

AGREEMENT

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2 THIS AGREEMENT (this "Agreement") is made and entered into as of
3 December 28, 2020, in duplicate for reference purposes only, by and between AKIDO
4 LABS, INC., a Delaware corporation ("Consultant"), with its principal place of business at
5 1702 Abbot Kinney Blvd, Venice, California 90291, and the CITY OF LONG BEACH, a
6 municipal corporation ("City").

7 WHEREAS, City requires specialized services requiring unique skills to be
8 performed in connection with development of a re-engineered intake, screening, referral,
9 and reporting process through implementation of an integrated data system ("Project"); and

10 WHEREAS, City has selected Consultant in accordance with City's
11 administrative procedures using a Request for Proposals ("RFP"), attached hereto as
12 Exhibit "A-1", and incorporated by this reference, and City has determined that Consultant
13 and its employees are qualified, licensed, if so required, and experienced in performing
14 these specialized services; and

15 WHEREAS, City desires to have Consultant perform these specialized
16 services, and Consultant is willing and able to do so on the terms and conditions in this
17 Agreement;

18 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
19 conditions in this Agreement, the parties agree as follows:

20 1. SCOPE OF WORK OR SERVICES.

21 A. Consultant shall furnish specialized services ("Services") more
22 particularly described in Exhibit "A" ("Statement of Work"), attached to this
23 Agreement and incorporated by this reference in accordance with the standards of
24 the profession, and City shall pay for these Services in the manner described below,
25 in an amount not to exceed Four Hundred and Sixty-Three Thousand Five Hundred
26 and Forty Dollars (\$463,540.00), at the rates or charges shown in Exhibit "A".

27 B. The City's obligation to pay the sum stated above for fees due
28 and owing to Consultant during any one fiscal year shall be contingent upon the City

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 Council of the City appropriating the necessary funds for such payment by the City
2 in each fiscal year during the term of this Agreement. For the purposes of this
3 Section, a fiscal year commences on October 1 of the year and continues through
4 September 30 of the following year. The City will use all reasonable efforts to obtain
5 sufficient appropriated funds to cover fees payable to Consultant pursuant to this
6 Agreement. In the event that the City Council of the City fails to appropriate the
7 necessary funds for any fiscal year, then, and in that event, the City will promptly
8 provide written notice to Consultant that the Agreement will terminate, the effective
9 date of such termination, and will include instructions regarding the stoppage of any
10 Services and a work-stoppage date. In the event of such a termination pursuant to
11 this Section, the City shall pay Consultant for all Services performed before the later
12 of Consultant's receipt of the City's written notice or the City-instructed work
13 stoppage date. The City shall not be obligated to pay for any Services provided
14 thereafter. Notwithstanding the foregoing, and for the avoidance of doubt, the City
15 hereby represents and warrants that the City has obtained sufficient appropriated
16 funds to pay for the Services, at least through the fiscal year ending September 30,
17 2021.

18 C. Consultant may select the time and place of performance for
19 these services provided, however, that access to City documents, records, and the
20 like, if needed by Consultant, shall be available only during City's normal business
21 hours and provided that milestones for performance, if any, are met.

22 D. Consultant has requested to receive regular payments. City
23 shall pay Consultant in due course of payments following receipt from Consultant
24 and approval by City of invoices showing the services or task performed, the time
25 expended (if billing is hourly), and the name of the Project. Consultant shall certify
26 on the invoices that Consultant has performed the services in full conformance with
27 this Agreement and is entitled to receive payment. Each invoice shall be
28 accompanied by a progress report indicating the progress to date of services

1 performed and covered by the invoice, including a brief statement of the Project
2 problems and potential causes of delay in performance, and listing those services
3 that are projected for performance by Consultant during the next invoice cycle.
4 Where billing is done and payment is made on an hourly basis, the parties
5 acknowledge that this arrangement is either customary practice for Consultant's
6 profession, industry, or business, or is necessary to satisfy audit and legal
7 requirements which may arise due to the fact that City is a municipality.

8 E. Consultant represents that Consultant has obtained all
9 necessary information on conditions and circumstances that may affect its
10 performance and has conducted site visits, if necessary.

11 F. CAUTION: Consultant shall not begin work until this
12 Agreement has been signed by both parties and until Consultant's evidence of
13 insurance has been delivered to and approved by the City.

14 2. TERM. The term of this Agreement shall commence at midnight on
15 December 28, 2020, and shall terminate at 11:59 p.m. on December 27, 2021, unless
16 sooner terminated as provided in this Agreement.

17 3. COORDINATION AND ORGANIZATION.

18 A. Consultant shall coordinate its performance with City's
19 representative, if any, named in Exhibit "B", attached to this Agreement and
20 incorporated by this reference. Consultant shall advise and inform City's
21 representative of the work in progress on the Project in sufficient detail so as to
22 assist City's representative in making presentations and in holding meetings on the
23 Project. City shall furnish to Consultant information or materials, if any, described
24 in Exhibit "C" attached to this Agreement and incorporated by this reference, and
25 shall perform any other tasks described in the Exhibit.

26 B. The parties acknowledge that a substantial inducement to City
27 for entering this Agreement was and is the reputation and skill of Consultant's key
28 employee, named in Exhibit "D" attached to this Agreement and incorporated by this

1 reference. City shall have the right to approve any person proposed by Consultant
2 to replace that key employee.

3 4. INDEPENDENT CONTRACTOR. In performing its services,
4 Consultant is and shall act as an independent contractor and not an employee,
5 representative, or agent of City. Consultant shall have control of Consultant's work and
6 the manner in which it is performed. Consultant shall be free to contract for similar services
7 to be performed for others during this Agreement provided, however, that Consultant acts
8 in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges
9 and agrees that a) City will not withhold taxes of any kind from Consultant's compensation,
10 b) City will not secure workers' compensation or pay unemployment insurance to, for or on
11 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the
12 usual and customary rights, benefits or privileges of City employees. Consultant expressly
13 warrants that neither Consultant nor any of Consultant's employees or agents shall
14 represent themselves to be employees or agents of City.

15 5. INSURANCE.

16 A. As a condition precedent to the effectiveness of this
17 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
18 duration of this Agreement, from insurance companies that are admitted to write
19 insurance in California and have ratings of or equivalent to A:V by A.M. Best
20 Company or from authorized non-admitted insurance companies subject to Section
21 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
22 by A.M. Best Company the following insurance:

23 i. Commercial general liability insurance (equivalent in
24 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less
25 than One Million Dollars (\$1,000,000.00) per each occurrence and Two
26 Million (\$2,000,000.00) general aggregate. This coverage shall include but
27 not be limited to broad form contractual liability, cross liability, independent
28 contractors liability, and products and completed operations liability. The

1 City, its boards and commissions, and their officials, employees and agents
2 shall be named as additional insureds by endorsement (on City's
3 endorsement form or on an endorsement equivalent in scope to ISO form CG
4 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04
5 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain
6 no special limitations on the scope of protection given to the City, its boards
7 and commissions, and their officials, employees and agents. This policy shall
8 be endorsed to state that the insurer waives its right of subrogation against
9 City, its boards and commissions, and their officials, employees and agents.

10 ii. Workers' Compensation insurance as required by the
11 California Labor Code and employer's liability insurance in an amount not
12 less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed
13 to state that the insurer waives its right of subrogation against City, its boards
14 and commissions, and their officials, employees and agents.

15 iii. Professional liability or errors and omissions insurance
16 in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

17 iv. Commercial automobile liability insurance (equivalent in
18 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in
19 an amount not less than Five Hundred Thousand Dollars (\$500,000.00)
20 combined single limit per accident.

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

26 C. Each insurance policy shall be endorsed to state that coverage
27 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior
28 written notice to City, shall be primary and not contributing to any other insurance

1 or self-insurance maintained by City, and shall be endorsed to state that coverage
2 maintained by City shall be excess to and shall not contribute to insurance or self-
3 insurance maintained by Consultant. Consultant shall notify the City in writing within
4 five (5) days after any insurance has been voided by the insurer or cancelled by the
5 insured.

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

12 E. Consultant shall require that all subconsultants or contractors
13 which Consultant uses in the performance of these services maintain insurance in
14 compliance with this Section unless otherwise agreed in writing by City's Risk
15 Manager or designee.

16 F. Prior to the start of performance, Consultant shall deliver to City
17 certificates of insurance and the endorsements for approval as to sufficiency and
18 form. In addition, Consultant, shall, within thirty (30) days prior to expiration of the
19 insurance, furnish to City certificates of insurance and endorsements evidencing
20 renewal of the insurance. City reserves the right to require complete certified copies
21 of all policies of Consultant and Consultant's subconsultants and contractors, at any
22 time. Consultant shall make available to City's Risk Manager or designee all books,
23 records and other information relating to this insurance, during normal business
24 hours.

25 G. Any modification or waiver of these insurance requirements
26 shall only be made with the approval of City's Risk Manager or designee. Not more
27 frequently than once a year, the City's Risk Manager or designee may require that
28 Consultant, Consultant's subconsultants and contractors change the amount, scope

1 or types of coverages required in this Section if, in his or her sole opinion, the
2 amount, scope, or types of coverages are not adequate.

3 H. The procuring or existence of insurance shall not be construed
4 or deemed as a limitation on liability relating to Consultant's performance or as full
5 performance of or compliance with the indemnification provisions of this Agreement.

6 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
7 contemplates the personal services of Consultant and Consultant's employees, and the
8 parties acknowledge that a substantial inducement to City for entering this Agreement was
9 and is the professional reputation and competence of Consultant and Consultant's
10 employees. Consultant shall not assign its rights or delegate its duties under this
11 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
12 of City, except that Consultant may with the prior approval of the City Manager of City,
13 assign any moneys due or to become due the Consultant under this Agreement. Any
14 attempted assignment or delegation shall be void, and any assignee or delegate shall
15 acquire no right or interest by reason of an attempted assignment or delegation.
16 Furthermore, Consultant shall not subcontract any portion of its performance without the
17 prior approval of the City Manager or designee, or substitute an approved subconsultant
18 or contractor without approval prior to the substitution. Nothing stated in this Section shall
19 prevent Consultant from employing as many employees as Consultant deems necessary
20 for performance of this Agreement.

21 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
22 certifies that, at the time Consultant executes this Agreement and for its duration,
23 Consultant does not and will not perform services for any other client which would create
24 a conflict, whether monetary or otherwise, as between the interests of City and the interests
25 of that other client. Consultant further certifies that Consultant does not now have and shall
26 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
27 other source of income, interest in real property or investment which would be affected in
28 any manner or degree by the performance of Consultant's services hereunder. And,

1 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
2 and contractors.

3 8. MATERIALS. Consultant shall furnish all labor and supervision,
4 supplies, materials, tools, machinery, equipment, appliances, transportation, and services
5 necessary to or used in the performance of Consultant's obligations under this Agreement,
6 except as stated in Exhibit "C".

7 9. OWNERSHIP OF DELIVERABLES. All materials, information and
8 documents prepared, developed, or assembled by Consultant to be furnished to City in
9 connection with this Agreement, including but not limited to documents, estimates,
10 calculations, studies, maps, graphs, charts, samples, models, reports, summaries,
11 drawings, designs, notes, plans, information, material, and memorandum ("Deliverables")
12 shall be the exclusive property of City. The Deliverables shall be given to City, in a format
13 identified by City, and City shall have the unrestricted right to use and disclose the
14 Deliverables in any manner and for any purpose without payment of further compensation
15 to Consultant. Copies of Deliverables may be retained by Consultant but Consultant
16 warrants that Deliverables shall not be made available to any person or entity for use
17 without the prior approval of City. This warranty shall survive termination of this Agreement
18 for five (5) years.

19 10. INTELLECTUAL PROPERTY AND COPYRIGHT.

20 A. As between Consultant and City, all rights, title and interest in
21 and to all intellectual property rights in the Services are owned exclusively by
22 Consultant. Except as expressly provided in this Agreement, Consultant does not
23 grant City (and expressly reserves) any rights, express or implied, or ownership in
24 the Services or any software provided by Consultant. Consultant shall have a
25 royalty-free, worldwide, non-exclusive, transferable, sub-license, irrevocable,
26 perpetual right to make use, sell, offer for sale, import or otherwise incorporate into
27 the Services, any suggestions, enhancements, updates, recommendations or
28 other feedback provided by any party relating to the Services.

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11. WARRANTY AND REPRESENTATION. Consultant warrants that:

A. Services will be performed in a good, professional and workmanlike manner by Consultant and shall perform in accordance with the applicable Statement of Work and be free from design, material, and workmanship defects in all material respects. In the event of any breach of this warranty, Consultant shall diligently remedy any material deficiencies that cause the Services not to conform to the foregoing warranties within thirty (30) days after its receipt of written notice from City. If, after thirty (30) days from the date Consultant receives notice from City, Consultant is unable to remedy the deficiency then City may immediately terminate this Agreement.

B. Consultant and its subcontractors and agents will perform Services in compliance with all applicable laws and regulations, including without limitation U.S. Privacy laws including HIPAA and the privacy and security rule. In relation to City and Consultants HIPPA obligations, Consultant and City will execute the Business Associate Agreement attached hereto as Exhibit "E", and incorporated by this reference.

C. Consultant will perform the Services with at least the degree of accuracy, quality, efficiency, completeness, timeliness and responsiveness as are equal to or higher than the accepted industry standards applicable to the performance of the same of similar services.

D. Disclaimer. Other than those warranties set forth above, Consultant specifically disclaims with respect to the Services and/or the deliverables, all other warranties, express and implied, including but no limited to implied warranties of merchantability and fitness for a particular purpose. Consultant does not warrant that the deliverables will be error-free or will operate without interruption.

12. TERMINATION. Either party shall have the right to terminate this Agreement for any reason or no reason at any time by giving at least ninety (90) calendar

1 days prior written notice to the other party. In the event of termination under this Section,
2 City shall pay Consultant for services satisfactorily performed and costs incurred up to the
3 effective date of termination for which Consultant has not been previously paid. The
4 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective
5 date of termination, Consultant shall deliver to City all Deliverables developed or
6 accumulated in the performance of this Agreement, whether in draft or final form, or in
7 process. Consultant acknowledges and agrees that City's obligation to make final payment
8 is conditioned on Consultant's delivery of the Deliverables to the City.

9 13. CONFIDENTIAL INFORMATION.

10 A. Definition. The term "Confidential Information" means all
11 proprietary, financial, technical and business information maintained by either
12 party, including without limitation, notes, analyses, system access credentials,
13 summaries, medical information, provider reimbursement information, financial
14 information, business methods, pricing data, procedure manuals, information
15 about such party's personnel, processes, customers, products in development,
16 future business plans, and other material however documented containing or
17 based, in whole or in part, on any such information, maintained in any format
18 whether or not it is marked or otherwise designated as "confidential".

19 Notwithstanding the foregoing, the term "Confidential Information" specifically
20 excludes: (a) information that is now in the public domain or subsequently enters
21 the public domain by publication or otherwise through no action or fault of the
22 Receiving Party; (b) information that is known to the Receiving Party without
23 restriction, prior to receipt from the Disclosing Party under this Agreement, as
24 evidenced by the Receiving Party's written records; (c) information that the
25 Receiving Party obtained from any third party that is not subject to an obligation of
26 confidentiality; and (d) information independently developed by the Receiving
27 Party without the aid, application or use of the Disclosing Party's Confidential
28 Information. Notwithstanding, the above, City may disclose documents that City is

1 legally obligated to produce in response to Public Record Act requests and as
2 otherwise required by applicable regulations and laws.

3 B. Each party (in such case, the "Receiving Party") will have
4 access to certain of the other party's (in such case, the "Disclosing Party")
5 Confidential Information. The Receiving Party agrees that (i) it will maintain the
6 confidentiality of the Disclosing Party's Confidential Information; (ii) it will not
7 disclose the Disclosing Party's Confidential Information except to those of its
8 employees and contractors who have a need to know the information in order for
9 the Receiving Party to perform its obligations hereunder; and (iii) it will use the
10 information solely to perform its obligations hereunder. Such employees or
11 contractors shall be notified of the confidential nature of the Confidential
12 Information and shall maintain the confidentiality of the Confidential Information on
13 the same terms as the Receiving Party. The Receiving Party shall use the same
14 degree of care as it employs with its own Confidential Information, but in any event
15 shall use at least a reasonable degree of care in maintaining the confidentiality of
16 the Confidential Information. Notwithstanding the foregoing, it shall not be a
17 breach of this Agreement for the Receiving Party to disclose the Disclosing Party's
18 Confidential Information if required to do so under law or in a judicial or other
19 governmental investigation or proceeding, provided the Disclosing Party has been
20 given prior notice (if permitted by law) so the Disclosing Party may seek available
21 safeguards against widespread dissemination prior to such disclosure. Nothing in
22 this Agreement will be construed or interpreted so as to prohibit either party from
23 entering into similar agreements with other parties concerning similar deliverables
24 or services and/or to prohibit either party from utilizing any skills or knowledge of a
25 general nature acquired during the course of performing the Services under this
26 Agreement.

27 C. Usage Data. As between Consultant and City, all data
28 obtained by Consultant from City through the provision of the Services

1 (collectively, the "Customer Data") is owned exclusively by City. During the
2 specified term, City grants to Consultant a limited, non- exclusive license to use
3 the Customer Data solely for the purposes contemplated by this Agreement and
4 for Consultant to perform the Services hereunder. This Agreement does not
5 transfer or convey to Consultant or any third party any right, title or interest in or to
6 the Customer Data or any associated intellectual property rights, but only a limited
7 right of use as granted in and revocable in accordance with this Agreement.
8 Notwithstanding the foregoing, the parties acknowledge and agree that Consultant
9 may monitor, collect, use and store anonymous and aggregate statistics regarding
10 the use of the Services or components thereof for their respective business
11 purposes, including, but not limited to, enhancing the Services (and or the
12 applicable vendor's solution) and their respective components and creating new
13 features thereof, and such anonymous and aggregate statistics will not constitute
14 Customer Data. Consultant shall not provide Customer Data (which, for the
15 purposes of this sentence only, shall include the anonymous and aggregate
16 statistics mentioned in the prior sentence, but for the avoidance of doubt shall not
17 include any information derived from the results of analyzing such statistics) to any
18 third party.

19 14. ADDITIONAL COSTS AND REDESIGN.

20 A. Any costs incurred by the City due to Consultant's failure, in
21 City's judgment, acting reasonably, to meet the standards required by the Scope of
22 Work or Consultant's failure to perform fully the tasks described in the Scope of
23 Work which, in either case, causes the City to request that Consultant perform again
24 all or part of the Scope of Work shall be at the sole cost of Consultant and City shall
25 not pay any additional compensation to Consultant for its re-performance.

26 B. If the Project involves construction and the scope of work
27 requires Consultant to prepare plans and specifications with an estimate of the cost
28 of construction, then Consultant may be required to modify the plans and

1 specifications, any construction documents relating to the plans and specifications,
2 and Consultant's estimate, at no cost to City, when the lowest bid for construction
3 received by City exceeds by more than ten percent (10%) Consultant's estimate.
4 This modification shall be submitted in a timely fashion to allow City to receive new
5 bids within four (4) months after the date on which the original plans and
6 specifications were submitted by Consultant.

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

10 16. LAW. This Agreement shall be governed by and construed pursuant
11 to the laws of the State of California (except those provisions of California law pertaining
12 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and
13 regulations of and obtain all permits, licenses, and certificates required by all federal, state
14 and local governmental authorities.

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

18 18. INDEMNIFICATION.

19 A. Consultant Indemnification Obligation. To the fullest extent
20 allowed by California law, Consultant will defend, indemnify, and hold harmless City
21 and its officers, officials, employees, and agents from and against any and all claims,
22 liabilities, obligations, judgments, causes of actions, losses, settlements, fines, costs
23 and expenses asserted by a third party to the extent arising out of or relating to: (a)
24 a breach of Consultant's warranties, representations, and/or obligations under this
25 Agreement; (b) gross negligence or willful misconduct of Consultant and/or its
26 employees, subcontractors, or agents in connection with this Agreement; and/ or (c)
27 an allegation that the Consultant's Service infringe upon a third party's patent,
28 copyright, or other intellectual property right, provided that, Consultant will have no

1 liability to the extent such claim results from failure of City to use updated or modified
2 versions of any deliverables provided by Consultant to City at no cost for avoiding
3 such a claim. If a covered infringement claim is asserted against City, or if
4 Consultant believes such a claim is likely to be asserted, Consultant shall at its
5 option and expense: (a) replace or modify the Services so that they become non-
6 infringing; (b) procure for City the right to continue using the Services; or (c)
7 terminate the Services and refund to Customer any amounts prepaid for services
8 not yet performed or received.

9 B. City Indemnification Obligations. To the fullest extent allowed
10 by California law, City will indemnify, defend and hold harmless Consultant from any
11 and all claims, suits actions, proceedings brought by a third party against Consultant
12 and any damages, liability or judgments resulting therefrom, arising from or relating
13 to a.) the gross negligence or willful misconduct of City or any of its employees,
14 officials, officers or agents in connection with the Services or, b.) failure of City to
15 use updated or modified versions of any deliverables provided by Consultant for
16 avoiding such a claim.

17 C. Procedure. A party's obligation to defend, and/or indemnify the
18 other party will only arise if the party seeking defense or indemnification: (a)
19 promptly notifies the indemnifying party in writing of the claim (unless the
20 indemnifying party already has notice of the claim); (b) grants the indemnifying party
21 sole control of the defense and settlement of the claim (provided that the
22 indemnifying party may not settle or defend any claim unless it unconditionally
23 releases the party seeking indemnification of all liability and does not require the
24 party seeking indemnification to pay any money or admit any fault); or (c) provides
25 the indemnifying party, at the indemnifying party's expense, with all assistance,
26 information and authority reasonably required for the defense and settlement of the
27 claim.

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

1 termination of this Agreement.

2 19. LIMITATION OF LIABILITY. Except for liability arising due to
3 Consultant's gross negligence or willful misconduct, in no event shall either party be
4 liable to the other party in connection with this Agreement, including without limitation the
5 Consultant's services and intellectual property provided hereunder, whether under theory
6 of contract, tort or otherwise, for an indirect, incidental, punitive, consequential, or special
7 damages (including any damage to business reputation or lost profits), whether
8 foreseeable or not and whether a party is advised of the possibility of such damages.

9 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY
10 IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE
11 SERVICES AND INTELLECTUAL PROPERTY PROVIDED HEREUNDER, WHETHER
12 UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY AMOUNTS IN
13 EXCESS OF THE HIGHER OF: (i) TWO (2) TIMES THE TOTAL OF THE FEES
14 ACTUALLY PAID AND PAYABLE TO CONSULTANT BY CITY UNDER THIS
15 AGREEMENT; OR (ii) THE MAXIMUM AMOUNT OF INSURANCE A PARTY IS
16 OBLIGATED TO MAINTAIN UNDER THIS AGREEMENT.

17 20. AMBIGUITY. In the event of any conflict or ambiguity between this
18 Agreement and any Exhibit, the provisions of this Agreement shall govern.

19 21. NONDISCRIMINATION.

20 A. In connection with performance of this Agreement and subject
21 to applicable rules and regulations, Consultant shall not discriminate against any
22 employee or applicant for employment because of race, religion, national origin,
23 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
24 disability. Consultant shall ensure that applicants are employed, and that employees
25 are treated during their employment, without regard to these bases. These actions
26 shall include, but not be limited to, the following: employment, upgrading, demotion
27 or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay
28 or other forms of compensation, and selection for training, including apprenticeship.

1 B. It is the policy of City to encourage the participation of
2 Disadvantaged, Minority and Women-owned Business Enterprises in City's
3 procurement process, and Consultant agrees to use its best efforts to carry out this
4 policy in its use of subconsultants and contractors to the fullest extent consistent
5 with the efficient performance of this Agreement. Consultant may rely on written
6 representations by subconsultants and contractors regarding their status.
7 Consultant shall report to City in May and in December or, in the case of short-term
8 agreements, prior to invoicing for final payment, the names of all subconsultants
9 and contractors hired by Consultant for this Project and information on whether or
10 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
11 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

12 22. FORCE MAJEURE. If any party fails to perform its obligations
13 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
14 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
15 governmental regulations, governmental controls, judicial orders, enemy or hostile
16 governmental action, pandemic, civil commotion, fire or other casualty, or other causes
17 beyond the reasonable control of the party obligated to perform, then that party's
18 performance will be excused for a period equal to the period of such cause for failure to
19 perform.

20 23. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
21 accordance with the provisions of the Ordinance, this Agreement is subject to the
22 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
23 Long Beach Municipal Code, as amended from time to time.

24 A. During the performance of this Agreement, the Consultant
25 certifies and represents that the Consultant will comply with the EBO. The
26 Consultant agrees to post the following statement in conspicuous places at its place
27 of business available to employees and applicants for employment:

28 "During the performance of a contract with the City of Long Beach, the

1 Consultant will provide equal benefits to employees with spouses and its
2 employees with domestic partners. Additional information about the City of
3 Long Beach's Equal Benefits Ordinance may be obtained from the City of
4 Long Beach Business Services Division at 562-570-6200."

5 B. The failure of the Consultant to comply with the EBO will be
6 deemed to be a material breach of the Agreement by the City.

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

11 D. Failure to comply with the EBO may be used as evidence
12 against the Consultant in actions taken pursuant to the provisions of Long Beach
13 Municipal Code 2.93 et seq., Contractor Responsibility.

14 E. If the City determines that the Consultant has set up or used its
15 contracting entity for the purpose of evading the intent of the EBO, the City may
16 terminate the Agreement on behalf of the City. Violation of this provision may be
17 used as evidence against the Consultant in actions taken pursuant to the provisions
18 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

19 24. NOTICES. Any notice or approval required by this Agreement shall
20 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
21 postage prepaid, addressed to Consultant at the address first stated above, and to the City
22 at 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a
23 copy to the City Engineer at the same address. Notice of change of address shall be given
24 in the same manner as stated for other notices. Notice shall be deemed given on the date
25 deposited in the mail or on the date personal delivery is made, whichever occurs first.

26 25. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
27 that Consultant has not employed or retained any entity or person to solicit or obtain this
28 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,

1 commission, or other monies based on or from the award of this Agreement. If Consultant
2 breaches this warranty, City shall have the right to terminate this Agreement immediately
3 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
4 due under this Agreement or otherwise recover the full amount of the fee, commission, or
5 other monies.

6 26. WAIVER. The acceptance of any services or the payment of any
7 money by City shall not operate as a waiver of any provision of this Agreement or of any
8 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
9 Agreement shall not constitute a waiver of any other or subsequent breach of this
10 Agreement.

11 27. CONTINUATION. Termination or expiration of this Agreement shall
12 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 13
13 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

14 28. TAX REPORTING. As required by federal and state law, City is
15 obligated to and will report the payment of compensation to Consultant on Form 1099-
16 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
17 resulting from payments under this Agreement. Consultant shall submit Consultant's
18 Employer Identification Number (EIN), or Consultant's Social Security Number if
19 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
20 Financial Management. Consultant acknowledges and agrees that City has no obligation
21 to pay Consultant until Consultant provides one of these numbers.

22 29. ADVERTISING. Consultant shall not use the name of City, its officials
23 or employees in any advertising or solicitation for business or as a reference, without the
24 prior approval of the City Manager or designee.

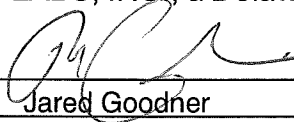
25 30. AUDIT. City shall have the right at all reasonable times during the
26 term of this Agreement and for a period of five (5) years after termination or expiration of
27 this Agreement to examine, audit, inspect, review, extract information from, and copy all
28 relevant books, records, accounts, and other documents of Consultant reasonably

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 requested by City relating to this Agreement.

2 31. THIRD PARTY BENEFICIARY. This Agreement is not intended or
3 designed to or entered for the purpose of creating any benefit or right for any person or
4 entity of any kind that is not a party to this Agreement.

5 IN WITNESS WHEREOF, the parties have caused this document to be duly
6 executed with all formalities required by law as of the date first stated above.

7 AKIDO LABS, INC., a Delaware corporation
8 _____, 2020 By 
9 Name Jared Goodner
10 Title Chief Product Officer

11 "Consultant"
12 CITY OF LONG BEACH, a municipal
13 corporation
14 _____, 2020 By _____
15 City Manager
16 "City"

17 This Agreement is approved as to form on _____, 2020.

18 CHARLES PARKIN, City Attorney
19 By _____
20 Deputy

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5 IN WITNESS WHEREOF, the parties have caused this document to be duly
6 executed with all formalities required by law as of the date first stated above.

7 AKIDO LABS, INC., a Delaware corporation
8 _____, 2020 By [Signature]
9 Name Jared Goodner
10 Title Chief Product Officer

11 "Consultant"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 January 4, 2020 By [Signature]
15 2021 City Manager
16 EXECUTED PURSUANT
17 TO SECTION 301 OF
18 THE CITY CHARTER

19 This Agreement is approved as to form on December 31, 2020.

20 CHARLES PARKIN, City Attorney
21 By [Signature]
22 Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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1st Signature Page

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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requested by City relating to this Agreement.

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

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

AKIDO LABS, INC., a Delaware corporation

December 31, 2020

By [Signature]
Name Prashant Samant
Title Chief Executive Officer

"Consultant"

CITY OF LONG BEACH, a municipal corporation

_____, 2020

By _____
City Manager

"City"

This Agreement is approved as to form on _____, 2020.

CHARLES PARKIN, City Attorney

By _____
Deputy

and Signature Page

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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CITY OF LONG BEACH

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2525 GRAND AVENUE • LONG BEACH, CALIFORNIA 90815 • (562) 570-4000 • FAX: (562) 570-4049

Health Information In Compliance With the Health Insurance Portability And Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH Act)

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made and entered as of December 28, 2020 by and between AKIDO LABS, INC., a Delaware corporation, whose principal place of business is at 1702 Abbot Kinney Blvd, Venice, California 90291 (hereinafter referred to as "Business Associate"), and the CITY OF LONG BEACH, a municipal corporation (hereinafter referred to as "City" or "Covered Entity").

WHEREAS, the City, a municipal corporation under the laws of the State of California, is a single legal entity which has various departments, including a Department of Health and Human Services that provides a multitude of health care and related services, and other departments that may have access to and use individually identifiable health information, such as human resources, a parks, recreation and marine department, a technology department, a fire department with ambulance services, and a police department; and

WHEREAS, in the course of providing health care, related and other services, the City obtains and may share amongst the various City departments protected health information; and

WHEREAS, Business Associate performs particular duties, functions, activities, or services for, or on behalf of the City; and

WHEREAS, Business Associate receives, has access to or creates protected health information in order to perform such duties, functions, activities or services; and

WHEREAS, the City and Business Associate intend to protect the privacy and provide for the security of protected health information in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

NOW, THEREFORE, in consideration of the mutual terms covenants, and conditions in this Agreement, the parties agree as follows:

1. DEFINITIONS. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations, including the Privacy Rule and the Security Rule codified in Title 45, Sections 160-164 of the Code of Federal Regulations, and under the HITECH Act.
2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.
 - A. Non-disclosure. Business Associate agrees to not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.
 - B. Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Regulations.
 - C. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of the requirements of this Agreement.
 - D. Notice of Use or Disclosure, Security Incident or Breach. Business Associate agrees to notify the designated privacy official of the Covered Entity of any use or disclosure of protected health information by Business Associate not permitted by this Agreement, any security incident involving electronic protected health information, and any breach of unsecured protected health information without unreasonable delay, but in no case more than thirty (30) days following discovery of breach.
 1. Business Associate shall provide the following information in such notice to Covered Entity:
 - (a) The identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach;
 - (b) A description of the nature of the breach including the types of unsecured protected health information that were involved, the date of the breach and the date of discovery;
 - (c) A description of the type of unsecured protected health information acquired, accessed, used or disclosed in the breach (e.g., full name, social security number, date of birth, etc.);
 - (d) The identity of the person who made and who received

- (if known) the unauthorized acquisition, access, use or disclosure;
- (e) A description of what the Business Associate is doing to mitigate the damages and protect against future breaches; and
 - (f) Any other details necessary for Covered Entity to assess risk of harm to individual(s), including identification of each individual whose unsecured protected health information has been breached and steps such individuals should take to protect themselves.
- 2. Covered Entity shall be responsible for providing notification to individuals whose unsecured protected health information has been disclosed, as well as the Secretary and the media, as required by the HITECH Act.
 - 3. Business Associate agrees to establish procedures to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.
 - 4. The parties agree that this section satisfies any notice requirements of Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful security incidents for which no additional notice to Covered Entity shall be required. For purposes of this Agreement, unsuccessful security incidents include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic public health information.
- E. Reporting of disclosures. Business Associate agrees to report to Covered Entity any use or disclosure of the protected health information not provided for by this Agreement of which it becomes aware.
 - F. Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- G. Availability of Information to City. Business Associate agrees to provide prompt access to protected health information in a designated record set to Covered Entity or, as directed by Covered Entity, to an individual upon Covered Entity's request in order to meet the requirements under 45 CFR § 164.524. If Business Associate maintains an electronic health record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act.
- H. Amendment of Protected Health Information. Business Associate agrees to promptly make any amendment(s) to protected health information in a designated record set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an individual.
- I. Internal Practices. Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, covered entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of the Secretary determining the Business Associate's compliance with the Privacy Rule.
- J. Reporting of Disclosures. Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for the City to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.
- K. Availability of Information to Covered Entity. Business Associate agrees to promptly provide to Covered Entity or an individual information collected in accordance with Section 2(j) of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with the Privacy Rule, including but not limited to 45 CFR § 164.528, and the HITECH Act.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

Except as otherwise limited in this Agreement, Business Associate may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule or the HITECH Act if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. The specific use and disclosure provisions are as follows:

- A. Except as otherwise limited in this Agreement, Business Associate may use protected health information for the proper management and administration of the Business Associate.
 - B. Except as otherwise limited in this Agreement, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - C. Except as otherwise limited in this Agreement, Business Associate may use protected health information to provide data aggregation services to covered entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
 - D. Business Associate may use protected health information to report violations of law to appropriate federal and state authorities, consistent with § 164.502(j)(1).
4. PROHIBITED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.
- A. Business Associate shall not use or disclose protected health information for fundraising or marketing purposes.
 - B. Business Associate shall not disclose protected health information to a health plan for payment or health care operations purposes if the individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the protected health information solely relates.
 - C. Business Associate shall not directly or indirectly receive payment or remuneration in exchange for protected health information, except with the prior written consent of Covered Entity and as permitted by law, including HIPAA and the HITECH Act. This prohibition shall not effect payment by Covered Entity to Business Associate.
5. OBLIGATIONS OF COVERED ENTITY.
- A. Notification of Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of covered entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.
 - B. Notification of Change or Revocation of Permission. Covered entity shall notify Business Associate of any changes in, or revocation of,

permission by individual to use or disclose protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

C. Notification of Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may effect Business Associate's use or disclosure of protected health information.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY. Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that this restriction is not intended and shall not be construed to limit Business Associate's capacity to use or disclose protected health information for the proper management and administration of the Business Associate or to provide data aggregation services to Covered Entity as provided for and expressly permitted under Section 3 (a), (b), and (c) of this Agreement.

7. TERM AND TERMINATION.

A. *Term.* The term of this Agreement shall be effective upon execution, and shall terminate when all of the protected health information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.

B. *Termination for Cause.* Upon either party's knowledge of a material breach by the other party, the party with knowledge of the other party's breach shall either:

1. Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the non-breaching party;
2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
3. If neither termination nor cure is feasible, the violation shall be reported to the Secretary.

C. *Effect of Termination.*

1. Except as provided in paragraph (2) of this Section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.
 2. In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such protected health information.
8. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS.
- Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement with the Covered Entity, available to Covered Entity, at no cost to Covered Entity to testify as witnesses or otherwise, in the event of litigation or administrative proceedings commenced against Covered Entity, its directors, officers, or employees based on a claimed violation of HIPAA, the HIPAA Regulations, the HITECH Act, or other laws relating to security or privacy, except where Business Associate or its subcontractors, employees or agents are named as an adverse party.
9. MISCELLANEOUS.
- A. *References.* A reference in this Agreement to a section in the HIPAA Regulations or the HITECH Act means the section as in effect or as amended.
 - B. *Amendment.* The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for covered entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and other privacy laws governing protected health information. Amendments must be in writing and signed by the parties to the Agreement.
 - C. *Survival.* The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement.

- D. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Regulations and the HITECH Act.
10. LAW. This Agreement shall be governed by and construed pursuant to federal law and the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Business Associate shall comply with all laws, ordinances, rules and regulations of all federal, state and local governmental authorities.
11. ENTIRE AGREEMENT. This Agreement, including Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.
12. INDEMNITY.
- A. Business Associate shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents (“Indemnified Parties”), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Business Associate’s breach or failure to comply with any of its obligations contained in this Agreement, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Business Associate, its officers, employees, agents, subcontractors, or anyone under Business Associate’s control, in the performance of work or services under this Agreement (collectively “Claims” or individually “Claim”).
- B. In addition to Business Associate’s duty to indemnify, Business Associate shall have a separate and wholly independent duty to defend Indemnified Parties at Business Associate’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 Business Associate shall be required for the duty to defend to arise. City shall notify Business Associate of any Claim, shall tender the defense of the Claim to Business Associate, and shall assist Business Associate, as may be reasonably requested, in the defense.
13. AMBIGUITY. In the event of any conflict or ambiguity in this Agreement, such ambiguity shall be resolved in favor of a meaning that complies and is consistent with HIPAA, HIPAA Regulations, the HITECH Act and California law.
14. COSTS. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies

hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees and court costs, including appeals.

15. NOTICES. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Business Associate at the address first stated herein, and to the City at 411 West Ocean Boulevard, Long Beach, California 90802 Attention: Director, Health Department. Notice of change of address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.
16. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
17. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to Sections 7,12 and 14 prior to termination or expiration of this Agreement, and shall not extinguish any warranties hereunder.
18. ADVERTISING. Business Associate shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.
19. THIRD PARTY BENEFICIARY. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all of the formalities required by law as of the date first stated herein.

AKIDO LABS, INC


a Delaware corporation

December 29, 2020, ~~20~~

By 

Title: Chief Product Officer

December 29, 2020, ~~20~~

By 

Title: Chief Information Security Officer

CITY OF LONG BEACH, a municipal corporation

January 4, 2021

By 

City Manager or designee

"City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

The foregoing Agreement is hereby approved as to form this 31st day of December, 2020.

CHARLES PARKIN, City Attorney

By 

Deputy

Scope of Work

This Statement of Work (the "SOW") is attached to, and incorporated into, and made a part of the Agreement ("Agreement") entered into by and between The City of Long Beach, with offices at 411 W Ocean Blvd, Long Beach, California ("Long Beach" or "Customer"), and Akido Labs, Inc., with offices at 834 S. Broadway, Los Angeles, CA 90014 ("Akido Labs" or "Akido"). Any references to departments within The City of Long Beach will refer to the City of Long Beach Department of Health and Human Services ("DHHS").

1. Scope of Work

- a. Support the Department of Health and Human Services efforts to more rapidly respond and more reliably connect individuals with supportive services within DHHS based on health, social and economic demographic information and strengthen the department's COVID-19 response. Specifically, Akido Labs will design, customize, test, deploy, host, and maintain an Integrated System of Care solution ("ISC Solution"), in collaboration with DHHS and TID staff, that standardizes and streamlines the intake process across DHHS programs, facilitates information sharing within the Health Department, increases program utilization via referrals, interfaces with internal and external databases as needed, and enables aggregated reporting at a department-wide level.
- b. ISC Solution will include
 - i. Intake: Standardized intake form for participants to provide necessary demographic information to DHHS.
 - ii. Health Screening Questionnaires: Electronic health risk assessment / screening survey for the purpose of determining an individual's need for services and vulnerability related to risk of COVID-19.
 - iii. Eligibility: Program eligibility determination based on a participant's intake and screening responses.
 - iv. Referrals: Based on needs and potential eligibility, facilitate referrals to DHHS programs that the individual may be interested in & close the loop on referrals by tracking whether referred participants enroll in services and alert appropriate staff.
 - v. Case Management: Secure messaging, notetaking, and scheduled alerts, notifications, and reminders for staff use. Also a channel for communication between staff and participants.
 - vi. Reporting Dashboard: Web-based dashboard to view, print, and customize aggregated reports based on near real-time staff and participant data. Ability to export raw data as a CSV file.
- c. In addition to configuring and implementing the above ISC Solution, Akido will provide the following services:
 - i. Project Management via biweekly project status reports

- ii. Implementation Services via training and change management support
- iii. Analytics Services via custom data reports
- d. The population that will benefit from this work is people and their families affected by or at elevated risk for COVID-19 due to underlying health, financial, and social conditions and participants that access and utilize the Health Department’s programs and services.

2. Deliverables

- a. Integration Discovery Summary (Data Inventory and Technical Assessment)
 - i. Inventory of the current data systems used by DHHS programs, eligible to be included in the ISC, and the technical elements required for integration.
- b. Discovery Report
 - i. Report summarizing the findings and key insights from the interviews and observations conducted with DHHS staff.
- c. Wireframes of ISC Solution
 - i. Visual guide that outlines application content and functionality and that takes into account user needs and user journeys.
- d. Implementation Plan
 - i. Implementation will detail the timeline and activities, such as communications and training, required for the phased roll out of ISC Solution to DHHS programs.
- e. ISC Solution
 - i. Configured ISC Solution in Akido Cloud (AWS) in preparation for go-live.
- f. Integrations
 - i. Integrations of the ISC with existing data systems used by DHHS programs, depending on need, feasibility, and approvals.

3. Milestones and Timelines

Milestone	Description	Estimated Timeline
Discovery Report	Report summarizing the findings and key insights from the discovery period.	Week 9
Integration Discovery Report	Inventory of data systems and technical elements required for integration	Week 10
Wireframes	Visual guide that outlines application content and functionality and that takes into account user needs and user journeys.	Week 10

Implementation Plan	Implementation will detail the timeline and activities, such as communications and training, required for the phased roll out of ISC Solution to DHHS programs.	Week 10
ISC Solution Phased Rollout Begins	First cohort of 5-10 programs onboard to the ISC Solution.	Week 12
Completion of ISC Solution Phased Rollout	All DHHS programs eligible for the ISC have on-boarded to the Solution.	Week 50
Year 1 Integrations Complete	All integrations scoped for 2021 based on need, feasibility, and agency approval are completed.	Week 50

4. Pricing

Professional Services are billed on a time and material basis at rates described in the Professional Services Fee List (below). Professional Services costs described in the Year 1 Integrated System of Care Pricing table (below) are estimates.

The cost of this Statement of Work will not exceed \$463,540.

Year 1 Integrated System of Care Pricing

	Category	Type of Services	Price
Professional Services	Project Management	Project Management	\$39,000
	Discovery and Design	Product Manager and Designer	\$36,000
	Development and Configuration	Application Engineering	\$100,000
	Data Analytics and Visualization	Data Scientist	\$40,000
	Integration	Data Engineering	\$100,000
	Training	Implementation Specialist	\$30,000

Software Licenses	Licenses for ISC Solution, prorated according to launch dates * 250 seats included in licenses	1. Care Coordination Suite 2. Data Management & Governance Platform 3. Data Analytics Module 4. Multi Mode Integration Module	\$147,583
		Year 1 Fees	\$492,583
		Year 1 Discount (6%)	- \$29,043
		Total Year 1 Fees	\$463,540

Professional Service Fee List

Professional Services	Hourly Rate
Project Management	\$130
Data Science	\$200
Implementation Specialist	\$150
Product Management	\$150
Product Design	\$150
Application Engineering	\$200
Data Engineering	\$200

5. Financial terms:

- a. Akido shall invoice DHHS on the performance payment structure, set forth below, to invoice the total award amount. Payment is due within thirty (30) days of issuance of the invoice "NET 30").

Project Phase	Corresponding Milestone	Estimated Timeline	Amount Invoice
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Discovery	Discovery Report	Week 9	\$46,354
Design	Wireframes	Week 10	\$69,531
Development	ISC Solution Phased Rollout Begins	Week 12	\$115,885
Test	ISC Solution Phased Rollout Begins	Week 12	\$46,354
Deployment	Mid-point between Phased Rollout Beginning & Completion of Rollout	Week 31	\$139,062
Maintenance	Completion of ISC Solution Phased Rollout	Week 50	\$46,354

- b. All Professional Services fees will be billed on a time and materials basis and are not to exceed the total fees as presented herein. In the event there is an overage, Akido will charge an hourly rate of \$0.
- c. All fees shall remain in effect without any increase for the Term of this SOW.

6. Service Level Agreement

- a. Service Level Agreement specified in Exhibit A applies to all deliverables specified in Section 2.

Exhibit A
Service Level Agreement
Akido Labs Gold Service Level

Akido Labs agrees to the following service levels for the Solution Offering.

1. Definitions

“Actual Uptime” the total time in a calendar month the Solution Offering is available, expressed as a percentage of total time in that calendar month.

“Emergency Maintenance Period” means the period of time during which any maintenance is performed on the Solution Offering as required due to conditions beyond Akido’s control.

“Permitted Downtime” means the Solution Offering is unavailable or down for permitted reasons as described in Section 2.c.

“Scheduled Maintenance” means maintenance scheduled to be performed by Akido Labs on the Solution Offering during the Scheduled Maintenance Period.

“Scheduled Maintenance Period” means the period of time during which scheduled maintenance performed by Akido Labs on the Solution Offering.

“Business Day” means Monday through Friday, excluding U.S. Federal holidays, from 7:30am PT to 6 pm PT.

“Business Hours” means 7:30 a.m. PT to 6 p.m. PT during a business day.

2. Guaranteed Uptime Commitment

- a. The Guaranteed Uptime of the Solution Offering on a monthly basis, wherein a month shall be defined as the first calendar day of the month through the last calendar day of the month, shall be as follows:

Service	Uptime
All Licensed Software	Greater than or equal to 99.9%

- b. Measuring Akido Labs Guaranteed Uptime: Solution Offering availability is measured via Akido Labs in least 2 minute increments.

- c. Permitted Downtime. Customer agrees that the following is Permitted Downtime:

- caused by Customer’s internet or other communication services;
- caused by any action taken by Customer Authorized User to intentionally disable the services;

- caused by software or hardware not provided or controlled by Akido Labs;
 - due to force majeure events, as defined in the Agreement;
 - caused by failure of public internet infrastructure;
 - caused by Customer or Authorized Users integrating or operating the Solution Offering in a manner not in compliance with Akido's published documentation and guidelines;
 - due to any Scheduled Maintenance Period; or
 - mutually agreed upon in advance with Customer in writing.
- d. The Parties agree that Akido Labs may, at its sole discretion and for any reason, schedule a Scheduled Maintenance Period with at least two business days' advance written notice.

3. Reporting an Issue

All issues and support requests should be opened through the Akido Labs authorized support channels (see *Contacting Support* below) for proper documentation and tracking. For the purposes of this document and Akido Labs support services, a support request is defined as a single discrete question, problem or issue with supported Akido Labs services that cannot be divided into subordinate problems. If a problem includes subordinate problems, then each may be treated as a separate support request at the discretion of Akido Labs.

Contacting Support

To be treated as a support request, initial contact regarding the request must be made through the authorized channels below for documentation and tracking purposes. All communication done over support channels (including phone) may be monitored or recorded. Any support request not made through these channels or made by an unauthorized person will not be considered a support request.

For the support request to be considered valid, the following information must be provided by Customer or otherwise obtained by Akido staff for each support request.

- The service(s) that are affected by the issue
- Identity of the requestor
- The date and time the issue started
- Description of the nature of the issue
- The severity of the issue (full outage, viable workaround, minor inconvenience, etc)
- The number and types of users affected
- The proposed classification and prioritization of the issue
- Contact information in the form of telephone or email to be used for follow up purposes

Support is available to respond during the Support Availability Period of Business Hours during Business Days.

Email

Support requests may be made over email by sending an email to sla-support@akidolabs.com. For avoidance of doubt, Personally Identifiable Information (PII), Personal Health Information (PHI), any information protected under HIPAA, or any other legally privileged or confidential information shall not be sent over email. Akido Labs is not responsible for the security or privacy of information sent over email.

Phone

Support requests may be made over the phone by calling 1-888-906-1303. Any phone support requests that involve Personally Identifiable Information (PII), Personal Health Information (PHI), or any information protected under HIPAA are subject to the terms of the Agreement.

Escalation

If the above methods of contacting support do not work, or the support received through the standard channels is not satisfactory, the escalation contact may be used. This contact is only to be used if the support request is urgent and the standard support channels are not functioning satisfactorily.

Escalation Contact

Phone: 1-888-648-6728

Email: sla-escalation@akidolabs.com

4. Issue Resolution

The resolution of a support request consists of two phases: 1) receipt and response to the request and 2) approval and fulfillment of the request. The phases are subject to time resolution guarantees (subject to severity and classification of the request) that are described in the Service Level Agreement below.

Response Phase

This phase starts when the Customer contacts Akido Labs Support through an approved channel. After the contact is made, the request is routed to the correct person who then verifies the proposed classification and prioritization of the request based on internal Akido Labs policies and additional customer input, if required. The request is then formally acknowledged and that acknowledgement is communicated to the Customer along with the request classification and prioritization. If the customer disagrees with this, they may bring it up with Akido Labs Support, or if the issue is sufficiently important, escalate it.

Fulfillment (Recovery) Phase

Depending on the classification (see *Issue Levels and Classification* below), the support request follows different routes. For requests classified as bugs, features or maintenance, the request is first triaged and prioritized internally, then a resource is allocated appropriately to the request. The request is verified with the customer if necessary, and an estimated time to recovery is then provided. Once the work has been completed, the completion is verified by the customer and the issue is marked completed. Upon request the Client may request an incident report as applicable in a timely manner.

If the request is classified as an end user support request or a general inquiry, the request is triaged and assigned internally to Akido Labs support resources. The assigned resource then attempts to resolve the request over email or phone. If the request cannot be solved and it is deemed important enough, an onsite visit is scheduled for resolution.

If the result of the fulfillment phase is unacceptable to the customer, the escalation channel may be used to resolve the dispute.

Issue Levels and Classification

After a support request is received by Akido Labs, it is classified and prioritized according to the table below. This determines the type of resource assigned to the request, the speed with which the request is completed and which part of the Service Level Agreement applies. The priority and classification is decided at the sole discretion of Akido Labs.

Priority	Definition
1	Critical: Errors preventing integral work from being completed at one or more location
2	Severe Impact: Errors which disable or substantially impair major functions from being performed, while allowing for basic functionality is enabled and/or a complicated work-around exists
3	Degraded Operations: Errors which disable or substantially impair functions where a work-around exists
4	Minimal Impact: Issues that result in minor inconvenience

Classification	Definition
Bug	Software is not functioning as expected
Feature Request	New functionality is needed
Maintenance or Routine Task	A task that Akido Labs staff member can perform (typically scheduled)
End User Support	Requires troubleshooting end user issues

Business Inquiry	General questions
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Issue Response and Recovery Objectives

TTR (Time to Response). Time to Response is defined as the completion of phase one of issue resolution (defined above). For all other priorities and classifications, the TTR is best effort (not included in the SLA).

RTO (Recovery Time Objective): Recovery Time Objective is defined as the completion of phase two of issue resolution (defined above).

Refer to the table below for Priority / Classification pairs and the associated TTR and RTO.

Priority	Classification	TTR	RTO
1	Bug	1 hour	2 hours
2	Bug	1 hour	1 day
3	Bug	1 hour	2 days
Other	Other	Best Effort	Best Effort

“Best Effort” support is defined as support provided without any guaranteed RTO or TTR, and without guarantees as to specific resolution. Response to Best Effort support cases will be decided by Akido Labs on a case by case basis.

5. Service Level Agreement (SLA)

Some requests and service functionality are subject to a Service Level Agreement that specifies uptime (availability) guarantees, maximum time to response and maximum time to recovery. The SLA uptime and response metrics are calculated monthly. If the SLA is not met, Akido Labs agrees to provide credits or other benefits to the customer (see *Exceptions and Reimbursements* below). The SLA applies only during the Support Availability Period (see *Contacting Support* above) and excludes outages scheduled more than 2 days in advance. At all times outside of the Support Availability Period, there are no guarantees regarding the availability of support or the service(s) covered under this agreement.

Data Integrity and Availability

Akido Labs will make commercially reasonable efforts to ensure the integrity and availability of Customer data. Customer may, at any time, request a full copy of all customer data and expect to receive it in CSV format within 3 business days. If Akido Labs fails to provide a full and complete copy of Customer Data within 3 business days of receipt of a written request, customer may cancel the contract immediately and without penalty at their discretion. Both Customer and Akido Labs acknowledge that the possibility for data loss exists and that the services provided are not intended to be and will not be used as the system of record for any business-critical data including, but not limited to, a patient’s legal health record or the patient’s designated record set (as defined by the HIPAA privacy rule).

Exceptions and Reimbursement

Exceptions

Akido Labs has no obligation to provide Support Services for problems in the operation or performance of the Software caused by a non-Akido Labs software or hardware product. If Akido Labs determines that it is necessary to perform Services for a problem caused by a Customer-Generated Error, then Akido Labs will notify Customer thereof as soon as Akido Labs is aware of such Customer-Generated Error and, upon Customer's written request, Akido Labs will perform such professional services and invoice Customer at Akido Labs contracted rate for auxiliary services.

Akido Labs is not responsible for: 1) failures caused through customer or customer affiliate actions, inactions, errors or omissions, 3) failures caused by factors outside the reasonable control of Akido Labs including any force majeure event or Internet access or related problems or 4) failures caused by your equipment, software or other technology and/or any third party equipment. In the case of software maintained on the customer premises, Akido Labs must be granted physical access to all hardware, not contained within the City's data center, hosting Akido Labs Software if necessary and Akido Labs must have remote access to the on premise network as well to the virtual machines hosting the Akido Labs Software, via a City-provided mechanism (i.e. VPN or similar) to process requests or service of any kind. In order to appropriately service requests, Akido Labs must have timely access to the IT services of the customer and to the person that initiated the request.

Reimbursement and Cancellation

If Uptime falls below the Guaranteed Uptime for two consecutive months during the Term, Customer shall be entitled to terminate this Agreement without penalty immediately upon notice to the Customer.

In addition, and without limiting any other right or remedy under this agreement, if Uptime falls below the Guaranteed Uptime in any one calendar month or if guaranteed TTR or RTO are exceeded in any one calendar month during the term, Customer shall be entitled to deduct a credit of 15% of the total monthly license cost from the amount owed to Akido Labs for the relevant month. Akido Labs shall deduct the relevant amount from the invoice submitted to Customer for such month.