

**AN ORDINANCE TO AUTHORIZE AND APPROVE A CONTRACT
BETWEEN THE CITY OF WILMINGTON AND TELADOC HEALTH, INC.
FOR TELEHEALTH SERVICES**

#4853

Sponsor:

**Council
Member
Freel**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City desires to enter into an agreement (the “Agreement”) with Teladoc Health, Inc. (“Teladoc”) to purchase telehealth services for City employees and their dependents, a copy of which, in substantial form, is attached hereto and incorporated by reference herein as Exhibit “A”; and

WHEREAS, the term of the Agreement is for a period of three (3) years from October 1, 2020 through September 30, 2023, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year, with the possibility of three (3) extensions of one (1) year thereafter at the same estimated maximum annual price; and

WHEREAS, it is the recommendation of the Department of Human Resources that the City enter into the Agreement with Teladoc for a period of three (3) years from October 1, 2020 through September 30, 2023, with the possibility of three (3) extensions of one (1) year thereafter.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. The Agreement between the City of Wilmington and Teladoc Health, Inc., a copy of which Agreement, in substantial form, is attached hereto as Exhibit “A,” for the period of three (3) years from October 1, 2020 through September 30, 2023, with the possibility

of three (3) extensions of one (1) year thereafter, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year, is hereby approved, and the Mayor or his designee is hereby authorized to execute as many copies of the Agreement, as well as all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... August 27, 2020
Second Reading..... August 27, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the execution of an agreement (the “Agreement”) with Teladoc Health, Inc. (“Teladoc”) to purchase telehealth services for City employees and their dependents. The Agreement is for a period of three (3) years from October 1, 2020 through September 30, 2023, with the possibility of three (3) extensions of one (1) year thereafter, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is a contract for the period of three (3) years from October 1, 2020 through September 30, 2023, at a total estimated maximum price of Ninety-Six Thousand Dollars (\$96,000.00), with the possibility of three (3) extensions of one (1) year thereafter, at an estimated maximum price of Thirty-Two Thousand Dollars (\$32,000,00) per year.

EXHIBIT A



TELADOC HEALTH SERVICES AGREEMENT

This **Teladoc Health Services Agreement** (“**Agreement**”) is entered into on **October 1, 2020** (“**Effective Date**”), by and between **Teladoc Health, Inc.** (“**Teladoc Health**”) and **City of Wilmington** (“**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, and (ii) a suite of expert medical information services offered under the Best Doctors® and Advance Medical® brands, 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 and will continue in force for an initial term that will end on the **third** anniversary of the Effective Date (“**Initial Term**”) unless extended under the provisions of Exhibit 2, attached hereto, unless terminated earlier pursuant to **Section II(B)** of Exhibit 2, attached hereto, 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 and its employees, directors, officers, agents, owners, successors and assigns shall maintain the confidentiality of any non-public Intellectual Property disclosed to the Employer by Teladoc Health; and (iii) 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 advance, Teladoc Health grants Employer a limited, non-exclusive, non-transferable license to use the Teladoc Health Marks during the term of this Agreement.

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.
- (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. If a deadline exists for the disclosure pursuant to a freedom of information/sunshine law, the Receiving Party may disclose the Confidential Information in accordance with the deadline regardless of any action taken by the Disclosing Party.
- (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.

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.

Notwithstanding the foregoing, Teladoc Health acknowledges that the Employer may meet its aforementioned obligations by self-insurance.

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 and naming the Employer as an additional insured with respect to the general liability coverage.

6.4 Employer acknowledges and agrees that except as may be explicitly set forth in this Agreement, Teladoc Health has made no representations, 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 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 defend, indemnify and hold harmless the other Party and its affiliates, and their directors, officers, employees, agents, representatives, successors and assigns, from and against any loss, cost, damage or expense, including reasonable attorneys' fees and court costs, arising out of any error, omission or malfeasance of such breaching Party.

7.2 Each Party'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 twice

the amount of Fees paid by Employer during the Term; 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 from the other Party including, without limitation, claims for loss of business, data, revenue, profits, or goodwill, even if the Parties have knowledge of the possibility of such damages and whether or not such damages are foreseeable.

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 written 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 agreeable to the Parties or via a virtual platform such as Microsoft Teams or Zoom. 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 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. This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. 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 Wilmington
Department of Human Resources
Attn: Charlotte B. Barnes
800 N. French St., 4th Flr. (HR)
Wilmington, DE 19801
Email: cbarnes@wilmingtonde.gov

11.6 Governing Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, 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 Wilmington, Delaware. Teladoc Health agrees to submit exclusively to the jurisdiction and venue of said courts.

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 Subcontractors. Teladoc Health may use qualified consultants, subconsultants, or subcontractors to perform the services required under this Agreement, to be provided upon request in a list showing services to be rendered.

11.10 Discrimination and Harassment. In the of this Agreement, the Parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

11.11 Records. Teladoc Health shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed reasonably necessary by the Employer to assure proper accounting for all project funds. Such records shall be made available remotely for audit purposes to the Employer or its authorized representatives upon request but no more than once per year.

11.12 Reports and Information. To the extent such records are not protected by any confidentiality agreements or privacy laws, Teladoc Health shall make available remotely to Employer such reports as the Employer may reasonably request directly pertaining to the work or services undertaken pursuant to this Agreement.

11.13 Business License. If applicable, Teladoc Health shall obtain and/or maintain an appropriate business license from the Employer’s Department of Finance.

11.14 Taxes. Teladoc Health shall withhold, if applicable, City of Wilmington city wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law.

11.15 Findings Confidential. All of the drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, illustrations, copies, maps, graphics, slides, and documents prepared, assembled, drafted or generated by Teladoc Health under this Agreement are confidential, and except as otherwise permitted under this Agreement, Teladoc Health agrees that



such documents shall not be made available to anyone, without the prior written approval of the Employer.

11.16 Successors and Assigns. This Agreement, and all the terms and provisions hereof, shall be binding upon and

shall inure to the benefit of the Employer and Teladoc Health, and their respective legal representatives, successors, and permitted assigns.

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 Wilmington	
Print Name	Title	Print Name	Title
		Charlotte B. Barnes	Director of Human Resources
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 **October 1, 2020** (“**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:

Terms

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 related to administering the Expert Medical Services and/or the activities related to administering the parts of the Teladoc Services which are performed on behalf of Covered Entity, which include engagement activities and eligibility verification. The delivery of, and activities related to the delivery of, Cross-Coverage Consultations 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.
- (h) “**Security Incident**” has the meaning set out in the Security Rule. Generally, a “Security Incident” means any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or systems operations in an electronic information system.
- (i) “**Unsecured PHI**” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of either the encryption method or the destruction method, as defined in Department of Health and Human Services (“HHS”) guidance published on April 27, 2009 (74 FR 19006) and modified by guidance published on August 24, 2009 (74 FR 42740). Unsecured PHI can include information in any form or medium, including electronic, paper, or oral.

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 as soon as practicable, but in no event more than five (5) 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 that 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 Delaware.

EXHIBIT 2-TELADOC SERVICES EXHIBIT

This **Teladoc Services Exhibit** (the “**Exhibit**”) is entered into on **October 1, 2020** (“**Effective Date**”), by and between **Teladoc Health, Inc.** (“**Teladoc Health**”) and **City of Wilmington** (“**Employer**”), pursuant to the terms of the Teladoc Health Services Agreement entered into by the Parties, dated **October 1, 2020** (“**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 “**Teladoc 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 telephone or web-based video, for another physician when the other physician is not available (“**Cross-Coverage Consultation(s)**”) to individuals and groups desiring to purchase such Cross-Coverage 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 telephone or web-based video; and (b) support for the operation and administration of that network, as further described herein.
- B. Employer desires to purchase the Teladoc Services for use by certain of its employees, retirees under the age of 65 (“**Employees**”) and their spouses and 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. 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 Effective 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 Agreement will be extended automatically on a year-to-year basis for a maximum of three (3) additional years, unless either Party has given written notice to the other at least 60 days prior to the scheduled expiration of the Agreement of its election not to extend the Agreement. Any extensions of this Agreement past the Initial Term are referred to as “**Renewal Term**”. The Initial Term and any Renewal Terms of this Agreement 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 the Agreement for convenience on each anniversary of the Effective Date by providing 60 days’ advance written notice to the other Party.

III. Teladoc Services

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

“**Consultation**” means a unit of the Teladoc Services for a Member (*for example, an instance of General Medical Cross-Coverage Consultation*).

“**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 Teladoc Services each month.

“**Physician**” means a doctor who is licensed to practice medicine and/or osteopathic medicine and is associated with the Provider to provide Cross-Coverage Consultations.

- B. **Teladoc Services for Members.** Teladoc Health will provide the following Teladoc Services to Members:
 1. The Teladoc Services include access to the Physicians, who are selected and engaged by the Provider to provide patient and Physician interaction, whereby the Physician may diagnose the patient’s ailment, recommends therapy, and if necessary and appropriate, writes a non-DEA controlled prescription. The Teladoc Services are designed to provide Physician access in the states where the Members live and travel. Each Physician shall be licensed to practice medicine and/or osteopathic medicine, be technologically proficient, trained in Cross-Coverage Consultations, and covered by medical malpractice insurance having limits equal to or greater than the minimum required limits in the state where such Physician practices. Cross-Coverage Consultations are not delivered via Internet questionnaires. Teladoc Health has the right to limit or restrict the Teladoc 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.
 2. It is understood by the Parties that the 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 Cross-Coverage 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 Physicians, and Teladoc Health will so advise the Member when he/she accesses the Teladoc Services); (ii) agreeing to Teladoc Health’s Terms and Conditions confirming an understanding that the Provider is not obligated to accept the Member as a patient, and that the Member’s participation in the Teladoc Services may be cancelled at any time without recourse by the Member; and (iii) the Member also understands and acknowledges that the Teladoc Services provide Cross-Coverage Consultations when the Member’s primary care physician is not accessible. If at any time a 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.

3. The Teladoc Services consist of the following:

i. **Included Teladoc Services:**

- a. **General Medical:** Toll-free access to telephone or web-based video Cross-Coverage Consultations provided by a Physician whereby the 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 access is available on-demand 24 hours, 365 days per year. Members shall have the option to schedule Consultations currently between the hours of 7AM to 9PM local time, seven days a week, subject to availability.

ii. **Optional Teladoc Services:**

- a. **Caregiver:** Allows Members to designate a third-party care recipient to receive a General Medical Consultation. Applicable Physician Consult Fees will apply. Employer may opt-out of Caregiver upon notice to Teladoc Health.

4. Teladoc Health agrees: (i) upon receipt of written notification by Employer of a Member’s eligibility for Teladoc Services, to initiate that Member’s identity in the Member database using Employer’s identification number, and begin processing that Member so that he/she may receive Teladoc Services; (ii) to provide and maintain an adequate system, forms and other resources for Members to: (a) complete the required EHR online, and (b) access and agree to Teladoc Health’s Terms and Conditions.

5. Teladoc Health further agrees to: (i) maintain a database of the Members’ information (in an electronic format that is compliant 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”) Act, and update the database periodically with information provided by Employer or its third party administrator as new Members are enrolled; and (ii) provide initial training for Employer’s designated employees (*i.e.*, *HR personnel*) at the time of implementation. Notwithstanding the foregoing, Employer acknowledges and agrees that: (a) Employer will be responsible for providing training and administering the Teladoc Services to Members; (b) 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.

C. Teladoc 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 Teladoc 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

2. **Reporting.** Teladoc Health will provide Employer with the following reporting:

- **Monthly** standard utilization reporting package*
- **Quarterly** standard 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 Teladoc Services for use by the Employer to communicate the Teladoc 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 Teladoc 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 Teladoc Services and ancillary services or products related to the provision of remote 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*):
 - **Benefit Education:** Monthly benefit education communications delivered by email, including eligibility awareness content aligned with seasonally relevant themes.
 - **Access to Marketing Hub:** 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 Teladoc Services to Employees. Cooperate with Teladoc Health in implementing the Teladoc Services. Provide consistent contextual placement of content and messaging related to the Teladoc 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 Files.** 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 Teladoc Services in that month (the "**Eligibility File**") and their applicable contact information, 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 **\$1.99** for each Employee eligible to utilize the Teladoc Services each month.
 - ii. The PEPM Fee includes an assumption of up to **30%** 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 **\$0.25** for each **5%** 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 5%. For example, where the Utilization Target for the current year is 40%, if actual annualized utilization in that year is 43%, the Utilization Target for the following year will be increased to 45% and the PEPM Fee for the following year will increase by \$0.25.
2. The Fee is based on approximately **1,130** 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 Effective 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.
4. The total amount payable under this Agreement by Employer shall not exceed thirty-two thousand dollars (\$32,000.00) per year unless mutually agreed upon by both Parties in writing. Notwithstanding the foregoing, the Parties agree that the Fee is subject to increase in the event that the employee count changes and/or annual utilization exceeds the amounts stated above.

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 Teladoc Services via email to the following email addresses: dbsmith@wilmingtonde.gov and jdray@wilmingtonde.gov.
4. If any Fees due to Teladoc Health become more than sixty (60) days delinquent, Teladoc Health may suspend provision of the Teladoc 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 Wilmington	
Print Name	Title	Print Name	Title
		Charlotte B. Barnes	Director of Human Resources
Signature	Date	Signature	Date