

Employer Agreement - Consults Included

This **Teladoc Services Agreement** (the "Agreement") is entered into on this **10/01/2016** (the "Effective Date"), by and between **Teladoc, Inc.** ("Teladoc") and **City of Idaho Falls** (the "Employer") located at 308 Constitution Way Idaho Falls, Idaho 83402 Teladoc and the Employer may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS: WHEREAS, Teladoc 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 provides various operational and administrative services to the Provider; **WHEREAS**, the physicians who are employed by, or under a contractual arrangement with, the Provider form a network that is designed to facilitate cross-coverage medical consultations via telephone or web-based video to individuals and groups desiring to purchase such cross-coverage consultations; **WHEREAS**, the arrangement between Teladoc and the Provider permits Teladoc 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; **WHEREAS**, the Employer sponsors a medical benefit plan or other similar program for the benefit of its employees and their dependents; **WHEREAS**, the Employer desires to include the Program, as defined below, in the benefits package it offers to its employees and their dependents; and **WHEREAS**, Teladoc desires to provide its Program to the Employer's employees and certain dependents pursuant to the terms of this Agreement. **NOW, THEREFORE**, in exchange for the promises made hereunder and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS

The following terms, which are not otherwise defined herein, shall have the meanings set forth below:

- A. "Cross-Coverage Consultations" means 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.
- B. "Eligible Dependent" means a "dependent," as defined under the Employer's medical benefit plan or program, who is covered under a medical benefit plan or similar program sponsored by the Employer.
- C. "Member" means an individual who is an employee or an Eligible Dependent covered under a medical benefit plan or similar program sponsored by the Employer.
- D. "PEPM" is an abbreviation for "Per Employee Per Month," which the Parties recognize as a common term in the health care industry. For purposes of this Agreement, PEPM is defined as the applicable rate paid by the Employer to Teladoc on a monthly basis for each employee who is covered under a medical benefit plan or similar program sponsored by the Employer.
- E. "Physician" means doctor who is licensed to practice medicine and/or osteopathic medicine and is associated with the Provider to provide Cross-Coverage Consultations.

2. TERM

This Agreement shall continue for a period of one year from the Effective Date (the "Initial Term") and will be automatically renewed thereafter for additional one-year terms on the anniversary of the Effective Date (each, a "Renewal Term"). Services will begin on **10/01/2016** .

3. THE PROGRAM

- A. The Program includes access to the Physicians, who are selected and engaged by the Provider to provide patient and Physician interaction, whereby the Physician diagnoses the patient's ailment, recommends therapy, and if necessary and appropriate, writes a Non DEA controlled prescription. The Program is designed to provide Physician access in the states where the Members live and travel. (The states in which such Physician access for telephone Cross-Coverage Consultations or web-based video Cross-Coverage Consultations is not available are identified in Attachment #1.) Each Physician shall be licensed to practice medicine and/or osteopathic medicine, 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. Physician consultations under the Program are not delivered by Internet questionnaires.
- B. The Program includes the following services: Teladoc will provide the Members with unlimited toll-free access to telephone or web-based video medical consultations and health information services provided by a Physician. This access shall be available on-demand 24 hours, 365 days per year; and Members can schedule Cross-Coverage Consultations between the hours of 7AM to 9PM local time, seven days a week. If the Member requests a scheduled consultation, an appointment reminder notification will be sent prior to the commencement of such consultation. Teladoc will promptly answer all calls and connect the Member within one hour to a Physician. To commence the web-based video Cross-Coverage Consultation, the Member will access such consultation within the Teladoc member site using their secure member login.
- C. For each Cross-Coverage Consultation under the Program, the Physician shall: (i) review the Member's medical record; (ii) conduct a medical consult to assess the Member's medical needs; and (iii) based upon the medical consult, respond as follows: (a) determine that the Member's condition is a life-threatening emergency, and direct the Member to the nearest emergency facility; (b) determine that the Member's condition is urgent but not a life-threatening emergency, and advise the Member how to treat the condition, prescribe medication as necessary, and make a determination whether the Member should contact or page his/her primary care physician; or (c) determine that the Member's condition is not urgent and not a life-threatening emergency, advise the Member how to treat the condition, prescribe medication as necessary, and advise the Member to follow up with his/her primary care physician or a specialist focused on the specific medical problem.
- D. 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 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

under the Program. Those steps include: (i) completing a comprehensive electronic health record (EHR), either online or by telephone with a designated Program 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 will so advise the Member when he/she accesses the service); (ii) agreeing to Teladoc'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 Program may be cancelled at any time without recourse by the Member; and (iii) the Member also understands and acknowledges that the Program provides Cross-Coverage Consultations when the Members primary care physician is not available.

4. DUTIES OF THE EMPLOYER

The Employer agrees to: (A) offer the Program to its employees and their Eligible Dependents at the prices outlined in this Agreement; (B) provide a description of the Program to the Members, as approved in advance by (and only as approved by) Teladoc; (C) cooperate with Teladoc in implementing the Program; and (D) provide Teladoc (or ensure that its third party administrator provides Teladoc) with membership eligibility files for each Member in a format approved by Teladoc.

5. ADDITIONAL DUTIES OF TELADOC

A. Teladoc agrees: (i) upon receipt of written notification by the Employer of a Member's inclusion in the Program, to initiate that Member's identity in the Member database using the Employer's identification number, and begin processing that Member so that he/she may receive services under the Program; (ii) to provide and grant to the Employer a non-exclusive, non-transferable, limited license to use the "Teladoc" branded Program (including all materials developed or provided to the Employer by Teladoc related to the Program, its marketing, implementation and use) during the term of this Agreement (notwithstanding the foregoing, Teladoc's toll-free telephone number shall not be a dedicated for exclusive use by the Employer's Members and shall remain the property of Teladoc at the termination of this Agreement); and (iii) to provide and maintain an adequate system, forms and other resources for Members to: (a) complete the required EHRonline, and (b) access and agree to Teladoc's Terms and Conditions.

B. Teladoc 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 the Employer or its third party administrator as new Members are enrolled; (ii) Provide to the Employer or its third party administrator, on the 5th day of each calendar quarter, Teladoc standard utilization and savings reports of the Program; and (iii) Provide initial training for the Employer's employees at the time of implementation. Notwithstanding the foregoing, the Employer acknowledges and agrees that: (a) the Employer will be responsible for providing training and administering the Program to the Members; (b) if the Employer requests Teladoc to attend any events such as, but not limited to, enrollment meetings, health fairs, etc., Teladoc will charge additional fees to attend as agreed to by both parties; and (c) if the Employer requests Teladoc to prepare any non-standard reports that require information technology programming, Teladoc will charge the Employer

an additional fee of Two Hundred (\$200) Per hour times that number of hours necessary for such non-standard reporting program development.

6. COMMUNICATION MATERIALS

Teladoc will provide a template description of the Program for use by the Employer to communicate the Program's services to the Members. Any changes or modifications to such description of services, and any and all materials used by the Employer or its agents to describe the Program's services must be approved in advance in writing by Teladoc 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 to communicate directly with the Members for the purpose of: (i) promoting the Program and ancillary services or products related to the provision of remote care; and (ii) treatment, payment and health care operations of Teladoc.

7. DATA TRANSMISSION SECURITY

A. 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 Personal Health Information) is transmitted over an electronic communications network i.e. "the internet", transmissions of ePHI to and from Teladoc, Inc. will utilize Secure File Transport Protocol (SFTP).

B. Employer is expressly prohibited from indirectly or directly, knowingly violating or attempting to violate the security of Teladoc'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 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.

8. PAYMENT TERMS

- A. Teladoc shall invoice the Employer a PEPM fee on the 5th day of each month for the Program services to be provided in that month. The invoice is based on a file that the Employer or its third party administrator sends on the **1ST** day of each month identifying the number of eligible employees participating in the Program. The Employer agrees to pay such fee upon receipt of the date of the invoice. The Employer specifically acknowledges that it is responsible for paying all applicable PEPM fees and the other fees identified herein to Teladoc.
- B. If applicable, Teladoc shall invoice the Employer for Physician Consult Fees on the 4th day of each month with respect to consultations that occurred within the prior 30 day period. The Employer agrees to pay such fee upon receipt of the invoice; or, if claims are being sent via EDI 837 file transfer, Teladoc shall invoice the Employer for any Physician Consult Fee, and the Employer agrees to pay such fee within 30 days of the invoice.

- C. If the Employer fails to make any payment within 60 days of the date of Teladoc's invoice, Teladoc shall have the right to cancel the Program memberships associated with the Employer.

9. SERVICE FEES

- A. Teladoc agrees to provide the services of the Program in exchange for the following fees, which shall be paid by the Employer to Teladoc:
 - 1. (i) **\$2.65** PEPM, which monthly fee includes coverage of **598** employees and his/her Eligible Dependents;
 - 2. The PEPM pricing includes an assumption of up to **20%** annual utilization "the Utilization Target."
 - 3. If actual utilization for a year exceeds the current year's Utilization Target, the PEPM shall increase by \$0.25 for each 5% increment of Utilization in excess of the Utilization Target for the next Renewal Term.
 - 4. A new Utilization Target will be set by rounding up the actual utilization in the plan year to the nearest 5% for the next year. For example, if utilization in year 1 is 23%, the Utilization Target in year 2 would be 25% and the PEPM would rise by \$0.25 over the year 1 price.
 - 5. Teladoc shall have the right to increase the PEPM pricing by up to 5% at any anniversary of the Agreement if the Teladoc book of business pricing is being increased as a result of overall book of business results even if actual utilization for a year does not exceed the Utilization Target. Teladoc shall give the Employer 60 days' notice prior to implementing any increase based upon this section 5.
 - 6. Teladoc shall have the right to discontinue certain pricing models at any contract anniversary with 60 days' prior written notice to the Employer.

10. RELATIONSHIP OF THE PARTIES

- A. Teladoc and the Employer are and shall at all times function as independent contractors under this Agreement and neither Teladoc nor the 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.
- B. The Employer and Teladoc agree that that they will each maintain in strict confidence any and all patient information they may have access to by complying with the Privacy and Security Standards of HIPAA and the American Recovery and Reinvestment Act of 2009, including, without limitation, the requirements of the Health Information Technology for Economic and Clinical Health Act, which is part thereof, and the Employer agrees to secure from the applicable medical benefit plan or its third party administrator a HIPAA Business Associate Agreement in a form acceptable to Teladoc, to the extent such agreement is required by law.

11. INDEMNIFICATION AND INSURANCE

- A. Each Party agrees that it is solely liable for any breach, misrepresentation, error or omission by its employees, agents and representatives concerning the Program 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 loss, cost, damage or expense, including reasonable attorneys' fees and court costs, arising out of any error, omission or malfeasance of such breaching Party.
- B. Each Party 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. Upon written request, each Party shall provide evidence of such coverage to the other Party. Additionally, Teladoc agrees that it will maintain appropriate liability insurance and contractually obligate the Provider and each Physician to have the requisite medical malpractice insurance coverage.

12. OWNERSHIP of INTELLECTUAL PROPERTY

- A. The Employer acknowledges that all materials relating to the Program that are developed by or on behalf of Teladoc or provided to the Employer by Teladoc (including, without limitation, the communications materials referred to in Section 6 above), and all trade names, service marks, trademarks and logos that are used by Teladoc (including but not limited to the "Teladoc" mark), and such other trade names, trademarks and logos as hereinafter may be designated by Teladoc in connection with its business (the "Teladoc Marks") are the unique intellectual property of Teladoc (the "Intellectual Property"), and the Employer agrees that: (i) the Employer will not duplicate the Program in any format that would, in whole or in part, infringe upon the intellectual property rights of Teladoc, 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; and (iii) on termination of this Agreement, the Employer shall return to Teladoc all of the Intellectual Property provided to the Employer.
- B. Teladoc grants to the Employer a limited, non-exclusive, non-transferable license to use the Teladoc Marks during the term of this Agreement and only pursuant to the terms of this Agreement and in a manner that has been approved by Teladoc in advance.
- C. Teladoc shall have the right to use Employer's trade name, trademark, service mark, or symbol in its advertising, publicity or other promotional endeavors.

13. NON-DISCLOSURE OBLIGATIONS

- A. For purposes of this Agreement, the 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.
- B. 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. Confidential Information shall also include, without limitation, 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.

- C. 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.
- D. 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.
- E. 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.
- F. 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 13 the prevailing Party in such action shall be entitled to reasonable attorneys' fees.

- G. The Receiving Party shall 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 immediately on the written request of the Disclosing Party.

14. TERMINATION

- A. Notwithstanding any other provision herein, either Party may terminate this Agreement as of any date on or after the first anniversary of the Effective Date by providing not less than 60 days' prior written notice to the other Party of its intention to terminate this Agreement. If the Employer exceeds the Utilization Target in any plan year and does not renew the agreement, the Employer shall pay to Teladoc, within 30 days from the termination date, \$45 per consult for each consult that is in excess of the Utilization Target.
- B. Either Party may terminate this Agreement immediately in the event (i) the other Party commits a material breach of this Agreement, and such breach is not cured within 30 days following written notice thereof to the other Party, or (ii) the other Party files or is subject to any voluntary or involuntary bankruptcy, receivership, assignment for the benefit of creditors or similar proceeding.

15. COMPLIANCE WITH LAWS

Each Party will perform its obligations under this Agreement in a manner that complies with all laws applicable to such Party.

16. ENTIRE AGREEMENT

- A. This Agreement (including any exhibits or attachments hereto) constitutes the entire agreement by and between Teladoc and the 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.
- B. 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.

17. NOTICE

Any notice required by this Agreement may be given by ordinary mail, certified mail, return receipt requested, or overnight mail to the address of the other Party set forth below or to such other address as specified in a written notice by one Party to the other Party in accordance with this Section 17. Notice shall be deemed to be received three days after deposit, if given by ordinary mail, seven days after deposit if given by certified mail, return receipt requested, and one day after deposit if given by overnight mail. The address of each Party for notice is set forth opposite their signature block on the signature page hereof.

18. GOVERNING LAW AND DISPUTES

This Agreement shall be governed by New York law, without giving effect to its conflicts of laws provisions. Jurisdiction and venue for any and all disputes under this Agreement shall be the state and/or federal courts of New York, New York. 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.

19. MISCELLANEOUS

This Agreement is deemed to have been prepared jointly by the Parties hereto, 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.

This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and each Party hereto may execute this Agreement by signing one or more counterpart and shall not affect the construction of this Agreement. Each signatory hereto represents that he/she has full authority to sign this Agreement on behalf of his/her respective organization and to bind and obligate such organization to the terms hereof.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized representatives of the Parties herein as of the Effective Date.

TELADOC, INC



By:

Printed Name: Mike King

Title: Chief Sales Officer

Date: 10/19/2016

The Employer's electronic signature will populate on the last page of this agreement.

Attachment #1

STATE AVAILABILITY

With respect to web-based video Cross-Coverage Consultations, Teladoc is currently not operating in the states of Arkansas and Texas.

With respect to telephonic Cross-Coverage Consultations, Teladoc is currently not operating in the states of Arkansas and Idaho.

Employer will be notified within 30 days of any changes with respect to the states in which services may be provided.