellectual Property provided to the Employer upon request.

3.2 Pursuant to the terms of this Agreement and only in a manner that has been approved by Teladoc Health in

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advance, Teladoc Health grants Employer a limited, non-exclusive, non-transferable, revocable license to use the Teladoc Health Marks during the term of this Agreement.

3.3 Employer hereby grants to Teladoc Health a limited, non-transferable, fully-paid, worldwide, non-exclusive right and license to use, reproduce, adapt, incorporate, integrate, and distribute Employer's trade names, trademarks, and logos in connection with its promotion and delivery of the Services, during the Term, solely as necessary to perform its obligations under this Agreement. Teladoc Health agrees that, if applicable, Employer may describe the Services in its health benefits plan materials, provided that any such descriptions are approved in advance by Teladoc Health.

4. **No Joint Undertaking.** Teladoc Health and Employer are and shall at all times function as independent contractors under this Agreement, and neither Teladoc Health nor Employer is authorized to assume or create any obligations or liabilities, express or implied, on behalf of or in the name of the other Party, except to the extent otherwise specifically contemplated herein. The employees, agents, representatives, providers, methods, facilities and equipment of a Party shall at all times be under the exclusive direction and control of that Party.

5. Protected Health Information; Confidential Information.

5.1 To the extent that Employer offers any Services as part of its Group Health Plan, as defined by 45 C.F.R. § 160.103, the receipt, creation, use, and/or disclosure of Protected Health Information by Teladoc Health on Employer's behalf will be governed, as applicable, by the Business Associate Agreement attached to this Agreement as *Exhibit 1*.

****MUST BE COMPLETED** by Employer: By choosing the appropriate box below, Employer confirms one of the following statements:

Services being provided under this Agreement are being incorporated as part of Employer's Group Health Plan, as defined by 45 C.F.R. § 160.103

OR

Services being provided under this Agreement are not being incorporated as part of Employer's Group Health Plan, as defined by 45 C.F.R. § 160.103

5.2 For purposes of this Agreement, "Disclosing Party" shall mean the Party that discloses any Confidential Information, as defined below, to the other Party to this Agreement, and the "Receiving Party" shall mean the Party that receives any Confidential Information, as defined below, from the other Party to this Agreement.

(a) For purposes of this Agreement, "Confidential Information" shall include information: (i) that is not known by actual or potential competitors of the Disclosing Party or is generally unavailable to the

public; (ii) that has been created, discovered or developed by, or otherwise become known to, the Disclosing Party or in which property rights have been assigned or otherwise conveyed to the Disclosing Party; and (iii) that has material economic value or potential material economic value to the Disclosing Party's present or future business. Confidential Information shall include trade secrets which include all discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, technical data (whether or not patentable or registerable under patent, copyright or similar statutes, and including all rights to obtain, register, perfect, and enforce those proprietary interests) and any other Intellectual Property, customer and supplier lists, price lists, business plans, and any modifications or enhancements of any of the foregoing, and all program, marketing, sales, or other financial or business information disclosed to the Receiving Party by the Disclosing Party, either directly or indirectly, in writing or orally or by drawings or observation, which has actual or potential economic value to the Disclosing Party, any other information that is treated as confidential, regardless of whether it is marked as such, and any other information that a reasonable party would conclude is confidential or proprietary in nature. Confidential Information shall also include, without limitation, employee information not otherwise defined as Protected Health Information by 45 C.F.R. § 160.103, analyses, forecasts, studies, summaries, marketing plans, financial data, business statistics, property, contracts, methods, transactions, affairs, concepts, ideas, services, products, images, graphics, text, audio, video, software and other data, knowledge, content or information in written, oral, visual and/or physical/sample form.

(b) Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it: (i) is or becomes a part of the public domain through no act or omission on the part of the Receiving Party; (ii) is disclosed to third parties by the Disclosing Party without restriction on such third parties; (iii) is in the Receiving Party's possession, without actual or constructive knowledge of an obligation of confidentiality with respect thereto, at or prior to the time of disclosure under this Agreement; (iv) is disclosed to the Receiving Party by a third party having no obligation of confidentiality with respect thereto; (v) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information; or (vi) is released from confidential treatment by written consent of the Disclosing Party.

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- (c) Notwithstanding the foregoing, portions of Confidential Information may be disclosed pursuant to the request of a governmental agency or third party if such disclosure is required by operation of law, regulation or court order, provided the Receiving Party gives the Disclosing Party prompt written notice of such proposed disclosure in order to enable the Disclosing Party to obtain an appropriate protective order, if it so desires.
- (d) The Receiving Party shall hold and maintain the Confidential Information of the Disclosing Party in strictest confidence and in trust for the sole and exclusive benefit of the Disclosing Party. The Receiving Party shall not, without the prior written approval of the Disclosing Party, use for its own benefit, publish or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information of the Disclosing Party.
- (e) The Receiving Party understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information of the Disclosing Party in violation of this Agreement may cause the Disclosing Party irreparable harm, and that monetary damages may not be a sufficient remedy. Thus, the Receiving Party agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such disclosure or misappropriation and for such other relief as the Disclosing Party shall deem appropriate, and the Receiving Party expressly agrees that the Disclosing Party shall be entitled, in addition to any other remedy provided by law, to seek an injunction or other equitable remedy respecting such violation or continued violation. Such right is to be in addition to the remedies otherwise available to the Disclosing Party at law or in equity. If any action at law or in equity is brought to enforce or interpret the provisions of this Section, the prevailing Party in such action shall be entitled to reasonable attorneys' fees.
- (f) Upon request, the Receiving Party shall promptly return to the Disclosing Party any and all records, notes and other written, printed or tangible materials pertaining to the Confidential Information of the Disclosing Party.

5.3 Public Records: The City is a public agency subject to the Florida Public Records Law expressed in Chapter 119, Florida Statutes. Accordingly, to the extent that it is determined that Teladoc/Healthiest You is acting on behalf of City as provided under Section 119.011(2), Teladoc/Healthiest You agrees to also comply with all applicable provisions of that law, specifically including, and in each case to the

extent required to comply with applicable law, to:

- a. A. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Upon request of the City, provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law, or provide the City with a copy of the requested records.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Consultant does not transfer the records to the City.
- d. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IF TELADOC/HEALTHIEST YOU HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TELADOC/HEALTHIEST YOU'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850.233.5100, lynne.fasone@pcbfl.gov, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413

6. Representations of the Parties; Disclaimer.

6.1 Each Party represents that (a) it has the necessary and actual right and authority to enter into and to perform its obligations under this Agreement, (b) it has taken all necessary corporate action to authorize the execution, delivery, and performance of this Agreement, (c) this Agreement constitutes a valid and binding obligation enforceable against the Party in accordance with its terms, and (d) it will perform its obligations under this Agreement in a manner that complies with all laws applicable to such Party.

6.2 Employer represents that (a) Employer has sought its own legal advice with respect to the use of the Services as part of a wellness program, if applicable; and (b) that Teladoc Health has not provided Employer with advice regarding the legality of any of its wellness programs or use of the Services for such wellness programs.

6.3 Each Party represents that it will maintain such insurance coverage as is reasonably necessary to support its respective obligations under this Agreement, which, for Employer, shall be at least a commercially reasonable general liability policy and cyber liability insurance with commercially reasonable limits in proportion to Employer's cyber liability risks.

Specifically, Teladoc Health represents that during the Term, it will maintain the following minimum types and amounts of insurance in the provision of the Services, with carriers having an AM Best Rating of A- or better:

- (a) Workers Compensation Insurance in the amount required by law;
- (b) Professional Liability/MCO Errors and Omissions coverage of \$10 million per occurrence/aggregate;
- (c) General Liability coverage of \$1 million per occurrence/\$2 million aggregate;
- (d) Technology Errors and Omissions and Cyber Risk Liability coverage (including network security and privacy liability) of \$10 million; and
- (e) With respect to telehealth services, Teladoc Health will ensure that each Physician is provided with the requisite medical malpractice insurance coverage, in all cases complying with the minimum requirements of the applicable jurisdiction.

Upon request, Teladoc Health will provide Employer with a certificate evidencing the above insurance coverage.

6.4 Employer acknowledges and agrees that except as may be explicitly set forth in this Agreement, Teladoc Health has made no representations or warranties and has expressly disclaimed to the maximum extent permitted by law, all warranties or representations of every kind or nature, either implied or statutory, as to the Services, including without

limitation, any implied warranties of merchantability, fitness for a particular purpose, or title.

7. Indemnification; Limitations of Liability.

7.1 Each Party agrees, subject to the limitations set forth in this section, that it is solely liable for any breach, misrepresentation, error or omission by its employees, agents and representatives concerning the Services or otherwise made by such Party in fulfilling its obligations under this Agreement. Each Party agrees to indemnify and hold harmless the other Party and its affiliates, and their directors, officers, employees, agents, representatives, successors and assigns, from and against any third party loss, cost, damage or expense, including reasonable attorneys' fees and court costs, arising (i) out of any error, omission or malfeasance of such breaching Party, or (ii) any actual or alleged infringement, violation, or misappropriation of intellectual property rights of any third party.

7.2 The City's duty to indemnify Teladoc for claims brought against Teladoc shall be expressly limited to the extent that they are found to result from the sole negligence of the City, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts or omissions of third parties, independent contractors or third-party agents of the City. This indemnification shall not be construed as a waiver of the City's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which the City could be liable under the common law interpreting the limited waiver of sovereign immunity. An action may not be instituted on a claim against the City unless the claimant presents the claim in writing to the City Manager within 3 years after such claim accrues or the City Manager denies the claim in writing. For purposes of this paragraph, the requirements of notice to the City Manager and denial of the claim are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues. Notwithstanding any other provisions of this paragraph, the value of this indemnification is limited to the maximum sum of \$200,000 as a result of all claims and judgments arising out of the same incident or occurrence, not to exceed the sum of \$100,000 for any claim or judgement or portions thereof. In addition, this indemnification shall be construed to limit recovery by the indemnified party against the City to only those damages caused by the City's sole negligence and shall specifically exclude any attorney's fees or costs associated therewith.

7.3 Teladoc Health's total liability (including the liability of any of its officers, employees, or agents) relating to claims for damages arising from or relating to the performance of this Agreement shall be limited to direct (reasonably foreseeable) damages and shall in no event exceed the amount of Fees paid by Employer during the twelve (12)

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months immediately preceding the first event, action, or omission giving rise to Teladoc Health's liability; *provided, however, that:*

- (a) Teladoc Health's total obligation for any claim arising from (i) a breach of the Protected Health Information; Confidential Information Section of the Agreement or (ii) from a claim for liability asserted by a third party relating to the performance of this Agreement shall in no event exceed \$5 million; and
- (b) in the event of a decision of liability attributed to both Parties, each Party's obligation will be limited by its relative fault as compared to the other Party or a third party in such matter.

Each Party expressly waives any right to seek consequential, indirect, punitive, or special damages for claimed losses arising from or relating to the performance of this Agreement including, without limitation, claims for loss of business, data, revenue, profits, or goodwill, even if the Parties had knowledge of the possibility of such damages and whether or not such damages are foreseeable.

7.4 Defense of Indemnification Claims. In claiming any indemnification under this Section, the indemnified party shall promptly provide the indemnifying party with notice of any claim that the indemnified party believes is within the scope of the obligation to indemnify. The indemnified party may, at its own expense, assist in the defense if it so chooses, but the indemnifying party shall have sole control of the defense and all negotiations relative to the settlement of any such claim. The indemnified party will provide the indemnifying party with reasonable assistance, at the indemnifying party's expense, in the defense, negotiations, and settlement of any claims. Any settlement intended to bind the indemnified party shall not be final without the indemnified party's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

7.5 In defending against any claim or action pursuant to Section 7.1 based upon an allegation that the Services infringes the intellectual property rights of a third party, Teladoc Health may at its option (a) procure for Employer the right to continue using the Services, or (b) modify or replace the Services so that it no longer infringes. If Teladoc Health concludes in its sole judgment that neither of the foregoing options is commercially reasonable, then Teladoc Health may terminate this Agreement and cease providing the Service, upon which Employer will cease offering the Services. This Section 7.5 specifies Teladoc Health's entire liability and Employer's exclusive remedy for infringement.

8. Data Transmission Security. Data transmission security is the process of sending data from one computer system to another in a secure manner so that only the intended recipient of the data receives the data and the data sent is identical to the data received. When ePHI (Electronic Protected Health Information) is transmitted over an electronic communications network i.e. "the internet", transmissions of ePHI to and from Teladoc Health will utilize Secure File Transport Protocol (SFTP).

Employer is expressly prohibited from indirectly or directly, knowingly violating or attempting to violate the security of Teladoc Health's web sites, including, without limitation, accessing data not intended for such user or logging into a server or account which user is not authorized to access, attempting to probe, scan or test the vulnerability of the system or network or to breach security or authentication measures, scanning or testing the performance of the system or network, attempting to interfere with service to any user, host or network, including, without limitation, via means of submitting a virus or "trojan horse" to the Web site, overloading, "flooding", "mail bombing" or "crashing", or sending unsolicited electronic mail, including promotions and/or advertising of products or services. Violations of system or network security may result in civil or criminal liability. Teladoc Health will investigate occurrences that may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations.

9. Publicity. Teladoc Health may use Employer's trade name and logo on Teladoc Health's standard sales-deck and customer list(s) solely to indicate, during the Term, Employer's status as a customer of Teladoc Health, without other indications of endorsement. All other use of Employer's trade name, trademark, service mark, or symbol in Teladoc Health's advertising, publicity or other promotional endeavors requires the prior consent of Employer.

10. Dispute Resolution. Prior to the institution of formal court action, the Parties agree that any claim or controversy arising from this Agreement shall be considered and addressed by one representative from Teladoc and one representative from the Employer at a meeting held upon at least five business days' advance notice from the complaining Party. Such meeting shall be held at a neutral location in the city where the non-complaining Party has its principal office. If the claim or controversy is not resolved by the representatives at such meeting or within five business days thereafter, either Party may proceed with court action.

11. Miscellaneous.

11.1 Entire Agreement; Amendment; Severability. This Agreement (including any Exhibits or attachments hereto) constitutes the entire agreement by and between Teladoc Health and Employer relating in any manner of its subject

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matter, and any representation, warranty, covenant, understanding or agreement not contained or incorporated in it by reference shall be of no force or effect. This Agreement supersedes all prior proposals, discussions, writings, and agreements between the Parties relating to the subject matter hereof. This Agreement may only be modified in writing, signed by an authorized representative of each Party. In the event any provision of this Agreement shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather this Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

11.2 Waiver. Any failure on the part of a Party to comply with any of its obligations, agreements, or responsibilities under this Agreement may be waived by the other Party to whom such compliance is owed. No waiver of any provision of such agreements shall be deemed a waiver of any other provision, nor shall any waiver constitute a waiver of any failure other than that waived.

11.3 No Third Party Beneficiaries. No person other than the Parties and their respective successors and permitted assigns is intended to be a beneficiary of this Agreement. In executing this Agreement, the Parties do not intend to create third-party beneficiary rights in anyone not a Party to the Agreement.

11.4 Force Majeure. Neither Party shall have liability to the other as a result of a Force Majeure Event; *provided, however,* that the non-performing Party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and restores performance as soon as such causes are removed. For purposes of this Agreement, "Force Majeure Event" means an event not reasonably foreseeable, beyond a Party's reasonable control, and occurring without its fault or negligence, including, without limitation (a) an act of nature, such as fire, flood, earthquake, storm, tornado, lightning, landslide, sink hole, or outbreak of disease, (b) a service failure caused by third parties, such as a power or utility outage or a labor dispute affecting suppliers or subcontractors, (c) a civil disruption such as war, invasion, insurrection, trade embargo, or activities by terrorists or public enemies, or (d) action by a governmental body that enjoins or prevents performance by a Party.

11.5 Notice. All notifications, consents, reports, requests, demands, and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed given: (i) three (3) days after being mailed (with return receipt requested), (ii) when emailed, or (iii) one (1) day after being sent via a recognized overnight courier service, to the Parties at the following addresses, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

If to Teladoc Health:

Teladoc Health, Inc.
Attn: Chief Legal Officer
2 Manhattanville Road, Suite 203
Purchase, NY 10577
Email: legalnotices@bestdoctors.com

With a Copy to: clientservices@teladoc.com

If to Employer:

CITY OF PANAMA BEACH
ATTN: LORI PHILPUT
17007 PANAMA CITY BEACH PARKWAY
PANAMA CITY BEACH, FL 32413
EMAIL: LORI.PHILPUT@PCBFL.GOV

11.6 Governing Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to the conflict of laws principles of such State. Jurisdiction and venue for any and all disputes under this Agreement shall be the state and/or federal courts of Florida.

11.7 Joint Preparation. This Agreement is deemed to have been prepared jointly by the Parties, and any uncertainty or ambiguity herein shall not be interpreted against either Party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

11.8 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts (and may be executed by way of email or electronic signature, and if so, shall be considered an original), all of which shall constitute one and the same instrument, and each Party hereto may execute this Agreement by signing one or more counterpart, which shall not affect the construction of this Agreement. Each signatory represents that he/she has full authority to sign this Agreement on behalf of his/her respective Party and to bind and obligate such Party to the terms hereof.

11.9 E-VERIFY: Contractor is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all employees hired after January 1, 2021, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit(s) for the duration of the contract. Failure to comply will lead to termination of this

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Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be eligible for or awarded a City contract for a period of 1 year after the date of termination.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Teladoc Health, Inc.		CITY OF PANAMA BEACH	
Samantha Secaur	Director, Contracts	<i>Stacy J White</i>	ASSISTANT CITY
Print Name	Title	Print Name	MANAGER
DocuSigned by: <i>Samantha Secaur</i>	11/22/2021	<i>Stacy J White</i>	11.21.21
Signature	Date	Signature	Date

Exhibit 1 Business Associate Agreement

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into by and between Employer (referred to herein as "Plan Sponsor"), on behalf of Plan Sponsor's Group Health Plan ("Covered Entity"), and Teladoc Health, Inc. and its affiliated companies (referred to herein as "Business Associate") pursuant to the Teladoc Health Services Agreement dated January 1, 2022 ("Agreement"), the terms and conditions of which are incorporated by reference into this BAA. The Effective Date of this BAA shall be the same as the Effective Date defined in the Agreement.

Introduction

WHEREAS, the U.S. Department of Health and Human Services ("HHS") has promulgated privacy and security requirements reflecting the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191; and the American Recovery and Reinvestment Act of 2009 (the "ARR Act"), including, without limitation, the requirements of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), which is part thereof, enacted and established additional provisions for written business associate agreements and required these additional provisions be incorporated into all business associate agreements;

WHEREAS, the HIPAA Rules provide that a Covered Entity is permitted to disclose Protected Health Information ("PHI") to a Business Associate only if the Covered Entity has first obtained "satisfactory assurances," in the form of a written contract requiring that the business associate will appropriately safeguard such PHI;

WHEREAS, Business Associate will be providing services to the Covered Entity as described in the Agreement ("Services");

WHEREAS, Business Associate may, in the course of providing the Services to the Covered Entity, receive, create, use, and/or disclose PHI on Covered Entity's behalf which would create a business associate relationship between the Parties, thus necessitating a written contract that meets the applicable requirements of the HIPAA Rules.

NOW THEREFORE, in consideration of the mutual promises contained herein, Covered Entity and Business Associate (each a "Party" and together the "Parties") agree as follows:

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1. Definitions.

Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as set forth in the Privacy Rule, the Security Rule (as both are defined below) and/or the security and privacy provisions of the ARR Act and the HITECH Act that are applicable to business associates along with any regulations issued by HHS with respect to the ARR Act and the HITECH Act that relate to the obligations of agents and subcontractors of business associates.

- (a) "Covered Services" shall mean, as applicable, the activities Business Associate performs on behalf of Covered Entity. The delivery of, and activities related to the delivery of, telehealth services is not an activity performed by Business Associate on behalf of Covered Entity.
- (b) Electronic Protected Health Information or ePHI shall have the meaning given such term in 45 C.F.R. § 160.103, but limited to the information received from or created on behalf of Covered Entity by Business Associate to perform the Covered Services.
- (c) HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- (d) "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (e) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- (f) Protected Health Information or PHI shall have the meaning given such term in 45 C.F.R. § 160.103, but limited to the information received from or created on behalf of Covered Entity by Business Associate to perform the Covered Services.
- (g) "Security Rule" shall mean the Standards for Security of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

2. Permitted Uses and Disclosures by Business Associate. Business Associate may use and disclose PHI only as follows:

- (a) Business Associate may use or disclose PHI in order to perform its obligations under the Agreement relating to providing the Covered Services.
- (b) Business Associate may use or disclose PHI as Required By Law.

- (c) Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- (d) Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that – (1) the disclosures are Required by Law, or (2) Business Associate obtains reasonable assurances from the entity to which the information is disclosed that it will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the entity, and the entity notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (e) Business Associate may use PHI to provide data aggregation services to Covered Entity.
- (f) Business Associate may use PHI to create de-identified information as defined by 45 C.F.R. §164.514(b). The Parties agree that once PHI is de-identified, it is no longer subject to this BAA.
- (g) Business Associate may use PHI to create a limited data set as defined by 45 C.F.R. §164.514(e)(2) and use and disclose such limited data set pursuant to 45 C.F.R. §164.514(e)(1).
- (h) Business Associate may use and disclose PHI for research purposes pursuant to a HIPAA compliant authorization form from the Individual or as permitted by and pursuant to 45 C.F.R. §164.512(i).
- (i) Business Associate may disclose PHI at the direction of Covered Entity to any other vendors of Covered Entity that provide other services for or on behalf of Covered Entity. Covered Entity hereby agrees that it shall not request or permit Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by Covered Entity.
- (j) Business Associate agrees to use reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request pursuant to 45 C.F.R. § 164.502(b).
- (k) Subject to any form signed by an Individual prohibiting such Disclosure, Business Associate may provide to Plan Sponsor PHI, subject to the requirements of 45 C.F.R. § 164.504(f)(2), for the purpose of carrying out legitimate plan administration functions that the Plan Sponsor performs on behalf of Covered Entity. Plan Sponsor agrees it will only request PHI for legitimate plan administration functions.

3. Obligations and Activities of Business Associate. Business Associate agrees to:

- (a) not use or disclose PHI other than as permitted or required by this BAA or as Required By Law.
- (b) use commercially reasonable and appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this BAA.
- (c) in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- (d) report, within thirty (30) days of becoming aware, to Covered Entity any use or disclosure of the PHI not provided for by this BAA, any Breaches of Unsecured PHI as required at 45 C.F.R. 164.410, and any successful Security Incident of which it becomes aware. Successful Security Incidents shall not include pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, Use or Disclosure of PHI.
- (e) mitigate, to the extent practicable, any harmful effect that is, or becomes, known of a use or disclosure of PHI by the Business Associate or any of its employees, agents, contractors or subcontractors in violation of the requirements of this BAA, the Privacy Rule, ARR Act or HITECH Act.
- (f) implement and use appropriate policies and procedures for the identification and notification of Breach.
- (g) make available PHI in a Designated Record Set to the individual or the individual's designee as necessary to satisfy Covered Entity's obligation under 45 C.F.R. § 164.524. Business Associate will, at the request of the Individual or Covered Entity, provide a copy of PHI directly to the Individual or the Individual's designee.
- (h) make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under C.F.R. § 164.526.
- (i) maintain and make available the information required to provide an accounting of disclosures to the Individual as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528.
- (j) comply with the requirements of Subpart E of 45 C.F.R. Part 164 to the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164.
- (k) make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner reasonably designated by the Secretary, for purposes of having the Secretary determine Covered Entity's compliance with the Privacy Rule. Business Associate shall have an annual HIPAA compliance audit conducted by an independent third party auditor and, upon request by Covered Entity, provide the results of such annual audit to Covered Entity. In the event of a Breach occurs, Business Associate will conduct an additional audit which shall be shared with Covered Entity at Covered Entity's request as confirmation the issue causing the Breach was remediated.

4. Obligations of Covered Entity.

(a) To Inform of Privacy Practices and Restrictions:

- (1) Covered Entity shall notify Business Associate in writing of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (2) Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate in writing of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclose of PHI.

- (b) Representations by Covered Entity. Covered Entity represents that it has the right and authority to disclose PHI to Business Associate to enable Business Associate to perform its obligations and provide services to Covered Entity. Except as otherwise permitted in this BAA, Covered Entity shall not request that or permit Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity. Covered Entity will neither request nor require Business Associate to deliver any PHI to Covered Entity, plan sponsor, or a third party in violation of this BAA.

5. Term and Termination.

- (a) Term. This BAA shall take effect on the Effective Date and shall terminate when the Agreement terminates.
- (b) Termination for Cause. Both Parties agree that this BAA may be terminated by either Party upon breach of a material term of the BAA. The non-breaching Party shall:
- (1) provide the breaching Party the opportunity to cure the breach or end the violation within fifteen (15) days; and
 - (2) if cure of such breach is not possible or if the breaching Party does not cure the breach or end the violation within fifteen (15) days, terminate the BAA.
- (c) Effect of Termination. Upon termination of this BAA for any reason, Business Associate shall:
- (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) Destroy the remaining PHI that Business Associate still maintains in any form;
 - (3) Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this section, for as long as Business Associate retains the PHI;
 - (4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at section 2(c) and 2(d) which applied prior to termination; and
 - (5) Destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- (d) Survival. The obligations of Business Associate under this section 5 shall survive the termination of this BAA.

6. Miscellaneous.

- (a) Regulatory References. Any reference in this BAA to a section of the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.
- (d) No Third-Party Beneficiaries. Nothing expressed or implied in this BAA is intended to confer, nor shall anything in the BAA be deemed to confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- (e) Governing Law. This BAA shall be governed by and construed in accordance with the laws of the State of New York.



HEALTHIESTYOU VIRTUAL CARE SERVICES EXHIBIT

This HealthiestYou Virtual Care Services Exhibit (the "Exhibit") is entered into on January 1, 2022 ("Effective Date"), by and between Teladoc Health, Inc. ("Teladoc Health") and CITY OF PANAMA BEACH ("Employer"), pursuant to the terms of the Teladoc Health Services Agreement entered into by the Parties, dated January 1, 2022 ("Agreement"), the terms and conditions of which are incorporated by reference into this Exhibit. Teladoc Health and Employer shall be referred to herein as the "Parties" and each individually as a "Party".

I. Introduction

- A. Teladoc Health provides a suite of telehealth services, as more fully described below (collectively, the "HealthiestYou Virtual Care Services"), and has entered into a contract with one or more professional associations that employ and/or contract with physicians (collectively, the "Provider"), and for which Teladoc Health provides various operational and administrative services to the Provider. The physicians who are employed by, or under a contractual arrangement with, the Provider form a network that is designed to facilitate medical consultations provided by a physician who provides patient care via electronic exchange ("Consultation(s)") to individuals and groups desiring to purchase such Consultations. The arrangement between Teladoc Health and the Provider permits Teladoc Health to offer a program to its customers that consists of: (a) a network of providers who provide medical consultations via electronic exchange; and (b) support for the operation and administration of that network, as further described herein.
- B. Employer desires to purchase the HealthiestYou Virtual Care Services for use by certain of its employees ("Employees") and their eligible dependents ("Eligible Dependents") as an additional benefit in connection with Employer's employee benefits program. "Eligible Dependent" means a "dependent," as defined under the Internal Revenue Code, I.R.C. § 152, or as may be mutually agreed between the Parties. Employees and Eligible Dependents are collectively and each referred to as "Member(s)". A Member may opt-in to participate in the Primary360 Services as described below, and upon such participation the Member shall thereafter be defined as a "Participant."

II. Term and Termination

- A. Teladoc Health will provide the HealthiestYou Virtual Care Services to Employer commencing on January 1, 2022 ("Start Date"). This Exhibit commences on the Effective Date and will continue in force for an initial term that will end on the third anniversary of the Start Date ("Initial Term"), unless terminated earlier pursuant to *Section II(B)* below. Unless otherwise agreed by the Parties, at the expiration of the Initial Term, the Exhibit will be extended automatically on a year-to-year basis, unless either Party has given written notice to the other at least 60 days prior to the scheduled expiration of the Exhibit of its election not to extend the Exhibit. Any extensions of this Exhibit past the Initial Term are referred to as "Renewal Term". The Initial Term and any Renewal Terms of this Exhibit are collectively referred to as the "Term."
- B. In addition to the termination provisions outlined in *Section 2* of the Agreement, either Party may terminate this Exhibit for convenience on each anniversary of the Start Date by providing 60 days' advance written notice to the other Party.

III. HealthiestYou Virtual Care Services

- A. During the Term, Teladoc Health will provide the HealthiestYou Virtual Care Services described in this Exhibit, which consist of HealthiestYou Virtual Care Services to Members and HealthiestYou Virtual Care Services to Employer. As used in this Exhibit, the following terms shall have the following meanings:

"Consultation" means a unit of the HealthiestYou Virtual Care Services for a Member (for example, an instance of General Medical Consultation).

"General Medical Physician" means a doctor who is licensed to practice medicine and/or osteopathic medicine and is contracted with the Provider to provide General Medical Consultations.

"PEPM" means "Per Employee Per Month," which the Parties recognize as a common term in the health care industry. For purposes of this Exhibit, PEPM is defined as the applicable rate paid by Employer to Teladoc Health for each Employee who is eligible to utilize the HealthiestYou Virtual Care Services each month.

- B. **HealthiestYou Virtual Care Services for Members.** Teladoc Health will provide the following HealthiestYou Virtual Care Services to Members:
1. **General Medical Services to Members.** The General Medical Services include access to the General Medical Physicians, who are selected and engaged by the Provider to provide patient and Physician interaction, whereby the General Medical Physician may diagnose the patient's ailment, recommends therapy, and if necessary and appropriate, writes a non-DEA controlled prescription. The General Medical Services are designed to provide General Medical Physician access in the states where the Members live and travel. Each General Medical Physician shall be licensed to practice medicine and/or osteopathic



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medicine, be technologically proficient, trained in General Medical Consultations, and covered by medical malpractice insurance having limits equal to or greater than the minimum required limits in the state where such General Medical Physician practices.

- i. It is understood by the Parties that the General Medical Physicians will not prescribe any Drug Enforcement Agency ("DEA") controlled substances or narcotics and operate subject to applicable state regulations. Teladoc Health is not required to guarantee that the Member will receive a prescription, and only the Members who have completed the necessary steps to create the legally mandated doctor/patient relationship (as described herein) will receive General Medical Consultations. Those steps include: (i) completing a comprehensive electronic health record ("EHR"), either online or by telephone with a designated Teladoc Health representative (It being understood that, in the event the Member fails to complete the EHR, the Member will not have access to the General Medical Physicians, and Teladoc Health will so advise the Member when he/she accesses the General Medical Services); (ii) agreeing to Teladoc Health's Terms and Conditions confirming an understanding that the General Medical Physician is not obligated to accept the Member as a patient, and that the Member's participation in the General Medical Services may be cancelled at any time without recourse by the Member for reasons including but not limited to: abusive language, behavior, or conduct that is unlawful or illegal when participating in the General Medical Services; and (iii) the Member also understands and acknowledges that the General Medical Services provide General Medical Consultations only; if at any time a General Medical Physician or other provider determines that the Member's condition is a life-threatening emergency, he or she shall direct the Member to the nearest emergency facility.
 - ii. The General Medical Services consist of the following:
 - i. Included Services:
 - **General Medical Services:** Toll-free access to telephone or web-based video General Medical Consultations provided by a General Medical Physician whereby the General Medical Physicians diagnose common or routine conditions, recommend treatment or direct the Member to contact his/her primary care physician, and if necessary and where appropriate, write a non-DEA controlled prescription. General Medical Services access is available on-demand 24 hours, 365 days per year. Members shall have the option to schedule General Medical Consultations currently between the hours of 7AM to 9PM local time, seven days a week, subject to availability.
 - ii. Optional Services:
 - **Caregiving:** Allows Members to designate a third-party care recipient to receive a General Medical Consultation. Applicable General Medical Physician Consult Fees will apply. Employer may opt-out of Caregiving upon notice to Teladoc Health.
2. Teladoc Health shall maintain up to date eligibility information as provided by Employer pursuant to this Exhibit and will confirm the Member's eligibility prior to the delivery of the HealthiestYou Virtual Care Services to the Member. Teladoc Health has the right to limit or restrict the HealthiestYou Virtual Care Services in any state or jurisdiction where the provision of such services is or would be contrary to applicable rule, law or regulation and shall provide Employer written notice of such limitation or restriction within 30 days.
 3. With respect to the delivery of the HealthiestYou Virtual Care Services and activities supporting the delivery of HealthiestYou Virtual Care Services, neither Teladoc Health nor the Provider is a business associate of Employer and is therefore providing such HealthiestYou Virtual Care Services as a covered entity. As such, Teladoc Health maintains compliance with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), including but not limited to those changes adopted and incorporated by Section XIII of the American Recovery and Reinvestment Act of 2009 ("ARRA") known as Health Information Technology for Economic and Clinical Health ("HITECH").

C. HealthiestYou Virtual Care Services for Employer. Teladoc Health will provide the following services to Employer.

1. Account Support. Teladoc Health will be available to Employer to assist with the following:
 - Implementing the HealthiestYou Virtual Care Services
 - Launching the Member Engagement Package(s) described below, and monitoring its performance
 - Providing assistance to Employer in answering questions and resolving issues
 - Reviewing and explaining reporting
 - Providing initial training for Employer's designated employees (e.g., HR personnel) at the time of implementation. Notwithstanding the foregoing, Employer acknowledges and agrees that if Employer requests Teladoc Health to attend any events such as, but not limited to, enrollment meetings, health fairs, etc., Teladoc Health will charge additional fees for attendance as mutually agreed by the Parties.



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2. **Reporting.** Teladoc Health will provide Employer with the following reporting:
 - **Monthly standard utilization and savings reporting package***
 - If Employer requests Teladoc Health to prepare any non-standard reports that require information technology programming, Teladoc Health will charge the Employer an additional fee of two hundred dollars (\$200) per hour, times that number of hours necessary for such non-standard reporting program development.
*The information included in any such report to Employer will be de-identified (i.e., aggregated). In accordance with applicable law, Teladoc Health will not share any personal identifiable information of any Member with Employer in such reports.
3. **Communications & Member Engagement.** Fees include the following Member Engagement Package(s):
 - i. **Member Engagement Package:**
 - a. Teladoc Health will provide a template description of the HealthiestYou Virtual Care Services for use by the Employer to communicate the HealthiestYou Virtual Care Services to Employees. Any changes or modifications to such template description, and any and all materials used by the Employer or its agents to describe the HealthiestYou Virtual Care Services, must be approved in advance in writing by Teladoc Health prior to distribution. Such communications include, but are not limited to, those that are in written form, on websites, on the radio, on television, sent by email, sent by fax, etc. In addition, the Employer hereby authorizes Teladoc Health to communicate directly with the Members for the purpose of: (i) promoting the HealthiestYou Virtual Care Services and ancillary services or products related to the provision of virtual care; and (ii) treatment, payment, and health care operations of Teladoc Health.
 - b. Teladoc Health will perform the following Member Engagement activities (including postage and processing costs, if applicable):
 - **Eligibility Awareness:** Create and deploy Welcome and Onboarding communications on an ongoing basis.
 - **Benefit Education:** Ongoing benefit education communications (e.g. seasonal and reminder communications each year delivered by direct mail, email, and/or digital channels).
 - **Email Curriculum:** Ongoing email curriculum targeting registered and non-registered Members to drive engagement in the HealthiestYou Virtual Care Services.
 - **Access to Engagement Center:** Access to a secure self-service Employer portal providing access to a repository of customizable communication pieces to support onboarding and increase awareness & utilization.

Employer Responsibilities: Provide the Teladoc Health approved description of the HealthiestYou Virtual Care Services to Employees. Cooperate with Teladoc Health in implementing the HealthiestYou Virtual Care Services. Provide consistent contextual placement of content and messaging related to the HealthiestYou Virtual Care Services across all appropriate Employee touch-points (e.g. Employee Benefits Portal, Direct Outreach, Open Enrollment, Newsletters, etc...) Provide Teladoc Health with timely and accurate contact information for Employees, including: Name (first, last, middle initial), mailing address, and email address.

IV. Eligibility and Fees

- A. **Eligibility File.** By the 1st day of each month, Employer, or its third party administrator, shall deliver to Teladoc Health an accurate file identifying the number of Employees eligible to utilize the HealthiestYou Virtual Care Services in that month (the "Eligibility File") and their applicable contact information (including name, street address, and email address), in a format approved by Teladoc Health. If Employer, or its third party administrator, fails to deliver the Eligibility File by the 1st day of the month, then the last valid Eligibility File delivered to Teladoc Health will be deemed to be the Eligibility File for that month. Alternatively and as applicable, Employer may either provide Eligibility File information via Teladoc Health's Client Site portal, or via a Real Time Eligibility (RTE) process, as mutually agreed by the Parties. If Employer subsequently requests a modification to their method of delivering Eligibility File information, Teladoc Health may charge the Employer an additional fee of two hundred dollars (\$200) per hour, times that number of hours necessary to effect such modification.
- B. **Fees.**
 1. Employer agrees to pay Teladoc Health the following fees (collectively, the "Fee"):
 - i. a recurring PEPM Fee of US \$7.00 for each Employee eligible to utilize the General Medical Services each month.
 - ii. The PEPM Fee includes an assumption of up to 50% annual utilization of the General Medical Services (the "Utilization Target"). If actual annualized utilization exceeds the current year's Utilization Target, the PEPM Fee shall increase for the next Renewal Term by \$0.50 for each 10% increment of utilization in excess of the Utilization Target. In addition, a new Utilization Target will be set for the next Renewal Term by rounding up the actual annualized utilization to the nearest 10%. For example, where the Utilization Target for the current year is 50%, if



actual annualized utilization in that year is 56%, the Utilization Target for the following year will be increased to 60% and the PEPM Fee for the following year will increase by \$0.50. Such increase in the PEPM Fee will not exceed \$2.00 in any Renewal Term.

2. The Fee is based on approximately 350 Employees in the Eligibility File each month.
3. With 60 days' advance written notice to Employer, the PEPM Fee set forth above may be increased on each anniversary of the Start Date by five (5%) percent rounded to the nearest penny if the Teladoc Health book of business pricing is being increased as a result of overall book of business results, even if actual utilization does not exceed the Utilization Target.

C. Payment of Fees.

1. Teladoc Health will submit an invoice to Employer on the 4th day of each month based on the Eligibility File delivered by Employer to Teladoc Health for that month ("Invoice"), and Employer agrees to pay such Invoice by the last day of that month. Notwithstanding the foregoing, should Employer determine an error was made in the Eligibility File, Employer may request a credit, not to exceed 5% of the monthly PEPM Fees paid by Employer to Teladoc Health for the corresponding month, as soon as practicable and in no event later than ninety (90) days after the end of the month to which the PEPM Fee pertains.
2. If applicable, Teladoc Health will submit an Invoice to Employer for Physician Consult Fees on the 1st day of each month with respect to Consultations that occurred within the prior thirty (30) day period, and Employer agrees to pay such Invoice by the last day of that month; *provided, however*, that if claims are sent via EDI 837 file transfer, Teladoc Health will submit an 837 transaction file for any Physician Consult Fee to the applicable healthcare payer.
3. Unless Employer directs otherwise in writing, Teladoc Health will deliver all Invoices for the HealthiestYou Virtual Care Services via email to the following email address: Carla.Jagers@pcbfl.gov.
4. If any Fees due to Teladoc Health become more than sixty (60) days delinquent, Teladoc Health may suspend provision of the HealthiestYou Virtual Care Services until such amounts have been paid.

IN WITNESS WHEREOF, the Parties have caused this Exhibit to be executed by their duly authorized representatives as of the Effective Date.

Teladoc Health, Inc.		CITY OF PANAMA BEACH	
Samantha Secaur	Director, Contracts	<i>Henry J White</i>	<i>ADMINISTRATIVE</i>
Print Name	Title	Print Name	Title <i>MANAGER</i>
DocuSigned by: <i>Samantha Secaur</i>	11/22/2021	<i>Henry J White</i>	<i>11.21.21</i>
Signature 3E0A1FB476	Date	Signature	Date

ADDITIONAL SERVICES EXHIBIT

This Additional Services Exhibit (the "Exhibit") is entered into on January 1, 2022 ("Exhibit Effective Date"), by and between Teladoc Health, Inc. ("Teladoc Health") and CITY OF PANAMA BEACH ("Employer"), pursuant to the terms of the Teladoc Health Services Agreement entered into by the Parties, dated January 1, 2022, which includes a HealthiestYou Virtual Care Services Exhibit (collectively, the "Agreement"), the terms and conditions of which are incorporated by reference into this Exhibit. Teladoc Health and Employer shall be referred to herein as the "Parties" and each individually as a "Party". The Agreement shall be amended to include the additional provisions set forth below, and any capitalized terms not otherwise defined herein shall have the meanings given to them in the Agreement.

I. Introduction

- A. Teladoc Health provides a suite of telehealth services, which includes mental health, dermatology and nutrition services as more fully described below (collectively, the "Additional Services").
- B. Employer desires to purchase the Additional Services for use by certain of its employees ("Employees") and their eligible dependents ("Eligible Dependents") as an additional benefit in connection with Employer's employee benefits program. "Eligible Dependent" means a "dependent," as defined under the Internal Revenue Code, I.R.C. § 152, or as may be mutually agreed between the Parties. Employees and Eligible Dependents are collectively and each referred to as "Member(s)".

II. Term and Termination

- A. Teladoc Health will provide the Additional Services to Employer commencing on the Exhibit Effective Date. This Exhibit commences on the Exhibit Effective Date and will continue in force until the expiration of the Teladoc Services Exhibit to the Agreement ("Term").

III. MH Services

- A. Teladoc Health provides a suite of telehealth services, which includes mental health services as more fully described below (the "MH Services"), and has entered into a contract with one or more professional associations (collectively, the "MH Provider") that employ and/or contract with various mental health practitioners, including psychiatrists, psychologists, clinical social workers, licensed professional counselors, mental health counselors, certified drug and alcohol abuse counselors, and marital and family therapists (each, a "MH Practitioner"), and for which Teladoc Health provides various operational and administrative services to the MH Provider. The MH Practitioners who are employed by, or under a contractual arrangement with, the MH Provider form a network that is designed to facilitate the provision of mental health consultations via electronic exchange ("MH Consultation(s)"). The arrangement between Teladoc Health and the MH Provider permits Teladoc Health to offer the MH Services to its customers that consist of: (a) a network of MH Practitioners who provide MH Consultations; and (b) support for the operation and administration of that network, as further described herein. During the Term, Teladoc Health will provide the MH Services described in this Exhibit.
- B. **MH Services for Members.** Teladoc Health will provide the following MH Services to Members:
 1. **The MH Practitioners:**
 - i. **General:** The MH Services include access to the MH Practitioners who provide MH Consultations to Members by telephone or video conference in the MH Services' service area. The MH Services offer Members ongoing access to mental diagnostic services, talk therapy, and prescription medication management, when appropriate. The MH Practitioners are selected and engaged by the MH Provider to provide mental health clinical intake assessments, ongoing talk therapy, and medication management in accordance with mental health protocols and guidelines that are tailored to the telehealth industry.
 - ii. **Types and Selection:** The MH Services are designed to allow the Member to select the type of MH Practitioner that will provide the MH Consultation. The following types of MH Practitioners are available under the MH Services:
 - Psychiatrists (MD/DO);
 - Psychologists (PhD);
 - Counselors (Masters);
 - Clinical Social Workers (Masters);
 - Therapists (Marriage and Family) (Masters); and
 - Substance Abuse Counselors.
 - iii. **Requirements:** Each MH Practitioner is required to satisfy all applicable state licensing laws in his/her field of practice. Each MH Practitioner shall also be board certified in his/her field of practice as applicable, technologically proficient, trained in providing mental health counseling services, and covered by medical malpractice insurance or other applicable liability insurance having limits equal to or greater than the minimum required amounts in the state where the MH Practitioner practices.
 2. **The MH Consultations:**
 - i. **Prerequisites:** In order for a Member to receive a MH Consultation, the Member must complete a comprehensive medical history and an assessment that is specific to the MH Services. This medical history may be completed

online or via the mobile app. If the Member fails to provide their comprehensive medical history, the Member will not have access to the MH Practitioners, and Teladoc Health will so advise the Member when he/she attempts to schedule a MH Consultation. In order for a Member to receive a MH Consultation, the Member must also agree to Teladoc Health's Informed Patient Consent and Release Form confirming an understanding that the MH Practitioner is not obligated to accept the Member as a patient, and that the Member's participation in the MH Services may be cancelled at any time without recourse by the Member.

- ii. **Scheduling:** Teladoc Health will provide the Member with information identifying each MH Practitioner's licensure, specialties, gender and language, and will provide sufficient biographical information on each MH Practitioner to allow the Member to select the MH Practitioner from whom the Member wishes to receive treatment. The Member may schedule MH Consultations through Teladoc Health's website/mobile platform. When scheduling a subsequent MH Consultation, the Member may choose to receive the MH Consultation from a different MH Practitioner. Alternatively, a Member may choose the same MH Practitioner for any subsequent MH Consultation. There are no limitations on the number of MH Consultations a Member may receive.
 - iii. **Individual Sessions:** The Initial MH Consultation is expected to be 45 minutes in length on average, followed by requested subsequent visits. For visits conducted with a therapist other than a psychiatrist, subsequent requested visits are expected to be 45 minutes in length on average. Visits conducted by a Psychiatrist (subsequent to an initial visit with a Psychiatrist) will be shorter in length, for the purpose of a medication check-in (if applicable). Prior to each MH Consultation, the Member will be required to complete a brief intake assessment. A MH Practitioner may determine that the treatment of a Member's particular mental health issue would be managed more appropriately through in-person therapy. In such a case, the MH Practitioner will encourage the Member to make an appointment for an in-person visit. Employer acknowledges that the terms of the MH Services do not apply to any in-person visits between a Member and a MH Practitioner.
 - iv. **Clarifications:** Unlike General Medical Consultations, the MH Consultations:
 - are not accessible 24 hours per day, 365 days per year. Rather, a Member must schedule a MH Consultation with a MH Practitioner, and the MH Consultation with a particular MH Practitioner must occur within a time period for which the MH Practitioner is scheduled to support the MH Services;
 - are not intended to be provided in emergency situations. Rather, Teladoc Health will follow an internal emergency protocol that includes calling 911 in emergency situations; and
 - are currently not available to Members who are minors.
3. **Prescription Drug Formulary:** The MH Services include a customized formulary of commonly-prescribed mental health medications (e.g., antidepressants, anti-anxiety, etc...). Medications may be prescribed only by MH Practitioners who are psychiatrists. Such MH Practitioners will generally issue a 30-day prescription, but may, in their discretion, issue a 90-day prescription. As is the case under the General Medical Services, MH Practitioners will not prescribe DEA controlled substances or narcotics under the MH Services. In the event a MH Practitioner elects to prescribe a DEA controlled substance or narcotic, or any other medication that is outside of the MH Services' formulary, the MH Practitioner shall refer the Member for an in-person visit, and the terms of the MH Services will not apply to such visit or to the prescription.

IV. Dermatology Services

- A. Teladoc Health provides a suite of telehealth services, which includes dermatology services as more fully described below (the "Dermatology Services"), and has entered into a contract with one or more professional associations (collectively, the "Dermatology Provider") that employ and/or contract with various practitioners, including licensed dermatologists (each, a "Dermatology Practitioner"), and for which Teladoc Health provides various operational and administrative services to the Dermatology Provider. The Dermatology Practitioners who are employed by, or under a contractual arrangement with, the Dermatology Provider form a network that is designed to facilitate the provision of dermatology consultations via Teladoc Health's web-based message center using store-and-forward technology, telephone, or web-based video ("Dermatology Consultation(s)"). The arrangement between Teladoc Health and the Dermatology Provider permits Teladoc Health to offer the Dermatology Services to its customers that consist of: (a) a network of Dermatology Practitioners who provide Dermatology Consultations; and (b) support for the operation and administration of that network, as further described herein. During the Term, Teladoc Health will provide the Dermatology Services described in this Exhibit.
- B. **Dermatology Services for Members.** Teladoc Health will provide the following Dermatology Services to Members:
 1. **The Dermatology Practitioners:**
 - i. **General:** The Dermatology Services include access to the Dermatologist Practitioners who provide Dermatology Consultations to Members through an online message center using store-and-forward technology in the Dermatology Services' service area. The Dermatology Services offer Members access to upload photographs of their dermatological conditions to licensed dermatologists, who provide treatment and prescription medication, when appropriate. The Dermatologist Practitioners are selected and engaged by the Dermatology Provider to provide dermatological

assessments in accordance with standard dermatology protocols and guidelines that are tailored to the telehealth industry

- ii. **Requirements:** Each Dermatologist Practitioner is required to satisfy all applicable state licensing laws in his/her field of practice. Each Dermatologist shall also be technologically proficient, trained in providing dermatology counseling services, and covered by medical malpractice insurance or other applicable liability insurance having limits equal to or greater than the minimum required amounts in the state where the Dermatologist Practitioner practices.

2. The Dermatology Consultations:

- i. **Prerequisites:** In order for a Member to receive a Dermatology Consultation, the Member must complete Teladoc Health's medical history disclosure form (if they have not previously completed it), as well as a comprehensive Dermatology Intake Form prior to a Dermatology Consultation. The intake will consist of a Dermatology History section and an intake form for the condition for which the Member is seeking treatment describing the area of concern. This medical history may either be completed online or by telephone with a designated Dermatology Services representative. Additionally, the Member must upload at least three images of their condition prior to communicating with a Dermatologist Practitioner. If the Member fails to complete the dermatology intake form or upload the required number of images, the Member will not have access to the Dermatologist Practitioners, and Teladoc Health will so advise the Member when he/she attempts to schedule a Dermatology Consultation. In order for a Member to receive a Dermatology Consultation, the Member must also agree to Teladoc Health's Informed Patient Consent and Release Form and Teladoc Health's Terms and Conditions confirming an understanding that the Dermatologist Practitioner is not obligated to accept the Member as a patient, and that the Member's participation in the Dermatology Services may be cancelled at any time without recourse by the Member. Members will be allowed to request more than one (1) Dermatology Consultation at any given time.
- ii. **Initial Dermatology Consultation:** The Member will be able upload a minimum of three (3) images and a maximum of five (5) images for the Dermatologist Practitioner to review. A Dermatologist Practitioner will respond to the Member's image submission via the Teladoc Health Message Center within two (2) business days of such submission. The Dermatologist Practitioner will either (a) determine that no additional information is required and provide a diagnosis and prescription, if appropriate; or (b) request additional information from the Member before making a diagnosis.
- iii. **Member Follow-up:** The Member will have seven (7) days after diagnosis to respond to the Dermatologist Practitioner with follow-up questions via the Teladoc Health Message Center. The Member will be able to respond only once and may upload up to five (5) additional images in the response. The Member will not be charged for a one-time follow-up Dermatology Consultation question.
- iv. **Subsequent Dermatology Consultations:** For subsequent Dermatology Consultations, the Member will have the option of selecting the same Dermatologist Practitioner with whom they had a prior Dermatology Consultation or a new Dermatologist Practitioner licensed in their state.
- v. **Clarifications:** Unlike General Medical Consultations, the Dermatology Consultations:
 - are not accessible 24 hours per day, 365 days per year. Rather, a Member must submit the required information for a Dermatology Consultation and will receive a response from a Dermatology Practitioner within two (2) business days; and
 - are not intended to be provided in emergency situations. Rather, Teladoc Health will follow an internal emergency protocol that includes calling 911 in emergency situations.

V. Nutrition Services

A. During the Term, Teladoc Health will provide the NTRN Services described in this Addendum.

B. **NTRN Services for Members.** Teladoc Health will provide the following NTRN Services to Members:

1. The NTRN Program Coaches:

- i. **General:** The NTRN Services include access to NTRN Program Coaches who provide NTRN Consultations to Members via electronic exchange. The NTRN Services offer Members access to the NTRN Program Coaches who assess and provide advice regarding the nutrition care of the Member. Each NTRN Consultation provides a personalized nutrition guide to the Member, along with various nutritional guidance support tools. The NTRN Services utilize current science-based nutrition guidelines while also incorporating assessments in accordance with standard protocols and guidelines. The NTRN Services are currently also available to Members who are minors (who are under the age of 18) with adult supervision.
- ii. **Requirements:** Each NTRN Program Coach is a registered dietitian, and is required to have:
 - earned a bachelor's degree;
 - received a verification statement from an Accreditation Council for Education in Nutrition and Dietetics ("ACEND")-accredited program verifying that program requirements have been met;
 - completed an ACEND-accredited supervised practice dietetic internship program;

- passed the Commission on Dietetic Registration's dietetic registration exam;
- gain licensure in their relevant State of practice, if applicable; and
- maintain required continuing education.
- The NTRN Program Coaches may have supplemental expert certifications in the areas of obesity and weight management, renal nutrition, pediatric nutrition, pediatric critical care nutrition, sports dietetics, gerontological nutrition, oncology nutrition, and/or be a Certified Diabetes Educator.

2. The NTRN Consultations:

- i. **Prerequisites:** In order for a Member to receive NTRN Consultations, the Member is required to complete a medical history and nutrition questionnaire to provide clinical data to the NTRN Program Coach to review and assess prior to the NTRN Consultation.
- ii. **Scheduling:** Teladoc Health will provide the Member with information identifying each NTRN Program Coach's licensure, specialties, gender and language, and will provide sufficient biographical information on each NTRN Program Coach to allow the Member to select the NTRN Program Coach from whom the Member wishes to receive coaching. The Member may schedule NTRN Consultations through Teladoc Health's website/mobile platform. The Initial NTRN Consultation provides a complete personalized nutrition plan. Should the Member choose to initiate any follow-up NTRN Consultation(s), they will be scheduled accordingly. Members receive confirmation emails showing the date and time of scheduled NTRN Consultations.
- iii. **Clarifications:** Unlike the General Medical Consultations, the NTRN Consultations:
 - are not accessible 24 hours per day, 365 days per year. Rather, a Member must schedule a NTRN Consultation with a NTRN Program Coach, and the NTRN Consultation with a particular NTRN Program Coach must occur within a time period for which the NTRN Program Coach is scheduled to support the NTRN Services; and
 - are not intended to be provided in emergency situations. Rather, the NTRN Services will follow an internal emergency protocol that includes calling 911 in emergency situations.

VI. Additional Services Fees

A. MH Services Fees.

1. Employer agrees to pay Teladoc Health the following fees in connection with the MH Services:
 - i. There will be no additional PEPM Fees charged to the Employer for the MH Services.
 - ii. The following MH Consult Fee(s), which shall be payable by the Member at the time of the MH Consultation by credit card or debit card. Employer shall pay any portion of the MH Consult Fee(s) which was not charged to the Member as a copay at the time of the MH Consultation. Employer shall provide Teladoc Health with thirty (30) days' advance notice of requested modifications to Member co-pay structure(s):
 - \$220.00 per initial MH Consultation with a psychiatrist;
 - \$100.00 per each subsequent MH Consultation with a psychiatrist; and
 - \$90.00 per MH Consultation with a therapist other than a psychiatrist.
2. The MH Consult Fees may be changed or modified by Teladoc Health upon thirty (30) days' prior written or e-mail notice of such change or modification by Teladoc Health to the Employer. However, no increase in the MH Consult Fees shall occur prior to the first anniversary of the Exhibit Effective Date.

B. Dermatology Services Fees.

1. Employer agrees to pay Teladoc Health the following fees in connection with the Dermatology Services:
 - i. There will be no additional PEPM Fees charged to the Employer for the Dermatology Services.
 - ii. The following Dermatology Consult Fee(s), which shall be payable by the Member at the time of the Dermatology Consultation by credit card or debit card. Employer shall pay any portion of the Dermatology Consult Fee(s) which was not charged to the Member as a copay at the time of the Dermatology Consultation. Employer shall provide Teladoc Health with thirty (30) days' advance notice of requested modifications to Member co-pay structure(s):
 - \$85.00 per Dermatology Consultation; and
 - \$0.00 for a one-time follow-up Dermatology Consultation question.
2. The Dermatology Consult Fees may be changed or modified by Teladoc Health upon thirty (30) days' prior written or e-mail notice of such change or modification by Teladoc Health to the Employer. However, no increase in the Dermatology Consult Fees shall occur prior to the first anniversary of the Exhibit Effective Date.

C. Nutrition Fees.

1. Employer agrees to pay Teladoc Health the following fees in connection with the NTRN Services:
 - i. There will be no additional PEPM Fees charged to the Employer for the NTRN Services.



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- ii. The following NTRN Consult Fee(s), which shall be payable by the Member at the time of the NTRN Consultation by credit card or debit card. Employer shall pay any portion of the NTRN Consult Fee(s) which was not charged to the Member as a copay at the time of the NTRN Consultation. Employer shall provide Teladoc Health with thirty (30) days' advance notice of requested modifications to Member co-pay structure(s):
 - \$59.00 per NTRN Consultation
2. The NTRN Consult Fees may be changed or modified by Teladoc Health upon thirty (30) days' prior written or e-mail notice of such change or modification by Teladoc Health to the Employer. However, no increase in the NTRN Consult Fees shall occur prior to the first anniversary of the Addendum Effective Date.

VI. Other Terms & Conditions

The terms and conditions set forth in the Agreement shall apply to the Additional Services in the same manner that such sections apply to the HealthiestYou Virtual Care Services.