

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREEMENT

35750

THIS AGREEMENT is made and entered, in duplicate, as of August 6, 2020 for reference purposes only, pursuant to Resolution No. RES-20-0092, adopted by the City Council of the City of Long Beach at its meeting on August 4, 2020, by and between HEALTHVANA, INC., a Delaware corporation ("Contractor"), with a place of business at 7162 Beverly Blvd. #238, Los Angeles, CA 90036, and the CITY OF LONG BEACH ("City"), a municipal corporation.

WHEREAS, the City desire to purchase COVID-19 test patient results reporting services; and

WHEREAS, Contractor's results delivery services are supplemental to the testing services provided by Fulgent Therapeutics LLC ("Fulgent"), and will enable the delivery of COVID-19 patient test results across multiple City-run testing sites through the end of January 2021; and

WHEREAS, Contractor is the only company reporting COVID-19 patient results from Fulgent lab tests in Los Angeles County, and is integrated with Fulgent as part of the services these two companies provide together; and

WHEREAS, City did by Resolution No. RES-20-0092 determine that the City's need to purchase COVID-19 test patient results reporting services could only be met by Contractor and, by reason of the foregoing, no useful purpose would be served by advertising for bids to purchase COVID-19 test patient results reporting services, and to do so would constitute an idle and useless act and an unnecessary expenditure of public funds;

NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Contractor shall sell, furnish and deliver to City COVID-19 test patient results reporting services as set forth in the Software as a Service

1 Agreement, together with all exhibits and attachments thereto, attached hereto as
2 Attachment "A" (the "SaaS Agreement") and incorporated herein by reference, as
3 authorized by Resolution No. RES-20-0092.

4 B. City shall pay Contractor in due course of payments, following
5 receipt of an invoice from Contractor and upon acceptance from City, for COVID-19
6 test patient results reporting services, the prices shown in Attachment "A" in an
7 annual amount not to exceed Three Hundred Sixty Four Thousand Eight Hundred
8 Dollars (\$364,800) for the initial term, with the option to renew for two (2) additional
9 one-year periods.

10 2. TERM. The term of this Agreement shall commence on July 15, 2020,
11 and shall terminate at midnight on January 31, 2021 unless sooner terminated as provided
12 herein. City shall have the option to extend the term of this Agreement for two (2) additional
13 one-year periods, at the discretion of the City Manager.

14 3. INDEPENDENT CONTRACTOR. In performing its services,
15 Contractor is and shall act as an independent contractor and not an employee,
16 representative or agent of City. Contractor shall have control of Contractor's work and the
17 manner in which it is performed. Contractor shall be free to contract for similar services to
18 be performed for others during this Agreement; provided, however, that Contractor acts in
19 accordance with Section 9 of this Agreement. Contractor acknowledges and agrees that
20 (a) City will not withhold taxes of any kind from Contractor's compensation; (b) City will not
21 secure workers' compensation or pay unemployment insurance to, for or on Contractor's
22 behalf; and (c) City will not provide and Contractor is not entitled to any of the usual and
23 customary rights, benefits or privileges of City employees. Contractor expressly warrants
24 that neither Contractor nor any of Contractor's employees or agents shall represent
25 themselves to be employees or agents of City.

26 4. INSURANCE.

27 A. As a condition precedent to the effectiveness of this
28 Agreement, Contractor shall procure and maintain, at Contractor's expense for the

1 duration of this Agreement, from insurance companies that are admitted to write
2 insurance in California and have ratings of or equivalent to A:V by A.M. Best
3 Company or from authorized non-admitted insurance companies subject to Section
4 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
5 by A.M. Best Company, the following insurance:

6 (a) Commercial general liability insurance (equivalent in scope to
7 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
8 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
9 coverage shall include but not be limited to contractual liability, cross
10 liability, and products and completed operations liability. City, its boards
11 and commissions, and their officials, employees and agents shall be named
12 as additional insureds by endorsement (on City's endorsement form or on
13 an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20
14 26 11 85), and this insurance shall contain no special limitations on the
15 scope of protection given to City, its boards and commissions, and their
16 officials, employees and agents. This policy shall be endorsed to state that
17 the insurer waives its right of subrogation against City, its boards and
18 commissions, and their officials, employees and agents.

19 (b) Workers' Compensation insurance as required by the California
20 Labor Code and employer's liability insurance in an amount not less than
21 \$1,000,000. This policy shall be endorsed to state that the insurer waives
22 its right of subrogation against City, its boards and commissions, and their
23 officials, employees and agents.

24 (c) Professional liability or errors and omissions insurance in an
25 amount not less than \$1,000,000 per claim.

26 (d) Commercial automobile liability insurance (equivalent in scope
27 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
28 amount not less than \$500,000 combined single limit per accident.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

C. The commercial general Liability insurance policy shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Contractor. Contractor shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Contractor guarantees that Contractor will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Contractor shall require that all sub-contractors or contractors that Contractor uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, Contractor shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Contractor shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies

1 of all policies of Contractor and Contractor's sub-Contractors and contractors, at any
2 time. Contractor shall make available to City's Risk Manager or designee all books,
3 records and other information relating to this insurance, during normal business
4 hours.

5 G. Any modification or waiver of these insurance requirements
6 shall only be made with the approval of City's Risk Manager or designee. Not more
7 frequently than once a year, City's Risk Manager or designee may require that
8 Contractor, Contractor's sub-Contractors and contractors change the amount,
9 scope or types of coverages required in this Section if, in his or her sole opinion, the
10 amount, scope or types of coverages are not adequate.

11 H. The procuring or existence of insurance shall not be construed
12 or deemed as a limitation on liability relating to Contractor's performance or as full
13 performance of or compliance with the indemnification provisions of this Agreement.

14 5. ASSIGNMENT AND SUBCONTRACTING. This Agreement
15 contemplates the personal services of Contractor and Contractor's employees, and the
16 parties acknowledge that a substantial inducement to City for entering this Agreement was
17 and is the professional reputation and competence of Contractor and Contractor's
18 employees. Contractor shall not assign its rights or delegate its duties under this
19 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
20 of City, except that Contractor may with the prior approval of the City Manager of City,
21 assign any moneys due or to become due Contractor under this Agreement. Any
22 attempted assignment or delegation shall be void, and any assignee or delegate shall
23 acquire no right or interest by reason of an attempted assignment or delegation.
24 Furthermore, Contractor shall deliver to the City Manager or designee, within five (5)
25 business days of request, a list of all subcontractors used by Contractor in the performance
26 of this Agreement. Nothing stated in this Section shall prevent Contractor from employing
27 as many employees as Contractor deems necessary for performance of this Agreement.

28 6. CONFLICT OF INTEREST. Contractor, by executing this Agreement,

1 certifies that, at the time Contractor executes this Agreement and for its duration,
2 Contractor does not and will not perform services for any other client which would, to the
3 best of Contractor's knowledge, create a conflict, whether monetary or otherwise, as
4 between the interests of City and the interests of that other client. And, to the extent
5 feasible, Contractor shall obtain similar certifications from Contractor's employees, sub-
6 Contractors and contractors.

7 7. OWNERSHIP OF DATA. Customer Data (as such term is defined in
8 the SaaS Agreement) shall, within ten (10) business days of the City's written request be
9 given to City, in a format reasonably requested by City, and City shall have the unrestricted
10 right to use and disclose the Customer Data in any manner and for any purpose without
11 payment of further compensation to Contractor. Copies of Customer Data may be retained
12 by Contractor but Contractor warrants that Customer Data shall not be made available to
13 any person or entity for use without the prior approval of City. This warranty shall survive
14 termination of this Agreement for five (5) years.

15 8. TERMINATION. Either party shall have the right to terminate this
16 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
17 prior notice to the other party. In the event of termination under this Section, City shall pay
18 Contractor for services satisfactorily performed and costs incurred up to the effective date
19 of termination for which Contractor has not been previously paid. The procedures for
20 payment in Section 1.B with regard to invoices shall apply. On the effective date of
21 termination, Contractor shall deliver to City all Customer Data developed or accumulated
22 in the performance of this Agreement, whether in draft or final form, or in process. And,
23 Contractor acknowledges and agrees that City's obligation to make final payment is
24 conditioned on Contractor's delivery of the Customer Data to City.

25 9. CONFIDENTIALITY. In addition to the terms outlined in Attachment
26 "A", Contractor shall keep all Confidential Information (as such term is defined in the SaaS
27 Agreement) confidential, and shall not disclose Confidential Information or use the
28 Confidential Information directly or indirectly, other than in the course of performing its

1 services, during the term of this Agreement and for one (1) year following expiration or
2 termination of this Agreement.

3 10. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for a
4 breach of confidentiality with respect to Confidential Information that: (a) Contractor
5 demonstrates Contractor knew prior to the time City disclosed it; or (b) is or becomes
6 publicly available without breach of this Agreement by Contractor; or (c) a third party who
7 has a right to disclose does so to Contractor without restrictions on further disclosure; or
8 (d) must be disclosed pursuant to subpoena or court order.

9 11. AMENDMENT. This Agreement, including all Exhibits, shall not be
10 amended, nor any provision or breach waived, except in writing signed by the parties which
11 expressly refers to this Agreement.

12 12. LAW. This Agreement shall be construed in accordance with the laws
13 of the State of California, and the venue for any legal actions brought by any party with
14 respect to this Agreement shall be the County of Los Angeles, State of California for state
15 actions and the Central District of California for any federal actions. Contractor shall cause
16 all work performed in connection with construction of the Project to be performed in
17 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
18 county or municipal governments or agencies (including, without limitation, all applicable
19 federal and state labor standards, including the prevailing wage provisions of sections 1770
20 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any
21 fire marshal, health officer, building inspector, or other officer of every governmental
22 agency now having or hereafter acquiring jurisdiction. If any part of this Agreement is found
23 to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it
24 is in conflict with any applicable laws, but the remainder of the Agreement will remain in full
25 force and effect.

26 13. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
27 constitutes the entire understanding between the parties and supersedes all other
28 agreements, oral or written, with respect to the subject matter in this Agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. INDEMNITY.

A. Contractor shall indemnify, defend and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any actual liability, claims, damages, losses, fines, judgments, penalties, reasonable costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, to the extent they arise from out of (1) Contractor's breach or failure to comply with any of its obligations contained in this Agreement, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 *et seq.* or (2) gross negligence or willful acts, committed by Contractor, its officers, employees, agents, subcontractors, or anyone under Contractor's control, in the performance of work or services under this Agreement (collectively "Claims" or individually "Claim").

B. In addition to Contractor's duty to indemnify, Contractor shall have a separate and wholly independent duty to defend Indemnified Parties at Contractor's expense by legal counsel approved by City, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Contractor shall be required for the duty to defend to arise. City shall notify Contractor of any Claim, shall tender the defense of the Claim to Contractor, and shall assist Contractor, as may be reasonably requested, in the defense.

C. If a court of competent jurisdiction determines that a Claim was caused in part by the negligence or willful misconduct of Indemnified Parties, Contractor's costs of defense and indemnity shall be reduced by the percentage of fault attributed by the court to the Indemnified Parties.

D. The provisions of this Section shall survive the expiration or termination of this Agreement.

1 15. FORCE MAJEURE. If any party fails to perform its obligations
2 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
3 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
4 governmental regulations, governmental controls, judicial orders, enemy or hostile
5 governmental action, civil commotion, fire or other casualty, or other causes beyond the
6 reasonable control of the party obligated to perform, then that party's performance will be
7 excused for a period equal to the period of such cause for failure to perform.

8 16. AMBIGUITY. In the event of any conflict or ambiguity between this
9 Agreement and any Exhibit, the provisions of this Agreement shall govern.

10 17. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
11 accordance with the provisions of the Ordinance, this Agreement is subject to the
12 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 *et seq.* of the
13 Long Beach Municipal Code, as amended from time to time.

14 A. During the performance of this Agreement, the Contractor
15 certifies and represents that the Contractor will comply with the EBO. The
16 Contractor agrees to post the following statement in conspicuous places at its place
17 of business available to employees and applicants for employment:

18 "During the performance of a contract with the City of Long Beach, the
19 Contractor will provide equal benefits to employees with spouses and its
20 employees with domestic partners. Additional information about the City of
21 Long Beach's Equal Benefits Ordinance may be obtained from the City of
22 Long Beach Business Services Division at 562-570-6200."

23 B. The failure of the Contractor to comply with the EBO will be
24 deemed to be a material breach of the Agreement by the City.

25 C. If the Contractor fails to comply with the EBO, the City may
26 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
27 to become due under the Agreement may be retained by the City. The City may
28 also pursue any and all other remedies at law or in equity for any breach.

1 D. Failure to comply with the EBO may be used as evidence
2 against the Contractor in actions taken pursuant to the provisions of Long Beach
3 Municipal Code Section 2.93 *et seq.*, Contractor Responsibility.

4 E. If the City determines that the Contractor has set up or used its
5 contracting entity for the purpose of evading the intent of the EBO, the City may
6 terminate the Agreement on behalf of the City. Violation of this provision may be
7 used as evidence against the Contractor in actions taken pursuant to the provisions
8 of Long Beach Municipal Code Section 2.93 *et seq.*, Contractor Responsibility.

9 18. NOTICES. Any notice or approval required by this Agreement shall
10 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
11 postage prepaid, addressed to Contractor at the address first stated above, and to City at
12 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
13 to the City Clerk at the same address. Notice of change of address shall be given in the
14 same manner as stated for other notices. Notice shall be deemed given on the date
15 deposited in the mail or on the date personal delivery is made, whichever occurs first.

16 19. COVENANT AGAINST CONTINGENT FEES. Contractor warrants
17 that Contractor has not employed or retained any entity or person to solicit or obtain this
18 Agreement and that Contractor has not paid or agreed to pay any entity or person any fee,
19 commission or other monies based on or from the award of this Agreement. If Contractor
20 breaches this warranty, City shall have the right to terminate this Agreement immediately
21 notwithstanding the provisions of Section 8 or, in its discretion, to deduct from payments
22 due under this Agreement or otherwise recover the full amount of the fee, commission or
23 other monies.

24 20. WAIVER. The acceptance of any services or the payment of any
25 money by City shall not operate as a waiver of any provision of this Agreement or of any
26 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
27 Agreement shall not constitute a waiver of any other or subsequent breach of this
28 Agreement.

1 21. CONTINUATION. Termination or expiration of this Agreement shall
2 not affect rights or liabilities of the parties which accrued pursuant to Sections 6, 8, 9, 13,
3 16 and 22 prior to termination or expiration of this Agreement.

4 22. TAX REPORTING. As required by federal and state law, City is
5 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.
6 Contractor shall be solely responsible for payment of all federal and state taxes resulting
7 from payments under this Agreement. Contractor shall submit Contractor's Employer
8 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not
9 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.
10 Contractor acknowledges and agrees that City has no obligation to pay Contractor until
11 Contractor provides one of these numbers.

12 23. ADVERTISING. Contractor shall not use the name of City, its officials
13 or employees in any advertising or solicitation for business or as a reference, without the
14 prior approval of the City Manager or designee.

15 24. AUDIT. City shall, with five (5) days advance written notice, have the
16 right during the term of this Agreement and for a period of five (5) years after termination
17 or expiration of this Agreement to examine, audit, inspect, review, extract information from
18 and copy all books, records, accounts and other documents of Contractor relating to this
19 Agreement during normal business hours and at the City's own expense.

20 25. THIRD PARTY BENEFICIARY. This Agreement is not intended or
21 designed to or entered for the purpose of creating any benefit or right for any person or
22 entity of any kind that is not a party to this Agreement.

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties have signed this document with all the formalities required by law as of the date first stated above.

HEALTHVANA, INC., a Delaware corporation

November 11, 2020, 2020

By [Signature]
Name LAMIN BASTANI
Title CEO

_____, 2020

By _____
Name _____
Title _____

"Contractor"

CITY OF LONG BEACH, a municipal corporation

December 16, 2020

By [Signature]
City Manager

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

This Contract is approved as to form on Dec. 16, 2020.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

Attachment "A"

SOFTWARE AS A SERVICE ("SAAS") AGREEMENT

This SaaS Agreement ("**Agreement**") is made and entered into as of June 29, 2020 ("Effective Date"), by and between Healthvana, Inc. ("**Company**"), and City of Long Beach ("**Customer**").

Company has developed and hosts the Subscription Services (as defined below), which are accessed and used by Company's customers.

Customer desires to access and use the Subscription Services and Company is willing to permit Customer to access and use the Subscription Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS

- 1.1. "**Authorized User**" means a user authorized by Customer to access and use the Subscription Services on Customer's behalf that has been provided a username-password combination to access and use the Subscription Services.
- 1.2. "**Clinic**" means a facility, including a drive-through testing center, located within the United States that is operated by Customer (or Customer's contractors, affiliates or subsidiaries, on behalf of Customer) for purposes of evaluating, testing, and/or caring for Patients.
- 1.3. "**Company Hardware**" if applicable, means a device owned by the Company through which the Company Platform is accessed.
- 1.4. "**Company Platform**" means Company's proprietary software as a service platform for health care professionals and recipients of health care services, as described in Exhibit A.
- 1.5. "**Customer Content**" means Customer's proprietary Patient education content related to the Subscription Services.
- 1.6. "**Customer Data**" means Customer's proprietary data and information input into and/or stored by the Subscription Services, but does not include Protected Health Information (which is governed by the Business Associate Agreement attached as Exhibit D).
- 1.7. "**Fees**" means the fees described in Exhibit B.
- 1.8. "**Go-Live Date**" means the first day the Contractor Platform is used by Customer.
- 1.9. "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and its implementing regulations.

- 1.10. **"Implementation Services"** means the services performed by Company to configure and rollout the Subscription Services to Customer.
- 1.11. **"Intellectual Property Rights"** means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.
- 1.12. **"Manual Entry"** refers to the entry of data into the Contractor Platform by Authorized Users, as opposed to the integration of data by computer-assisted or other automatic means.
- 1.13. **"Patient"** means an individual evaluated, tested, and/or treated by Customer.
- 1.14. **"Software"** means any Company or third-party software used by Company to provide the Implementation Services and/or Subscription Services.
- 1.15. **"Subscription Services"** means the: (i) the Company Platform; (ii) the Company Hardware; and (iii) technical support services relating to the Company Platform and the Company Hardware.
- 1.16. **"Term"** means the term of this Agreement as defined in Section 10.1.
- 1.17. In addition, the following terms shall have the meanings ascribed to them under HIPAA and/or the Business Associate Agreement ("**BAA**") attached hereto as Exhibit D: "Data Aggregation", "Covered Entities", "Protected Health Information" (or "**PHI**").

2. **IMPLEMENTATION**

- 2.1. Implementation Services. Subject to Customer's cooperation and assistance in accordance with Section 4.1, Company will provide the Implementation Services as described in Exhibit A.

3. **SUBSCRIPTION SERVICES**

- 3.1. Subscription Services. Subject to Customer's compliance with the terms and conditions of this Agreement, commencing on the Effective Date and continuing throughout the remainder of the Term, Company will provide the Subscription Services in accordance with and subject to the service level agreement set forth in Exhibit C (the "**Service Level Agreement**"). Company grants Customer a non-exclusive, non-transferable, non-sublicensable license to access and use the Subscription Services, solely for Customer's business purposes, and such access and use is expressly limited to the Authorized Users and Patients that sign up to use the Subscription Services.

- 3.2. Restrictions. Customer shall not, and shall not permit Authorized Users or others to, attempt to interfere with or disrupt the Subscription Services or the Software or attempt to gain access to any systems or networks that connect thereto (except as required to access and use the Subscription Services). Customer shall not allow access to or use of the Subscription Services by anyone other than Authorized Users or Patients. Customer shall not: (a) copy, modify or distribute any portion of the Subscription Services or Software; (b) rent, lease, or provide access to the Subscription Services on a time-share or service bureau basis; or (c) transfer any of its rights hereunder (except as specified in Section 14.8). Customer shall not, and shall require that all Authorized Users not, remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the Subscription Services.
- 3.3. HIPAA. The Company agrees to implement appropriate administrative, physical, and technical safeguards to prevent the unauthorized use and disclosure of Protected Health Information through use of the Subscription Services as set forth in the BAA and attached hereto as Exhibit D.
- 3.4. Patient PHI. Customer acknowledges that Company may retain a Patient's PHI in order to provide such Patient with ongoing access to such PHI upon termination of this Agreement, pursuant to a valid authorization in accordance with HIPAA from such Patient. Customer will provide reasonable cooperation to assist Company in obtaining such authorization.
- 3.5. Acceptable Use Policies. Customer acknowledges and agrees that Company does not monitor or police communications or Customer Data transmitted through the Subscription Services and that Company shall not be responsible for the content or accuracy of any such communications or transmissions. Customer shall be responsible for all Manual Entry and any errors therein including any costs or liabilities associated with errors in the Manual Entry data. Customer shall use the Subscription Services exclusively for authorized and legal purposes, consistent with all applicable laws, regulations and the rights of others. Customer shall not use the Subscription Services to transmit any bulk unsolicited commercial communications. Company may refuse to accept or transmit, store or otherwise process any data and Company may delete any data from the Subscription Services at any time if it determines, in its sole discretion, that the data is in violation of this Agreement, any other applicable agreements, or applicable law. Customer shall keep confidential and not disclose to any third parties, and shall ensure that Authorized Users keep confidential and do not disclose to any third parties any user identifications or account profiles. Customer acknowledges that the Subscription Services are not designed, intended or authorized for use in hazardous or mission-critical circumstances or for uses requiring fail-safe performance such as the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control systems or weapons control systems,

or where failure could lead to death, personal injury or environmental damage. Customer shall not use the Subscription Services for such purposes or under such circumstances.

- 3.6. License to Customer Content and Customer Data. During the term of this Agreement, Customer grants Company a royalty free, non-exclusive license to use, copy, publicly display, publicly perform and distribute the Customer Content and Customer Data to the extent necessary under this Agreement.
- 3.7. Professional Services. From time to time, the parties may enter into a statement of work ("**SOW**") to have Company perform certain professional services (the "**Professional Services**") related to Subscription Services, including, without limitation, development of new features. Each SOW will: (i) expressly refer to this Agreement, will form a part of this Agreement and will be subject to the terms and conditions contained herein; (ii) be signed by an authorized representative of each party; (iii) set forth the Professional Services to be performed and any work product to be delivered and the applicable fees. Company will perform the Professional Services in accordance with the terms and conditions of this Agreement and each SOW, subject to the payment of the Professional Services Fees.
- 3.8. Data Maintenance and Backup Procedures. Company shall follow its archival procedures for Customer Data as described in the Service Level Agreement. In the event of any loss or corruption of Customer Data, Company shall use its commercially reasonable efforts to restore the lost or corrupted Customer Data from the latest backup of such Customer Data maintained by Company in accordance with the archival procedure described in Service Level Agreement. Company shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Customer Data caused by any third party. COMPANY'S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER DATA PURSUANT TO THIS SECTION 3.8 SHALL CONSTITUTE COMPANY'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER DATA.

4. CUSTOMER OBLIGATIONS

- 4.1. Cooperation and Assistance. As a condition to Company's obligations hereunder, Customer shall at all times: (a) provide Company with good faith cooperation and access to such information, facilities, and equipment as may be reasonably required by Company in order to provide the Implementation Services, Professional Services and Subscription Services, including, but not limited to, providing Customer Content, Customer Data, security access, information, and software interfaces to Customer's business and clinical applications; (b) provide such personnel assistance as may be reasonably requested by Company from time to time; and (c) carry out in a timely manner all other Customer responsibilities

set forth in this Agreement. In the event of any delay in Customer's performance of any of the obligations set forth in (a), (b) or (c), or any other delays caused by Customer, or by Customer's agents or independent contractors, Company may adjust any milestones set forth in Exhibit A or the applicable SOW as reasonably necessary to account for such delays.

- 4.2. Customer Content License. During the term of this Agreement, and notwithstanding the terms of Section 8 hereunder, Customer hereby grants to Company a non-exclusive, royalty-free, worldwide, perpetual license to make available Customer Content to Patients and other individuals using Company's Subscription Services, solely for educational purposes.
- 4.3. Marketing Support. Customer shall comply with reasonable requests of Company to support public relations efforts pertaining to the Subscription Services, which efforts may include: (a) a press release highlighting Customer's purchase or use of the Subscription Services (including any return on investment attained through the Subscription Services); (b) participation in targeted press and analyst interviews highlighting benefits of implementing the Subscription Services; and (c) participation in customer case studies developed by Company and used on the Company web site and in other marketing materials. Customer grants to Company a non-exclusive, royalty-free, non-transferable (except as permitted under Section 14.8), limited right to use the Customer name, trademarks, and logos (collectively, the "**Customer Marks**") in the production of marketing materials, provided that such use is in accordance with Customer's trademark and logo use guidelines that Customer provides to Company, if any.
- 4.4. Enforcement. Customer shall ensure that all Authorized Users comply with the terms and conditions of this Agreement, including, without limitation, with Customer's obligations set forth in Sections 3.2 and 3.5. Customer shall promptly notify Company of any suspected or alleged violation of the terms and conditions of this Agreement and shall cooperate with Company with respect to: (a) investigation by Company of any suspected or alleged violation of this Agreement and (b) any action by Company to enforce the terms and conditions of this Agreement. Company may suspend or terminate any Authorized User's access to the Subscription Services upon notice to Customer in the event that Company reasonably determines that such Authorized User has violated the terms and conditions of this Agreement. Customer shall be liable for any violation of the terms and conditions of this Agreement by any Authorized User, including any costs associated with such violation.
- 4.5. Telecommunications and Internet Services. Customer acknowledges and agrees that Customer's and its Authorized Users' use of the Subscription Services is dependent upon access to telecommunications and Internet services. Customer shall be solely responsible for acquiring and maintaining all telecommunications

and Internet services and other hardware and software required to access and use the Subscription Services, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Company shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

5. **FEES; TAXES**

5.1. Fees. In consideration for Company providing the Implementation Services and Subscription Services, Customer shall pay to Company the Fees, in accordance with the terms set forth in Exhibit B. In consideration for the Company providing the Professional Services, Customer shall pay to Company the Professional Services Fees in accordance with the terms set forth in each applicable SOW.

5.2. Other Expenses. Customer shall reimburse Company for all actual and reasonable expenses (including, but not limited to, travel, lodging, shipping and long distance communication) incurred by Company in performing the Implementation Services (collectively, "**Expenses**"); provided, however, that Company obtains Customer's prior written approval prior to incurring such Expenses.

5.3. Invoices; Payment; Late Payment. Company shall invoice Customer in accordance with the payment schedule set forth in Exhibit B for all Fees, Expenses, and applicable Taxes (as defined in Section 5.4), and including any related interest and/or penalties due. Each invoice is due and payable fifteen (15) days following the invoice date. If Company has not received payment within five (5) days after the due date, interest shall accrue on past due amounts at the rate of one and one half percent (0.5%) per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by Company. Customer shall reimburse Company for the reasonable costs of collection, including reasonable fees and expenses of attorneys.

5.4. Taxes. All amounts and fees stated or referred to in this Agreement are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, "**Taxes**"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Company's net income.

6. **OWNERSHIP**. As between Company and Customer, the Subscription Services, Software (including all copies of the Software), and all Intellectual Property Rights therein or relating thereto, are and shall remain the exclusive property of Company or its licensors. Company will also retain ownership of any and all modifications, enhancements, or improvements that Company makes to the Subscription Services or Software, including

but not limited to any such developments made to achieve the functionality required herein or made in connection with the Professional Services.

7. FEEDBACK

- 7.1. Customer will: (a) test the Subscription Services and cooperate with Company in evaluating the Subscription Services; and (b) work with Company to identify and resolve any errors, problems or defects in the Subscription Services discovered by Customer or Company. All feedback, comments, and suggestions for improvements that Customer provides to Company hereunder are referred to collectively as "**Customer Feedback**".
- 7.2. Customer acknowledges and agrees that all Customer Feedback will be the sole and exclusive property of Company. Customer hereby irrevocably transfers and assigns to Company and agrees to irrevocably assign and transfer to Company all of Customer's right, title, and interest in and to all Customer Feedback, including all Intellectual Property Rights therein. At Company's request and expense, Customer will execute documents and take such further acts as Company may reasonably request to assist Company to acquire, perfect and maintain its Intellectual Property Rights and other legal protections for the Customer Feedback. Customer acknowledges and agrees that, as between the parties, Customer will not earn or acquire any rights or licenses in the Subscription Services, or Software on account of Company's incorporation of Customer Feedback into the Subscription Services or Software.

8. CONFIDENTIALITY

- 8.1. Definition. By virtue of this Agreement, the parties may have access to each other's Confidential Information. "Confidential Information," as used in this Agreement, means any written, machine-reproducible and/or visual materials that are clearly labeled as proprietary, confidential, or with words of similar meaning, and all information that is orally or visually disclosed, if not so marked, if it is identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure, and any information of any nature described in this Agreement as confidential. Company Confidential Information includes, without limitation, the Subscription Services and any Software, source code, documentation, nonpublic financial information, pricing, business plans, techniques, methods, processes, and the results of any performance tests of the Subscription Services or the Software. Customer Data and Customer Content is the Confidential Information of Customer. The terms and conditions of this Agreement shall be deemed the Confidential Information of both parties and neither party shall disclose such information except to such party's advisors, accountants, attorneys, investors (and prospective investors), and prospective acquirers as have a reasonable need to know such information, provided that any such third parties shall, before they may access such

information, either (a) execute a binding agreement to keep such information confidential or (b) be subject to a professional obligation to maintain the confidentiality of such information.

- 8.2. Exclusions. Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure; (c) is rightfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party, which independent development can be shown by written evidence, or (e) is Protected Health Information, and subject to the Business Associate Agreement attached as Exhibit D.
- 8.3. Use and Nondisclosure. During the Term and for a period of five (5) years after expiration or termination of this Agreement, neither party shall make the other's Confidential Information available to any third party or use the other's Confidential Information for any purposes other than exercising its rights and performing its obligations under this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any agents or subcontractors that are permitted to access any of the other's Confidential Information are legally bound to comply with the obligations set forth herein, and each will be liable hereunder for the conduct of its agents and subcontractors. Confidential Information may be disclosed as required by any governmental agency, provided that before disclosing such information the disclosing party must provide the non-disclosing party with sufficient advance notice of the agency's request for the information to enable the non-disclosing party to exercise any rights it may have to challenge or limit the agency's authority to receive such Confidential Information.

9. **WARRANTY**

- 9.1. Warranty for Subscription Services. Company warrants that the Subscription Services will provide the functionality described in Exhibit A, and that Company's delivery of the Subscription Services will meet the requirements set forth in the Service Level Agreement (Exhibit C). Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section 9.1 will be as set forth in the Service Level Agreement.
- 9.2. Disclaimer. Customer assumes sole responsibility and liability for results obtained from the use of the Subscription Services and for conclusions drawn from such use. Company shall have no liability for any claims, losses, or damage caused by

errors or omissions in any information, Customer Data, Manual Entry or PHI provided to Company by Customer in connection with the Subscription Services or any actions taken by Company at Customer's direction.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE IMPLEMENTATION SERVICES, PROFESSIONAL SERVICES OR THE SUBSCRIPTION SERVICES. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, COMPANY DISCLAIMS ANY WARRANTY THAT THE SUBSCRIPTION SERVICES WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. COMPANY FURTHER DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SUBSCRIPTION SERVICES AS TO MERCHANTABILITY, ACCURACY OF ANY INFORMATION PROVIDED, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. COMPANY FURTHER DISCLAIMS ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

10. TERM AND TERMINATION

- 10.1. Term. This Agreement shall commence on the Effective Date and shall continue for a period of three (3) months thereafter (the "**Term**"), unless terminated earlier as provided in this Agreement. Upon expiration of the Initial Term, the term of this Agreement will automatically renew on a month-to-month term unless either party provides written notice of non-renewal at least thirty (30) days prior to the end of the then-current term.
- 10.2. Termination for Cause. Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach; provided that the cure period for any default with respect to payment shall be five (5) business days.
- 10.3. Rights and Obligations Upon Expiration or Termination. Upon expiration or termination of this Agreement: (i) Customer's and Authorized Users' right to access and use the Subscription Services shall immediately terminate, and Customer and its Authorized Users shall immediately cease all use of the Subscription Services, (ii) Customer shall immediately return all Company Hardware, and (iii) each party shall return or destroy and make no further use of

any Confidential Information, materials, or other items (and all copies thereof) belonging to the other party. Notwithstanding the foregoing, Company may destroy or otherwise dispose of any Customer Data in its possession unless Company receives, no later than ten (10) days after the effective date of the expiration or termination of this Agreement, a written request for the delivery to Customer of the then-most recent back-up of the Customer Data. Company will use all reasonable efforts to deliver the back-up to Customer within thirty (30) days of its receipt of such a written request. Customer shall pay all reasonable expenses incurred by Company in returning Customer Data to Customer. Notwithstanding the foregoing, Company may continue to maintain or store any PHI associated with a Patient solely to the extent such Patient has provided a valid HIPAA consent pursuant to Section 3.4. Also upon expiration or termination of this Agreement, Company shall cease use of the Customer Marks (as defined in Section 4.2); provided, however, that (a) Company shall have a reasonable time to remove the Customer Marks from promotional materials, (b) Company shall be entitled to exhaust materials printed during the Term that include the Customer Marks, and (c) Company shall not be required to remove any such printed materials from circulation.

10.4. Survival. The rights and obligations of Company and Customer contained in Sections 3.3 (HIPAA), 3.4 (Patient PHI), 4.2 (Customer Content License), 5 (Fees; Taxes), 6 (Ownership), Section 7 (Feedback), 8 (Confidentiality), Section 9.2 (Disclaimer), 10.3 (Rights and Obligations Upon Expiration or Termination), 10.4 (Survival), 11 (Indemnification), 12 (Limitation of Liability), 13 (Acknowledgement), and 14 (General) shall survive any expiration or termination of this Agreement.

11. **INTENTIONALLY OMITTED**

12. **LIMITATION OF LIABILITY**. EXCEPT FOR LIABILITY ARISING FROM A BREACH OF SECTIONS 3.2 OR 3.5 OR SECTION 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR COST OF SUBSTITUTE SERVICES, OR OTHER ECONOMIC LOSS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE.

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY TO CUSTOMER AND ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S ACCESS TO AND USE OF THE SUBSCRIPTION SERVICES EXCEED THE TOTAL MONTHLY SUBSCRIPTION FEES PAID BY CUSTOMER IN THE TWELVE MONTH PERIOD PRECEDING THE CLAIM OR ACTION, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION.

13. **ACKNOWLEDGEMENT.** The parties acknowledge that the limitations and exclusions contained in Section 12 and elsewhere in this Agreement have been the subject of negotiation between the parties and represent the parties' agreement based upon the perceived level of risk associated with their respective obligations under this Agreement, and the payments made hereunder. Without limiting the generality of the foregoing, the parties acknowledge and agree that (a) the provisions hereof that limit liability, disclaim warranties or exclude consequential damages or other damages or remedies shall be severable and independent of any other provisions and shall be enforced as such, regardless of any breach hereunder, and (b) all limitations of liability, disclaimers of warranties, and exclusions of consequential damages or other damages or remedies shall remain fully valid, effective and enforceable in accordance with their respective terms, even under circumstances that cause an exclusive remedy to fail of its essential purpose.

14. **GENERAL**

14.1. Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of California, without regard to its conflict of law provisions. Any legal action or proceeding relating to this Agreement shall be brought exclusively in the state or federal courts located in the federal District of California. Company and Customer hereby agree to submit to the jurisdiction of, and agree that venue is proper in, those courts in any such legal action or proceeding.

14.2. Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

14.3. Notices. All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be sent to the addresses set forth below or delivered in person. The notices shall be deemed to have been given upon: (a) the date actually delivered in person; (b) the day after the date sent by overnight courier; or (c) three (3) days following the date such notice was mailed by first class mail. Notices may be confirmed by email or fax.

If to Company:

Healthvana, Inc.
P.O. Box 480131
Los Angeles, CA 90048
Attn: Ramin Bastani
Phone: (310) 205-0246
Email: ramin@healthvana.com

If to Customer:

City of Long Beach, COVID-19 Response Team

- 14.4. Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
- 14.5. Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of events beyond the reasonable control of such party, which may include without limitation denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a “**Force Majeure Event**”). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations effected by the Force Majeure Event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.
- 14.6. Compliance with Laws. Each party agrees to comply with all applicable laws and regulations with respect to its activities hereunder, including, but not limited to, any export laws and regulations of the United States.
- 14.7. Relationship Between the Parties. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other’s behalf without such other party’s prior written consent.
- 14.8. Assignment/Successors. Neither party may assign or transfer this Agreement, in whole or in part, without the other party’s written consent except that Company may assign or transfer this Agreement in the event of a Change of Control of Company (as defined below) without consent. Any attempted assignment or transfer in violation of this Section will be null and void. “Change of Control” means, with respect to Company: (a) the direct or indirect acquisition of either (i) the majority of voting stock of Company or (ii) all or substantially all of the assets of Company, by another entity in a single transaction or a series of transactions; or (b) the merger of Company with another entity. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of the successors and permitted assigns of the parties.
- 14.9. Entire Agreement. This Agreement together with the exhibits hereto constitutes the complete and exclusive agreement between the parties concerning its subject

matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

- 14.10. Non-Exclusive Remedies. Except as set forth in Sections 3.8 and 11.2 and in the Service Level Agreement, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
- 14.11. Equitable Relief. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.
- 14.12. No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.
- 14.13. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.
- 14.14. Headings. The headings in this Agreement are for the convenience of reference only and have no legal effect.

In Witness Whereof, the parties have caused this Agreement to be signed as of the Effective Date by their duly authorized representatives.

CUSTOMER

By: Linda F. Tatum
Name: LINDA F. TATUM
Title: ASST CITY MANAGER
Date: 12-16-20

COMPANY

By: [Signature]
Name: RAMIN BASTANI
Title: CEO
Date: 11-11-2020

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

APPROVED AS TO FORM
Dec. 16, 2020
CHARLES PARKIN, City Attorney
By: [Signature]
GARY J. ANDERSON
PRINCIPAL DEPUTY CITY ATTORNEY

EXHIBIT A

DESCRIPTION OF SUBSCRIPTION SERVICES AND IMPLEMENTATION SERVICES

1. **Description of the Subscription Services:** The Subscription Services shall provide the functionality described herein. Capitalized terms not defined in this Exhibit have the meaning set forth in the Agreement
 - 1.1. For COVID-19 Patients: A cloud-based, mobile-optimized personal health record for Patients to maintain their personal information (including Protected Health Information) and do the following: i) access lab test results and care instructions for tests by or through Customer; ii) view educational content; and iii) complete satisfaction surveys (collectively the “PHR”)
 - 1.2. Email and text message notifications to Patients (“Notifications”).
 - 1.3. For Authorized Users: A cloud-based solution that allows Authorized Users to view a dashboard with patient test results filterable by result status.
 - 1.4. An integration between the Company Platform and the Customer’s external laboratory (Fulgent) (collectively, the “Integrations”).
 - 1.5. Training for Authorized Users regarding the Company Platform (“Training”).
 - 1.6. Email support for Patients and email and phone support for Authorized Users during Company’s regularly scheduled Support hours (“Support” and together with the Company Platform, Integrations, and Training, the “Subscription Services”).
2. **Description of the Implementation Services:** With Customer’s cooperation and assistance in accordance with Section 2 of the Agreement, Contractor shall provide the following Implementation Services:
 - 2.1. Configuration of the Software and implementation of the Subscription Services with the objective of meeting a mutually agreed upon Go-Live Date.
 - 2.2. Initial Training for Authorized Users regarding the Company Platform.
3. **Level of Access:** Subject to the payment of the Fees set forth in Exhibit B, Customer will receive the following level of access to the Subscription Services:
 - 3.1. Customer may use the Subscription Services for an unlimited number of Authorized Users.
 - 3.2. Customer is eligible to receive unlimited Support for Authorized Users and Patients during Company’s regularly scheduled Support hours.

EXHIBIT B

FEES

1. Subscription Fees.

- 1.1. The Subscription Fee includes the fees for all Subscription Services rendered over the Term, but excludes the Professional Services Fees.
- 1.2. Customer shall pay fee of three dollars (\$3.00) per Patient, per COVID-19 or Combo COVID-19 Test. A "Combo COVID-19 Test" reports, at no additional charge to Customer, whether Influenza A or B virus is identified in a specimen tested for COVID-19. Company is authorized to include Influenza A or B test results with COVID-19 Test results delivered to Patients. Company acknowledges that testing locations and the number of patients tested daily may increase or decrease, as determined by Customer.
- 1.3. Company Platform can process test results beyond the PCR COVID-19 test being sent to Fulgent today (e.g., other COVID-19 tests, non-COVID-19 results, vaccinations, etc.) Customer and Company would mutually agree on a SOW to process other tests results if and when the time arises.

2. Fees for Out-of-Scope Services.

If significant delays, scope changes, or changes in assumptions or other matters beyond the Company's control arise that would affect the Implementation Fee, Implementation Services, Implementation Schedule, Subscription Fee, or Subscription Services ("**Out-of-Scope Services**"), both parties will discuss their impact and mutually agree upon a course of action in writing before Company is obligated to proceed with such Out-of-Scope Services. Out-of-Scope Services include any services required to be performed by the Company in connection with HIPAA breach investigation or notification obligations to the extent any such obligations were set in motion by or arose out of the acts or omissions of the Customer or Customer's vendors. Out-of-Scope Services shall be billed on a time and materials basis at the rates set forth in Table B-1, below.

Table B-1
Professional Services Fees

Resource	Hourly Rate
Architect	\$250.00
Data Analyst	\$225.00
Database Administrator	\$200.00
Engineer	\$200.00
Multimedia	\$175.00
System Administrator	\$175.00
Business Analyst	\$150.00

Project Manager	\$150.00
Test Engineer	\$150.00
Designer	\$125.00
Web Developer	\$125.00

3. Fee Payment Schedule.

Fees will be invoiced and payable in accordance with Section 5.3 of the Agreement and as set forth in Table B-2, below.

**Table B-2
Invoicing Schedule**

Invoice Date	Amount
Monthly, expected start date of July 1, 2020	Three Dollars (\$3.00) per Patient, per Test

EXHIBIT C

SERVICE LEVEL AGREEMENT

1. Subscription Services.

The Subscription Services will meet the following service level standards:

- 1.1. Hosting Facility. The hosting equipment will be installed on Company premises or in a professional hosting facility designed for such use. The facility will be equipped with access security, climate control, fire suppression, managed power supply with UPS, and generator backup.
- 1.2. Security Services. Company will provide security services as follows: (a) facility access will be limited to authorized Company and/or contracted third-party personnel; (b) facility will be monitored through closed circuit video surveillance and require identification for access; (c) data access security will be provided through managed firewall services, private network path for administration and SNMP monitoring, and hardened servers.
- 1.3. Backup, Archiving and Recovery Services. Company will perform regular backups of Customer Data, and provide routine and emergency recovery of Customer Data from its archives. The backup schedule shall include at least weekly full backups and daily incremental backups. In the event of loss or corruption of Customer Data, Company will use reasonable commercial efforts to restore such Customer Data based on its most recent backup.
- 1.4. Administration Services. Company will provide installation and administration of additional hardware, operating systems and other software, equipment and resources as necessary to maintain the Subscription Services.

2. Service Availability Definitions.

- 2.1. **"Downtime"** means the number of minutes during the Scheduled Availability Period that the Subscription Services are not available for access.
- 2.2. **"Excused Downtime"** means any Downtime that: (i) occurs during an Excused Maintenance Period or (ii) is caused by: (A) Customer's or its Authorized Users' telecommunications and Internet services, (B) software or hardware not provided and controlled by Company (including third-party software or sites that are accessed or linked through the Subscription Services), or (C) Force Majeure Events within the meaning of Section 14.5 of the Agreement.
- 2.3. **"Excused Maintenance Period"** means any time period during which Company performs unscheduled maintenance on the Subscription Services or Software,

provided that Company has furnished Customer with at least three (3) days advance notice thereof.

- 2.4. **“Scheduled Availability Period”** mean the regularly scheduled time periods during which the Subscription Services are available for access, as specified below:

Scheduled Availability Period is 7 days a week, 7:00 a.m. to 11:00 p.m. Pacific.

- 2.5. **“Total Scheduled Availability”** means the total number of minutes in the Scheduled Availability Period.

Example: Using the examples in Section 2.4 above (assuming a 30-day month), the Total Scheduled Availability would be:

7:00 am to 11:00 pm = 16 hours or 960 minutes

Total Scheduled Availability = (30 x 960) = **28,800 minutes**

- 2.6. **“Uptime Percentage”** means that percentage of the Total Scheduled Availability (taking into account any Excused Downtime) that the Subscription Services are actually available for access:

$$\text{Uptime Percentage} = \frac{\text{Total Scheduled Availability} - \text{Downtime}}{\text{Total Scheduled Availability} - \text{Excused Downtime}}$$

3. **Service Level Guarantee.** Company will use commercially reasonable efforts to achieve a 99% Uptime Percentage for the Subscription Services, as measured by Company.
4. **Breach; Remedy.** Notwithstanding Section 10.2 of the Agreement (Termination for Cause), if Company fails to comply with the Service Level Guarantee in three (3) consecutive calendar months, then Customer may terminate the Agreement upon written notice to Company. Such right to terminate shall be limited to a period of thirty (30) days from the end of the third consecutive month of failure. Notwithstanding anything to the contrary in the Agreement, this Section states Company’s sole liability regarding its failure to comply with the SLA and Customer’s sole and exclusive remedy for any failure of Company to comply with any of the obligations under this SLA.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("**BAA**") is effective upon execution of the Software as a Service Agreement ("**SaaS Agreement**") entered into between the City of Long Beach ("**Covered Entity**") with offices at 411 W. Ocean Blvd, Long Beach, CA 90802 and Healthvana, Inc., a Delaware corporation with its principal offices at 7162 Beverly Blvd., Suite 238, Los Angeles, CA 90036 (hereinafter referred to as "Healthvana" or "Business Associate"). Execution of the SaaS Agreement shall be deemed to constitute execution of this Business Associate Agreement.

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this BAA shall have the meaning set forth in the HIPAA Rules. In addition, the following definitions apply:

(a) "**Business Associate**" shall generally have the same meaning as the term "Business Associate" at 45 CFR 160.103, and in reference to the party to this BAA, shall mean Healthvana.

(b) "**Covered Entity**" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this BAA, shall mean City of Long Beach.

(c) "**Data Subject**" shall mean the individual that particular Protected Health Information relates to.

(d) "**HIPAA Rules**" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(e) "**Protected Health Information**" or "**PHI**" shall generally have the meaning as set forth in 45 CFR 160.103 but, for the purposes of this BAA and the SaaS Agreement, shall be limited to information created or received by Business Associate from or on behalf of Covered Entity pursuant to the SaaS Agreement. "Protected Health Information" or "PHI" shall also include electronic PHI.

2. **Obligations and Activities of Business Associate**

(a) Business Associate agrees it shall use or disclose Protected Health Information ("**PHI**") only as permitted or required by this BAA or as Required by Law, the SaaS Agreement, as requested by Covered Entity in writing, or as otherwise permitted by a Data Subject pursuant to a valid authorization obtained in accordance with Section 3(f) of this BAA.

(b) Business Associate agrees to comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to use appropriate safeguards designed to prevent use or disclosure of PHI other than as provided for by Section 2(a) of this BAA.

(c) Business Associate agrees to report to Covered Entity within seven (7) calendar days any use or disclosure of PHI not provided for by this BAA or the SaaS Agreement of which it becomes aware, including any Breach of Unsecured PHI, as defined in 45 CFR 164.402 and as required at 45 CFR 164.410 and/or applicable state laws. Notwithstanding the foregoing, if a law enforcement official requests that Business Associate delay, in accordance with 45 CFR § 164.412, notification to covered entities, Business Associate may delay notifying Covered Entity, for the applicable time period. Following the initial notification of any such Breach of Unsecured PHI as noted above, Business Associate shall provide, within a reasonable period of time, but not later than thirty (30) business days after providing the initial notice, a written report to Covered Entity that includes, as known: (i) a brief description of what happened, including the date of occurrence and the date of the discovery by Business Associate; (ii) a description of the PHI affected, including the names of any Individuals whose PHI has been or is reasonably believed to have been accessed, acquired or disclosed and the types of PHI involved (such as full name, social security number, date of birth, home address, account numbers, etc.); and (iii) a brief description of what Business Associate has done to investigate the Breach of Unsecured PHI, to mitigate harm to Individuals, and to protect against any further Breaches of Unsecured PHI. Business Associate also shall provide to Covered Entity any other available information Covered Entity is required to include in its notification to affected Individual(s).

(d) Business Associate shall reimburse Covered Entity for its reasonable and actually incurred costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance for up to one year) for affected individuals whose PHI was or may have been compromised by Business Associate, but only to the extent that the Breach of Unsecured PHI was not set in motion by or did not arise out of the acts or omissions of Covered Entity or any individual or entity acting at the direction of Covered Entity. Business Associate shall not be responsible for any breach notification costs attributable to the acts or omissions of Covered Entity or any individual or entity acting at the direction of Covered Entity. Covered Entity shall control the timing and method of providing such notification; Business Associate shall have the right to advance review of and comment on any notifications that identify Business Associate.

(e) Business Associate agrees to report to Covered Entity within seven (7) calendar days any successful Security Incident of which it becomes aware; provided, however, that the parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents of which no additional notice to Covered Entity shall be required. Unsuccessful Security Incidents shall include, but not be limited to, 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 such incidents do not result in unauthorized access, use or disclosure of Covered Entity's electronic PHI.

(f) If applicable, Business Associate agrees to, require 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 Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2).

(g) Business Associate agrees to make any PHI in a designated record set available to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524 within ten (10) business days of a written request from Covered Entity,

(h) Business Associate agrees to make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526 within ten (10) business days of a written request from Covered Entity,

(i) Business Associate agrees to maintain and, within ten (10) business days of a written request from Covered Entity, make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528, subject to any exceptions therein.

(j) Subject to the exceptions of 45 CFR § 164.504(e)(2)(i), to the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

(k) Business Associate agrees to make its internal practices, books, and records relating to the privacy and security of PHI and relating to the use and disclosure of PHI reasonably available to the Secretary, upon written request, for purposes of determining compliance with the HIPAA Rules.

(l) Business Associate shall abide by all applicable requirements for business associates set forth in the HITECH Act, which was adopted as part of the American Recovery and Reinvestment Act of 2009, and its implementing regulations, and which makes business associates directly liable for compliance with many of the same requirements as Covered Entities under both the Privacy Rule and the Security Rule. Accordingly, Business Associate shall, among other things, implement adequate policies, procedures, and practices designed to prevent, detect, evaluate, report, and mitigate breaches of PHI; and perform regular risk analyses.

3. Permitted Uses and Disclosures by Business Associate

(a) Business Associate may only use or disclose PHI as specified in this BAA, and as necessary to perform the services set forth in the SaaS Agreement and any other written agreements between the parties.

- (b) Business Associate may use or disclose PHI as Required By Law.
- (c) Business Associate may use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c).
- (d) Business Associate agrees to make uses and disclosures and requests for PHI consistent with the minimum necessary policies and procedures required by HIPAA.
- (e) Business Associate shall retain any and all ownership claims relating to the de-identified PHI it created from Covered Entity's PHI.
- (f) If it first obtains a valid authorization, pursuant to 45 CFR 164.508(c), from a Data Subject for Covered Entity to disclose that Data Subject's PHI to Business Associate and to retain that PHI after termination, Business Associate may retain such PHI upon termination of this BAA in order to provide any Data Subjects with ongoing access to such Data Subjects' PHI.
- (g) Business Associate may use and disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).
- (h) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.
 - (i) Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (ii) In accordance with 45 CFR 164.504(e)(4), Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - (iii) Business Associate may use PHI to provide data aggregation services relating to the health care operations of the Covered Entity.

4. **Obligations of Covered Entity**

- (a) Covered Entity shall promptly notify Business Associate in writing of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity shall promptly 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.

(c) Covered Entity shall promptly 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 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(d) Except as provided in Section 4.3(g), Covered entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

(e) Covered Entity shall, with respect to all PHI created, used, maintained, transmitted, or disclosed by or at the direction of the Covered Entity to Business Associate, (i) comply with HIPAA Regulations with respect to ePHI, and (ii) implement all reasonable and appropriate administrative, physical, and technical safeguards designed to protect the confidentiality, integrity and availability of the PHI and to prevent use or disclosure of PHI not provided for by this BAA or the SaaS Agreement.

5. **Term and Termination**

(a) Term. The Term of this BAA shall be effective as of the date of execution, and shall terminate upon termination or expiration of the SaaS Agreement, unless terminated earlier as provided herein.

(b) Termination. This BAA may be terminated by mutual written consent of the parties. Additionally, upon a party's knowledge of a breach of a material term of this BAA by the other party, the nonbreaching party shall provide an opportunity for the breaching party to cure the breach or end the violation and terminate this BAA if the breaching party does not cure the breach or end the violation within the time specified by the nonbreaching party.

(c) Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI, except that Business Associate may retain PHI: (i) for its own management and administration purposes; (ii) if it first obtains a valid authorization from a Data Subject for Covered Entity to disclose that Data Subject's PHI to Business Associate and to retain that PHI following termination in order to provide such Data Subject with ongoing access to such Data Subject's PHI; however, in such case, once Covered Entity and Business Associate terminate this BAA, Healthvana shall no longer be acting as a Business Associate of

Covered Entity, but shall be holding PHI based on its separate independent relation to the Data Subject; or (iii) to carry out its legal responsibilities, subject to HIPAA and this BAA.

(d) Upon termination of this BAA for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

(i) Retain only that PHI which is necessary for Business Associate to provide Data Subjects with ongoing access to PHI pursuant to Sections 3(f) and 5(c)(ii) of this BAA, continue its proper management and administration or to carry out its legal responsibilities;

(ii) Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining PHI that the Business Associate still maintains in any form;

(iii) To the extent Healthvana is permitted by Covered Entity to retain any PHI for any reason allowed by HIPAA, or as expressly authorized by Section 5(c), Healthvana shall continue to comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI and shall continue to use appropriate safeguards designed 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;

(iv) 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 herein which applied prior to termination; and

(v) Return to Covered Entity or, if agreed to by Covered Entity, 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. Notwithstanding the foregoing, if Covered Entity has not provided Business Associate with written instruction requesting the return or destruction of its PHI within sixty (60) days from the date of termination or expiration of this Agreement, and it is feasible that such PHI can either be returned or destroyed, Covered Entity hereby agrees that Business Associate shall be entitled to destroy such PHI using a methodology in conformity with the then-current standards set forth by the U.S. Department of Health and Human Services for the destruction of protected health information.

(e) Survival. The obligations of Business Associate under this Section shall survive the termination of this BAA.

6. **Miscellaneous**

(a) Regulatory References. A reference in this BAA to a Section in the HIPAA Rules means the Section as in effect or as amended.

- (b) Amendment. The Parties agree to work together to clarify their respective obligations with respect to any new requirements under the HIPAA Rules. Any amendment to this BAA shall be in writing and signed by both parties.
- (c) Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules.
- (d) Governing Law. Notwithstanding any other provision to the contrary, this BAA shall be governed and construed in accordance with the laws of the State of California.
- (e) Entire Agreement. This BAA and the SaaS Agreement constitute the complete and exclusive agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the subject matter of this BAA, including, without limitation, any previously executed Business Associate Agreement.
- (f) Notices. All notices required or permitted to be given under this BAA shall be given pursuant to the terms of the SaaS Agreement.
- (g) No Third-Party Beneficiaries. Nothing express or implied in this BAA is intended to confer nor shall anything herein confer upon any person other than Covered Entity, Business Associate and their respective successors and permitted assigns any rights, remedies, obligations or liabilities whatsoever.

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

1 IN WITNESS WHEREOF, the parties have signed this document with all the
2 formalities required by law as of the date first stated above.

3 HEALTHVANA, INC., a Delaware
4 corporation
5 November 11, 2020, 2020 By [Signature]
6 Name RAMIN BASTANI
7 Title CEO

8 _____, 2020 By _____
9 Name _____
10 Title _____

11 "Contractor"

12 December 16, 2020 By [Signature]
13 City Manager

14 CITY OF LONG BEACH, a municipal
15 corporation

16 "City"

17 This Contract is approved as to form on Dec. 16, 2020.
18 EXECUTED PURSU,
19 TO SECTION 301
20 THE CITY CHARTER

21 CHARLES PARKIN, City Attorney

22 By [Signature]
23 Deputy
24
25
26
27
28

In Witness Whereof, the parties have caused this Agreement to be signed as of the Effective Date by their duly authorized representatives.

CUSTOMER

By: Linda F. Tatum
Name: LINDA F. TATUM
Title: ASST. CITY MANAGER
Date: 12-16-20

COMPANY

By: [Signature]
Name: RAMIN BASTANI
Title: CEO
Date: 11-11-2020

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

APPROVED AS TO FORM
Dec. 16, 2020
CHARLES PARKIN, City Attorney
By [Signature]
GARY J. ANDERSON
PRINCIPAL DEPUTY CITY ATTORNEY