

NL-126-2023-156 Responsive Record

PREPARATORY SERVICES AGREEMENT

This **Preparatory Services Agreement** (this “**Agreement**”) is entered into on **November 29, 2023** (“**Effective Date**”),

BETWEEN: **Teladoc Health Canada, Inc.** a corporation formed under the federal laws of Canada with its principal place of business at 312 Adelaide Street West, Suite 200, Toronto, Ontario

(“**Teladoc Health**”)

AND: **The Provincial Health Authority**, operating as **Newfoundland and Labrador Health Services**, a corporation without share capital established pursuant to the *Provincial Health Authority Act*, RSNL 2022, c. P-30.1

(“**NLHS**”)

(each a “**Party**” and, together, the “**Parties**”)

RECITALS

- A. The Parties have entered into a Virtual Health Services Agreement dated November 1, 2023 (the “**VHS Agreement**”) wherein Teladoc Health will provide certain services to NLHS (the “**VHS Project**”);
- B. In contemplation of signing the VHS Agreement, Teladoc Health has made in good faith, prior to the effective date of the VHS Agreement and after having been awarded the VHS Project on May 18, 2023, certain Preparations (as defined below) which are not the subject matter of the VHS Agreement;
- C. NLHS recognizes such Preparations were necessary to launch the VHS Project for the envisioned go-live date;
- D. NLHS and Teladoc Health wish to enter into an agreement in relation to these Preparations.

Article 1- Services and Payment

1.01 Teladoc Health provided the following services in preparation for the launch of the VHS Project during the months prior to the Effective Date(the “**Preparations**”):

- A dedicated Teladoc Health project management team;
- recruitment, training and licensing of physicians with the College of Physicians and Surgeons of Newfoundland and Labrador;
- onboarding and engagement of Teladoc Health project execution team;
- involvement of global Teladoc Health specialists and subject matter experts;
- customization of Teladoc Health platforms and processes;

- engagement with NLHS to refine and implement the VHS Project;
 - change management, communications and marketing support;
 - development of customized training materials for physicians and local clinicians;
 - delivery of a first Lite V4 device to the Dr. Y.K. Jeon Kittiwake Health Centre;
 - demonstration of device, platform and software to local clinicians on site; and
 - other in-person meetings in Newfoundland and Labrador.
- 1.02 In consideration for the Preparations, NLHS shall pay a one-time fee of \$630,000 to Teladoc Health (the “Fee”).
- 1.03 Teladoc Health will submit an invoice to NLHS (“Invoice”) at accounts.payable@nlchi.nl.ca, and NLHS agrees to pay such Invoice within thirty (30) days of the date of Invoice in accordance with the instructions set forth therein. Teladoc Health will invoice for applicable taxes and NLHS is solely responsible for payment of any federal, provincial or local excise, sales, use or similar taxes assessed with respect to the vER Services.
- 1.04 All amounts not paid within thirty (30) days of the due date of the Invoice are subject to a late payment charge of one and a half percent (1.5%) per month simple interest (or, if less, the maximum rate allowed by applicable law) from the due date of the Invoice until the date of payment.

Article 2- Termination

- 2.01 This Agreement shall continue in effect until payment is received by Teladoc Health pursuant to section 1.02.

Article 3- Confidential Information

- 3.01 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.
- 3.01.1 For purposes of this Agreement, “**Confidential Information**” shall include:
- (a) information that is not known by actual or potential competitors of the Disclosing Party or is generally unavailable to the public;
 - (b) information 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;
 - (c) information that, if disclosed, would cause harm to the Disclosing Party;
 - (d) information that is marked “Confidential” or “Proprietary” when provided to the Receiving Party, and shall include all reporting documentation

provided by the Parties in accordance with this Agreement and all information disseminated any management or in meetings held by either Party;

- (e) trade secrets which include all discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, 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);
- (f) any other intellectual property, client 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 (e.g., Fee(s)) 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;
- (g) any other information that is treated as confidential, regardless of whether it is marked as such;
- (h) any other information that a reasonable party would conclude is confidential or proprietary in nature; and
- (i) without limitation, employee information, 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.

3.01.2 Notwithstanding the foregoing, Confidential Information shall not include any information to the extent it:

- (a) is or becomes a part of the public domain through no act or omission on the part of the Receiving Party in breach of this Agreement;
- (b) is disclosed to third parties by the Disclosing Party without restriction on such third parties to maintain the confidentiality of such information;
- (c) 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;
- (d) is disclosed to the Receiving Party by a third party having no obligation of confidentiality with respect thereto;
- (e) is independently developed by the Receiving Party without use or reference to the Disclosing Party's Confidential Information; or,

- (f) is released from confidential treatment by written consent of the Disclosing Party.
- 3.01.3 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, if permitted to do so under applicable law, in order to enable the Disclosing Party to obtain an appropriate protective order, if it so desires.
- 3.01.4 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.
- 3.01.5 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 legal fees.
- 3.01.6 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.

Article 4 - Representations of the Parties

- 4.01 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.

Article 5 - Miscellaneous

- 5.01 **Entire Agreement; Amendment; Severability.** Unless otherwise explicitly agreed to by both Parties, this Agreement constitutes the entire agreement by and between Teladoc Health and NLHS relating in any manner to the Preparations, 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 discussions, writings, and agreements between the Parties relating to the subject matter hereof. For greater certainty, the Parties agree that nothing in this section 5.01 shall affect the validity or enforceability of the VHS Agreement. This Agreement may only be modified in writing, signed by an authorized representative of each Party. In the event any provision of this Agreement shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather this Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.
- 5.02 **No Joint Undertaking.** Teladoc Health and NLHS are and shall at all times function as independent contractors under this Agreement, and neither Teladoc Health nor NLHS 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.
- 5.03 **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.
- 5.04 **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.
- 5.05 **Assignment.** Neither Party shall have the right to assign a right or obligation under this Agreement, other than with the express written consent of the other Party, which consent shall not be unreasonably withheld.
- 5.06 **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:
 - (a) five (5) business days after being mailed (with return receipt requested);
 - (b) when emailed; or,

- (c) one (1) business 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 Canada, Inc.
Attn: Managing Director
312 Adelaide Street West, Suite 200
Toronto, ON M5V 1R2

With a Copy to:
legalnoticescanada@teladochealth.com

If to NLHS:

Newfoundland and Labrador Health Services
Attn: Strategic Planner, Sourcing a & Contracts
21 Carmelite Road
Grand Falls-Windsor, NL
A2A 1Y4

With a Copy to: open.calls@centralhealth.nl.ca


- 5.07 **Governing Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the federal laws of Canada applicable therein, without regard to the conflict of laws principles therein. Jurisdiction and venue for any and all disputes under this Agreement shall be the courts located in St. John's, Newfoundland and Labrador.
- 5.08 **Language.** The Parties confirm having requested that this Agreement and all notices or other communications relating to it be drafted in the English language only. *Les Parties aux présentes confirment avoir requis que cette convention et autres communications s'y rapportant soient rédigés en langue anglaise seulement.*
- 5.09 **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.
- 5.10 **Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts (and may be executed by way of 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 they have full authority to sign this Agreement on behalf of the respective Party and to bind and obligate such Party to the terms hereof.

[SIGNATURE PAGE FOLLOWS]

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

Teladoc Health Canada, Inc.

**Provincial Health Authority, o/a
Newfoundland and Labrador Health
Services**



**Name: Joby McKenzie
Title: Managing Director**

**Name: Amanda Bouzane
Title: Strategic Planner, Sourcing &
Contracts**

Date: November 29, 2023

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