

Hospital Vendor Contract – Summary Sheet

1. Name of Contract: **Bluestream Enterprise Telehealth Plan**
2. Contracted Parties: **Bluestream Health and Mangum City Hospital Authority**
3. Contract Type Services: **Virtual visits between patients and providers**
4. Description of Services: **Bluestream software allow for virtual visits via mobile, PC and tablet utilizing the web.**
5. Cost: ☒ _____ (Monthly) -and- ☒ **\$12,000** (Total Purchase Price)
6. Term: **5** Years
7. Termination Clause: **30 Days**

ANNUAL BLUESTREAM ENTERPRISE TELEHEALTH PLAN PRICE SHEET

Software Plans (annual)	
Seats	Enhanced
	2
Price per seat	\$100
Five (5) Year Upfront Payment	\$12,000
Video Visit	
White label	✓
HIPAA Compliance	✓
Instant Access – No Downloads, Installs or Plug ins	✓
HD Video	✓
Click to call links	✓
Peer to Peer Encrypted	✓
3-way calling	✓
Tech check	✓
Screenshare	✓
SMS/email language customization	✓
On demand portal (including localization)	✓
Image Capture	✓
Note/Metadata	✓
Remote Device Capture	✓
Virtual Care Workflows	
Virtual care workflows built to your specifications	3
Scheduled and on demand visits	✓
Offline notifications	✓
Customizable Content, Consent, Intake, and Survey Form	✓
24/7 Access to interpreting	✓
Turn-key workflow configuration	✓
Drag and drop interface	✓
Intelligent Routing	✓
Auto escalation	✓
Self-Queue	✓
Queue Management	✓
Load balance inside/outside expert network	✓
Active and Dynamic Data Collection	✓
Reports/Admin	
Reporting	✓
Admin Portal	✓
Facilitator view	✓
Single sign-on (SSO) integration	extra
Support	
Email	✓
Live Chat	✓



Add on	
Interpreting	✓
EMR Integration	extra
PRICING	

Payment Frequency: One-time upfront payment for entirety of the agreement.

Company:

Invoice Email Address:

By signing below, the undersigned hereby agrees the above plan and to the attached terms of service.

Signature

Name

Title

Date

The Bluestream Health Platform Terms of Service

UPDATED: 020821

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. BY ACCESSING OR USING BLUESTREAM HEALTH'S SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS DESCRIBED HEREIN AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE BLUESTREAM HEALTH'S SOFTWARE.

These terms and conditions of use ("Software Terms") apply to your ("Company") access to, and use of, the Software of Bluestream Health, Inc. ("Bluestream Health") that allows you to operate virtual visits between patient and providers via mobile, PC and tablet utilizing the web (the "Software"). These Software Terms do not alter in any way the terms or conditions of any other signed agreement you may have with Bluestream Health, or its subsidiaries or affiliates, for products, services or otherwise. If you are using the Software on behalf of any entity, you represent and warrant that you are authorized to accept these Software Terms on such entity's behalf, and that such entity agrees to indemnify you and Bluestream Health for violations of these Terms. The services contained on or provided in connection with the Site, the Software, or the Bluestream Health Materials shall be collectively considered the "Services."

To the full extent permitted by applicable law, Bluestream Health reserves the right to change or modify any of the terms and conditions contained in the Software Terms or any policy or guideline of the Software, at any time and in its sole discretion by providing notice the Software Terms have been modified. Such notice may be provided by sending an email, or by posting a notice on Bluestream Health's proprietary website located at www.bluestreamhealth.com (the "Site"), by posting the revised Software Terms on the Site and revising the date at the top of these Software Terms or by such other form of notice as determined by Bluestream Health. Your continued use of the Software following the posting of the revised Software Terms or other notice of such changes will constitute your acceptance of such changes or modifications if you fail to notify Bluestream Health of any objections. Otherwise, any changes or modification will be effective within thirty (30) days of the notice of the revisions on the Site unless you notify Bluestream Health within such thirty (30) days that you do not agree to the changes and stop using the Software. Therefore, you should review these Software Terms whenever you



access the Site and at least every thirty (30) days to make sure that you understand the terms and conditions that will apply to your use of the Software.

If you have any question regarding the use of the Software, they should be directed to 929-373-7005 or support@Bluestreamhealth.com.

1. Definitions

1.1. "Confidential Information" means nonpublic information revealed by or through a party to this Agreement (the "Disclosing Party") (whether in writing, orally or by another means) to the other party (the "Receiving Party") in connection with this Agreement, including, without limitation, (i) information expressly or implicitly marked or disclosed as confidential, including, without limitation, all forms and types of financial, business, scientific, technical, economic, or engineering information including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing; (ii) information traditionally recognized as proprietary trade secrets; and (iii) all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing. Confidential Information of Bluestream Health includes the Software and the source code thereof.

1.2. "Software" means, collectively, the hosted Software, mobile applications and web interfaces provided by Bluestream Health, including all Updates.

1.3. "Updates" means any subsequent revisions, updates, improvements, modifications, enhancements, corrections, or new releases of Software that Bluestream Health generally makes available to its customer base and includes upgrades and bug fixes.

1.4. "Effective Date" means the date of signing of plan selected on page 1. It is the date the account set up planning commences and first day of the annual license.

2. License Grants.

2.1. License to Software. Subject to the restrictions and other conditions set forth in this Agreement, Bluestream Health hereby grants to Licensee during the term of this Agreement, a nonexclusive, nontransferable, limited license, without the right to grant sublicenses, to access and use the Software for Licensee's own internal business purposes.

3. Restrictions on Use

3.1 Restrictions on Use. Licensee shall not (i) use the Software other than for the purposes outlined in this Agreement, (ii) permit any third parties to use the Software except as contemplated by this Agreement, (iii) disassemble, decompile, reverse engineer, or otherwise attempt to discover the source code of, the Software, (iv) modify the Software in any manner, or (v) use the Software in any other manner not expressly authorized by this Agreement. Licensee shall not alter or remove any copyright or other proprietary notices contained on or in the Software.

4. Updates

Bluestream Health shall provide Licensee with Updates when such Updates become generally available to its customers.

5. Prohibition on Publicity. The parties agree they will not use each other's name or programs in any advertising, promotional material, press release, publication, or through other public media, written or oral, whether to the press or to holders of publicly owned stock without the prior written consent of the party whose name is to be used.

6. Fees

6.1. Fees. During the License Term (as defined in Section 8), Licensee shall pay Bluestream Health the fees as set forth in page 1 detailing Software Plan.

6.2. Billing and Payment Terms. Bluestream Health shall charge monthly the credit card on file. If Licensee chose Annual option, they shall be invoiced at the time Software is activated and it shall become due and payable in thirty (30) days. All payments must be made in U.S. dollars within thirty (30) days of the date of an applicable invoice.

6.3. License Fee Increase. Pricing will not change during the License Term.

7. Title to Software

Bluestream Health retains title to and ownership of the Software, including, but not limited to, all intellectual property rights (including, but not limited to, all patent rights, inventions (whether patentable or not), concepts, ideas, algorithms, formulae, processes, methods, techniques, copyrights, copyrightable works, trade secrets, know-how, and trademarks) relating thereto. Licensee shall have no rights with respect to the Software. While software can be white labeled, the software will include powered by Bluestream mark.

8. License Term

This Agreement shall commence on the Effective Date and shall continue in full force and effect for sixty (60) months unless otherwise terminated as provided herein. Term would auto renew another sixty (60) months unless cancelled ninety (90) days prior to auto-renewal.

9. Termination

9.1. Termination for Breach. Either party may terminate this Agreement in the event that the other party breaches any term or condition of this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice of such breach from the non-breaching party.

9.2. Effect of Termination. Upon any termination or expiration of this Agreement: (i) the licenses granted to Licensee hereunder shall immediately cease, and (ii) Licensee shall immediately destroy any and all other copies of the Software and Confidential Information that are in its possession or control. Licensee shall provide Bluestream Health upon request with written certification of the return and destruction required by this section.

9.3. Survival. The following provisions shall survive any termination or expiration of this Agreement: Section 1 (Definitions), Section 7 (Title to Software), Section 9.3 (this Section), Section 11 (solely with respect to Disclaimers); Section 12 (Indemnification), Section 13 (Limitation of Liability), Section 14 (Confidentiality), and Section 15 (General Provisions).

10. Responsibilities of Licensee



- 10.1. Bug Reporting. During the Term, Licensee shall be responsible for reporting bugs to Bluestream Health in a timely manner.
- 10.2. Access to Personnel and Resources. During the Term, Licensee shall provide Bluestream Health with access to appropriate personnel and resources for research, evaluation and technical implementation and maintenance purposes, as deemed necessary by Bluestream Health.
- 10.3. De-Identification. All data provided to Bluestream Health shall be de-identified of any Patient-identifiable information.
- 10.4. Wireless Local Area Network (WLAN). Licensee acknowledges that its provision of a functioning WLAN is essential to performance by Bluestream Health of its obligations under this Agreement, and that Bluestream Health shall not be liable for any deficiency or delay in performing such obligations if such deficiency or delay results from Licensee's failure to provide the foregoing.
- 10.5. Hardware. Licensee acknowledges that its provision of optimally functioning hardware is essential to performance by Bluestream Health of its obligations under this Agreement, and that Bluestream Health shall not be liable for any deficiency or delay in performing such obligations if such deficiency or delay results from Licensee's failure to provide the foregoing.
11. Warranties; Disclaimers
- 11.1. Mutual Warranty. Each party warrants and represents that it has the right to enter into this Agreement and perform its obligations hereunder.
- 11.2. Software Warranties.
- 11.2.1. Bluestream Health warrants that Licensee's use of the Software or other product provided in connection with this Agreement will not infringe any patent, trademark, copyright, or other proprietary right of any third party. Bluestream Health further warrants that any information disclosed to Licensee will not contain any trade secrets of any third party unless disclosure is permitted by such third party.
- 11.2.2. Bluestream Health warrants that all services performed under this Agreement will be performed in a good and workmanlike manner.
- 11.2.3. Bluestream Health warrants that it is financially capable of fulfilling all requirements of this Agreement, that there are no legal proceedings against it that could threaten performance of this Agreement, and that the Bluestream Health is a validly organized entity that has the authority to enter into this Agreement. Bluestream Health is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Agreement.
- 11.2.4. Bluestream Health represents and warrants that as of the effective date of this Agreement, Licensee's use of the Software is consistent with the requirements of all federal and state law and regulation pertaining to the security and privacy of individually identifiable health information. In the event such laws or regulations change after the effective date hereof, Bluestream Health agrees it will make best efforts to keep the products and software compliant at no cost to Licensee and that any required updates shall be made available to Licensee before the effective date of such regulatory changes. In the event Bluestream Health fails to make such changes to the Products as may be necessitated by regulation, Bluestream Health agrees to provide Licensee with written notice to that effect at least 45 days following the publication of any proposed regulation or statute requiring



change to the products and software, and Bluestream Health further agrees to refund to Licensee a pro-rata portion of license and maintenance fees paid hereunder, on a 5-year straight-line depreciation schedule, if its Products shall fail to be compliant by the date Licensee is required to be in compliance with the regulation.

11.2.5. Bluestream Health warrants that to the best of its knowledge as of delivery to Licensee, the Device, Server or Software does not contain any virus, worm, trap door, back door, timer or clock that would erase data or programming or otherwise cause the Software or Equipment to become inoperable or incapable of being used in accordance with its Documentation so long as Licensee uses the Software or Equipment according to permitted uses under this Agreement.

11.2.6. In the event that the Software fails to conform to this warranty, Bluestream Health will, at its sole option and expense (A) repair or replace the defective Software, or (B) refund any unused pre-paid fees for the affected Software on a pro-rated basis. THIS SECTION 11.2.6 STATES LICENSEE'S SOLE AND EXCLUSIVE REMEDY, AND BLUESTREAM HEALTH'S SOLE AND EXCLUSIVE LIABILITY, FOR BREACH OF THE WARRANTY SET FORTH IN SECTION 11.

11.3. Support.

11.3.1. Bluestream Health will provide Support in accordance with the Support terms attached hereto as Schedule 1.

11.4. DISCLAIMERS. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 11:

11.4.1. BLUESTREAM HEALTH DOES NOT WARRANT THAT THE SOFTWARE WILL NOT INTERFERE WITH OR DISRUPT THE OPERATION OF LICENSEE'S SOFTWARES (INCLUDING, WITHOUT LIMITATION, ITS COMPUTER NETWORKS), THAT THE OPERATION OF THE SERVER OR THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE SERVER OR THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES, THAT THE SERVER OR THE SOFTWARE WILL BE USEABLE IN ALL LANGUAGES OR PROVIDE AN ICON FOR EVERY PATIENT REQUEST, OR THAT INSTALLATION OF THE SERVER OR THE SOFTWARE WILL NOT AFFECT THE USABILITY OF THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES.

11.4.2. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE IS NOT INTENDED AS A SUBSTITUTE FOR FACE TO FACE INTERACTIONS OR OTHER FUNCTIONS OF A CARE PROVIDER, NOR AS A SUBSTITUTE FOR OTHER SOFTWARES THAT LICENSEE MAY HAVE IN PLACE.

11.4.3. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT BLUESTREAM HEALTH IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY THE SERVER, THE DEVICES OR THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF LIFE SUPPORT SOFTWARES.

11.4.4. BLUESTREAM HEALTH SHALL NOT BE RESPONSIBLE FOR ANY ASSUMPTIONS ABOUT LICENSEE'S SERVICES OR CAPABILITIES MADE BY A USER AS A RESULT OF OR BASED UPON SUCH USER'S EXPERIENCE USING BLUESTREAM HEALTH, OR FOR ANY LIABILITY ARISING FROM SUCH ASSUMPTIONS.

12. Indemnification

12.1.1. Bluestream Health's Indemnification Obligations. Bluestream Health will indemnify, defend and hold harmless Licensee and its officers, directors, members, managers, employees and agents from and against any claim, suit or proceeding brought by a third party against Licensee to the extent that it is based on any assertion that Licensee's use of the Software infringes or misappropriates any of the following United States intellectual property rights: patent rights, copyrights, trademark rights, or trade secrets. Bluestream Health shall pay all costs incurred by (including reasonable attorneys' fees and disbursements) and damages awarded against Licensee. Bluestream Health shall have full control of any such claim, proceeding or suit. Notwithstanding the foregoing, Bluestream Health shall have no liability to Licensee if the infringement arises or results, directly or indirectly, from any of the following acts, where such act was not authorized by Bluestream Health and to the extent that such infringement would have been avoided in the absence of such act: (i) misuse of the Software; (ii) alteration of the Software; (iii) use of the Software in combination with unauthorized apparatus, hardware, software or services; (iv) any use of the Software that violates this Agreement or any applicable law or regulation of any governmental authority or self-regulatory agency or authority; (v) any use for which the Software was not designed; or (vi) use of a superseded release of the Software if Bluestream Health has made available to Licensee a more current release of the Software.

12.1.2. Licensee's Indemnification Obligations. Licensee will indemnify, defend and hold harmless Bluestream Health and its officers, directors, members, managers, employees and agents from and against any claim, suit or proceeding brought by a third party against Bluestream Health to the extent that it is based on any assertion arising out of: (i) Licensee's negligent use of the Software; (ii); or (iii) any breach by Licensee of its representations, warranties, or covenants hereunder.

12.1.3. Remedies for Intellectual Property Infringement. If all or any part of the Software is, or in the opinion of Bluestream Health may become, the subject of any claim or suit for infringement of the intellectual property rights of a third party, Bluestream Health may, but is not obligated to, exercise any of the following remedies, at its sole option and expense: (i) obtain the right to continue to provide the affected Software; (ii) modify or replace the affected Software so they are non-infringing and in compliance with this Agreement; or (iii) terminate this Agreement. THIS SECTION 12.1.3 AND THE INDEMNIFICATION PROVISION IN SECTION 12.1.1 STATE LICENSEE'S SOLE AND EXCLUSIVE REMEDY, AND BLUESTREAM HEALTH'S SOLE AND EXCLUSIVE LIABILITY, REGARDING INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

13. Limitations of Liability

13.1. Licensee shall have individualized login information in order to use the Software. Licensee agrees and acknowledges that it is solely responsible for the conduct of all users under its logins, and for any consequences thereof. Licensee is responsible for maintaining the confidentiality of its individualized login information, and for ensuring that its users logout after each use. Licensee agrees to promptly notify Bluestream Health of any unauthorized use of its individualized login information, or any other breach of security related to the Software of which it becomes aware. Bluestream Health shall not be liable for any loss, damage or other liability arising in any way from Licensee's failure to keep its individualized login information secure.

13.2. EXCEPT WITH RESPECT TO THE PARTIES INFRINGEMENT INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREIN, UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, BLUESTREAM HEALTH'S OR SUCCESSORS BE LIABLE TO LICENSEE (OR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM LICENSEE) FOR DIRECT, CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS OR LOSS OF BUSINESS) WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE RELATING TO THE SOFTWARE, OR OTHER MATERIALS OR SERVICES PROVIDED HEREUNDER,

REGARDLESS OF WHETHER THE INDEMNIFYING PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Some jurisdictions do not allow exclusion of certain warranties or limitations of certain liabilities, so some of the above limitations or exclusions may not apply. Each party's liability in such case shall be limited to the greatest extent permitted by law.

14. Confidentiality

14.1. At all times, the Receiving Party shall protect and preserve the Confidential Information as confidential, using no less care than that with which it protects and preserves its own highly confidential and proprietary information (but in no event less than a reasonable degree of care), and shall not use the Confidential Information for any purpose except as necessary to carry out its obligations under this Agreement (the "Limited Purpose"). The Receiving Party may disclose, distribute or disseminate the Confidential Information to any of its officers, directors, members, managers, partners, employees, agents or other persons (its "Representatives") provided that the Receiving Party reasonably believes that those Representatives have a need to know and such Representatives are bound by confidentiality obligations at least as restrictive as those contained herein. The Receiving Party shall not disclose, distribute or disseminate the Confidential Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party shall at all times remain responsible for any violations of this Agreement by any of its Representatives. In the event the Receiving Party becomes or may become legally compelled to disclose any Confidential Information (whether by deposition, interrogatory, request for documents, subpoena, civil investigative demand or other process or otherwise), the Receiving Party shall provide the Disclosing Party with prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement.

14.2. The Receiving Party acknowledges that in the event of a breach of this Section 14, substantial injury could result to the Disclosing Party and money damages will not be a sufficient remedy for such breach. Therefore, in the event that the Receiving Party or its Representatives engage in, or threaten to engage in any act which violates any provision of this Agreement, the Disclosing Party shall be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the terms of this Agreement, without being required to post a bond or other security in connection with the granting of any such relief.

14.3. Promptly following the earlier of (i) the expiration or earlier termination of this Agreement, or (ii) the request of the Disclosing Party, the Receiving Party shall return to the Disclosing Party, or, at the Disclosing Party's option, destroy (and certify such destruction) all materials that are in written, electronic or other tangible form (including, without limitation, all written or printed documents, notes, memoranda, email, computer disks or tapes (whether machine or user readable), or computer memory, whether or not prepared by the Receiving Party) that contain, summarize or abstract any portion of the Confidential Information, including, without limitation, all copies, extracts and derivations of such materials.

15. General Provisions

15.1. Force Majeure. Neither party shall be liable for any failure or delay in the performance of any of their respective obligations if prevented from doing so by a Force Majeure Event. "Force Majeure Event" means (i) floods, earthquakes, or other similar elements of nature or acts of God; (ii) riots, civil disorders, rebellions or revolutions in any country; or (iii) any other cause beyond the reasonable control of the non-performing party, provided the non-performing party is without fault in failing to prevent or causing such default or delay, and such



default or delay could not have been prevented or circumvented by the non-performing party through the reasonable use of alternate sources, workaround plans or other reasonable precautions.

15.2. Notices. All notices and other communications required or permitted to be given to a party pursuant to this Agreement shall be in writing, and shall be deemed duly given (i) on the date delivered if personally delivered, (ii) on the date sent by telecopier with automatic confirmation by the transmitting machine showing the proper number of pages were transmitted without error, (iii) on the business day after being sent by Federal Express or another recognized overnight courier service which utilizes a written form of receipt for next day or next business day delivery, or (iv) five (5) business days after mailing, if mailed by United States postage-prepaid certified or registered mail, return receipt requested, in each case addressed to the applicable party at the address set forth on the first page of this Agreement, in the case of Bluestream Health, Attention: Legal Department, and, in the case of Licensee, Attention shall be signing party of terms of service.

15.3. Relationship of the Parties. Bluestream Health is an independent contractor and this Agreement does not create an agency, partnership, or joint venture relationship between Bluestream Health and Licensee or Bluestream Health and any Licensee personnel. Bluestream Health has sole responsibility for activities of Bluestream Health and its personnel and shall have no authority and shall not represent to any third party that it has the authority to bind or otherwise obligate Licensee in any manner. Likewise, Licensee has sole responsibility for activities of Licensee and its personnel and shall have no authority and shall not represent to any third party that it has the authority to bind or otherwise obligate Bluestream Health in any manner.

15.4. Applicable Law and Forum. This Agreement, and all matters arising directly or indirectly from this Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws rules applicable to contracts to be performed entirely within the State of New York, and without regard to the U.N. Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act.

15.5. Assignment. This Agreement may not be assigned or otherwise transferred by either party without the prior written consent of the other party, and any attempt to assign any rights, duties or obligations which arise under this Agreement without such consent shall be null and void. However, either party may, without the consent of the other party, assign this Agreement to any person or entity that is acquiring all or substantially all of its assets or which is a successor by merger, consolidation, divestiture, acquisition of stock or assets, or other business combination. This Agreement will be binding upon and will inure to the benefit of the parties and their respective permitted successors and assignees.

15.6. Remedies Not Exclusive. Except as expressly set forth herein, no remedy hereunder is intended to be exclusive of any other remedy available hereunder or at law or in equity.

15.7. Severability. The illegality, invalidity, or unenforceability of any provision of this Agreement shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this Agreement, and that provision, and this Agreement generally, shall be reformed, construed and enforced so as to most nearly give lawful effect to the intent of the parties as expressed in this Agreement.

15.8. Headings. The section headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation of this Agreement.

15.9. Modification and Waiver. No modification of this Agreement shall be effective unless it is in writing and signed by an authorized representative of each party. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver thereof.

15.10. Complete Agreement. This Agreement, including any exhibits, schedules and other attachments hereto or entered into hereunder, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all existing or prior agreements and communications, whether written or oral, relating to the subject matter hereof.

15.11. Counterparts. This Agreement may be executed in counterparts (which may be exchanged by facsimile, or scanned email attachment), each of which shall be deemed an original, but which together shall constitute one and the same instrument.

Schedule 1

Support

1. Support:

1.1 Licensee is responsible for identifying a technical lead on their end. This technical lead will act as the single point of contact to Bluestream Health's helpdesk and take responsibility for communicating any issues to Bluestream Health and resolutions to Licensee's end users.

1.2 Availability of Support:

First-line support via phone and email is available 24 hours per day, 7 days per week, and is provided to answer common questions and create helpdesk tickets for more serious issues, which are escalated to second-tier support.

Second-tier support is available to respond to escalated issues from 9am-6pm Eastern Standard Time (EST). Responses by the second-tier support team may be provided via phone, email, or routed through first-line support.

1.3 Support Response Times

First-line support will acknowledge issues within 1 hour of initial notification. A resolution or helpdesk ticket (escalation to second-tier support) will be provided within 3 hours of acknowledgement of the issue.

Helpdesk tickets that are escalated to second-tier support will be resolved within 10 business days.

2. Service Level Agreement (SLA)

Software will be operational and available, 99.99% of the time in a given month, excluding scheduled maintenance and upgrades. Any downtime or outages caused by failures in the operation or maintenance of the client's server, infrastructure, or hardware are excluded from the scope of this SLA. For each 0.1% of missed availability Licensee will receive a 1% credit, with a maximum of 50% of the monthly service fee credited if availability is less than 95% in a given month. Should availability fall below 50% in a given month, 100% of the monthly service fee will be credited.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into on this **3rd** day of **June, 2021** by and between **Mangum City Hospital Authority, dba Mangum Regional Medical Center**, (the "Covered Entity") and **Bluestream Health** (the "Business Associate").

WITNESSETH

WHEREAS, Covered Entity and Business Associate have entered into, or plan to enter into, an agreement or other documented arrangement (the "Underlying Agreement"), pursuant to which Business Associate provides certain services (the "Services") to Covered Entity;

WHEREAS, Covered Entity may Disclose to Business Associate Protected Health Information ("PHI") as necessary for Business Associate to provide Services pursuant to the Underlying Agreement, and the Business Associate may Use and further Disclose such PHI, or create additional PHI, in the performance of such Services;

WHEREAS, Covered Entity and the Business Associate desire to set forth their respective rights and obligations with respect to the Use and Disclosure of PHI in order to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the regulations promulgated thereunder, including, without limitation, the regulations codified at 45 C.F.R. Parts 160 and 164 ("HIPAA Regulations"); the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), including all applicable regulations and guidance issued by the Secretary of the Department of Health and Human Services ("HHS"); and other applicable state laws, all as amended from time to time; and;

WHEREAS, the HIPAA Regulations require Covered Entity to enter into an agreement with Business Associate meeting certain requirements with respect to the Use and Disclosure of PHI, which are met by this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the exchange of information pursuant to this Agreement, Business Associate and Covered Entity agree as follows:

1. **Definitions.** Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations and/or the HITECH Act, as applicable.

1.1 **Breach:** "Breach" shall have the same meaning as the term "breach" has in 45 C.F.R. §164.402, wherein breach is defined to mean the acquisition, access, Use, or Disclosure of PHI in a manner not otherwise permitted under 45 C.F.R. Subpart E that compromises the security or privacy of the PHI.

The term Breach specifically excludes:

(i) Any unintentional acquisition, access, or Use of PHI by a workforce member or person acting under the authority of a Covered Entity or a Business Associate, if such acquisition, access, or Use was made in good faith and within the scope of authority and does not result in further Use or Disclosure in a manner not permitted under 45 C.F.R. Subpart E.

(ii) Any inadvertent Disclosure by a person who is authorized to access PHI at a Covered Entity or Business Associate to another person authorized to access PHI at the same Covered Entity or Business Associate, or organized health care arrangement in which the Covered Entity participates, and the information received as a result of such Disclosure is not further Used or Disclosed in a manner not permitted under 45 C.F.R. Subpart E.

(iii) A Disclosure of PHI where a Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably have been able to retain such information.

1.2 Breach Notification Rule: "Breach Notification Rule" shall mean the Notification of Breach of Unsecured PHI regulations at 45 C.F.R. Part 164, Subparts A and D.

1.3 Designated Record Set: "Designated Record Set" has the same meaning as the term "designated record set" has in 45 C.F.R. §164.501.

1.4 Individual: "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

1.5 Privacy Rule: "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act.

1.6 Protected Health Information: "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.7 Required by Law: "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.103.

1.8 Secretary: "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

1.9 Security Incident: "Security Incident" shall have the same meaning as "security incident" in 45 C.F.R. §164.304.

1.10 Security Rule: "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C, as amended by the HITECH Act.

1.11 Unsecured Protected Health Information: "Unsecured Protected Health Information" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in regulations or as otherwise defined in 45 C.F.R. §164.402.

2. **Obligations and Activities of Business Associate.** The parties agree as follows:

2.1 Business Associate shall only Use and Disclose PHI in compliance with each applicable requirement of 45 C.F.R. § 164.504(e). Business Associate shall comply with all requirements of Subpart E of 45 C.F.R. related to privacy and applicable as if Business Associate were a "covered entity," as such term is defined in HIPAA.

2.2. Business Associate shall use reasonable and appropriate safeguards to prevent the Use or Disclosure of PHI other than as contemplated by the Underlying Agreement and this Agreement. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity and shall comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI.

2.3 Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.4 Business Associate shall notify the Covered Entity in writing of any Security Incident or access, acquisition, Use or Disclosure that is not provided for by this Agreement without unreasonable delay and within five (5) business days of Business Associate's discovery of the Security Incident or non-permitted access, acquisition, Use or Disclosure. The initial notification shall include a brief description of the Security Incident or non-permitted access, acquisition, Use or Disclosure, which shall include (a) the date of the event, (b) the date of discovery, (c) the nature of the PHI involved, (d) the extent of the non-permitted access, acquisition, Use or Disclosure or Security Incident, and (e) the unauthorized person(s) who accessed, acquired, or Used the PHI or to whom the non-permitted Disclosure was made. Business Associate shall investigate each Security Incident or unauthorized access, acquisition, Use, or Disclosure of Covered Entity's PHI that it discovers and shall conduct a risk assessment as set forth in 45 C.F.R. § 164.402. Business Associate shall document and retain records of its investigation of any non-permitted access, acquisition, Use or Disclosure or Security Incident, including its risk assessment and reports to Covered Entity under this Section 2.4. Upon request of Covered Entity, Business Associate shall furnish to Covered Entity the documentation of its investigation and risk assessment of whether such unauthorized access, acquisition, Use, or Disclosure constitutes a reportable Breach. If such Security Incident or non-permitted access, acquisition, Use or Disclosure constitutes a reportable Breach of Unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.5 below.

2.5 If Business Associate concludes that a reportable Breach of Unsecured PHI has occurred, or Covered Entity makes such determination based on the Business Associate's investigation and risk assessment, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than thirty (30) calendar days after discovery of the

Breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. § 164.410(c). Covered Entity shall have sole control over the determination of whether Breach notification is required and the timing and method of providing notification of such Breach to the affected individual(s), the Secretary and, if applicable, the media. Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations with respect to such a Breach. Business Associate shall reimburse Covered Entity for its reasonable costs, expenses, and damages (including reasonable attorney fees) arising from a Breach reported to the Covered Entity, 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 a period not to exceed one year) for affected individuals whose PHI has or may have been compromised as a result of the Breach.

2.6 Business Associate shall require each agent and subcontractor that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such agents and subcontractors the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.

2.7 Business Associate agrees to provide access, at the reasonable request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. If Business Associate maintains PHI in an Electronic Health Record, Business Associate shall provide such information in the electronic form and format requested by Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 42 U.S.C. § 17935(e) and 45 C.F.R. § 164.524(c)(2).

2.8 Business Associate agrees to, at the request of the Covered Entity or an individual, promptly make any amendment(s) to the PHI that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526.

2.9 Business Associate agrees to make available to the Secretary during Business Associate's normal business hours, the internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Except to the extent prohibited by law, Business Associate shall notify Covered Entity of such requests served upon Business Associate for information or documentation by or on behalf of the Secretary.

2.10 Business Associate agrees to document such Disclosures of PHI and information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528. If Business Associate maintains an Electronic Health Record on behalf of Covered Entity, then, Business Associate shall document Disclosures made through such Electronic Health Record for Treatment, Payment and Health Care Operations in compliance with 42 U.S.C. § 17935(c) and the implementing regulations.

2.11 Business Associate agrees to promptly provide to Covered Entity or an Individual information collected in accordance with the Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. §164.528.

3. **Permitted Uses and Disclosures by Business Associate.** Business Associate shall Use and Disclose PHI only for the purpose of performing Business Associate's obligations under the Underlying Agreement and as permitted by this Agreement or Required by Law.

3.1 Business Associate shall not Use or Disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity, except that Business Associate may Use PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any Disclosure by the Business Associate for such purposes, either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be Disclosed that such person shall hold the PHI in confidence and shall not Use and further Disclose such PHI except as Required by Law or for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person shall notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Business Associate may also Use PHI for Data Aggregation purposes, if requested by Covered Entity, in connection with the Health Care Operations of Covered Entity. Business Associate is not authorized to Use the PHI to create de-identified information. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

3.2 Business Associate shall limit its Use, Disclosure or request for PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

3.3 Business Associate agrees that it shall not, directly or indirectly, receive remuneration in exchange for any PHI of Covered Entity, consistent with 42 U.S.C. § 17935(d)(2) and 45 C.F.R. § 164.502(a)(5)(ii), except with the prior written consent of the individual in accordance with 45 C.F.R. § 164.508(a)(4).

3.4 Business Associate shall not Use or Disclose PHI for fundraising purposes or for the purpose of making a communication about a product or service that encourages recipients of the communication to purchase or Use the product or service, unless such communication: (1) complies with the requirements of subparagraph (i), (ii) or (iii) of paragraph (1) of the definition of marketing contained in 45 C.F.R. § 164.501, and (2) complies with the requirements of subparagraphs (A), (B) or (C) of Section 42 U.S.C. § 17936, 45 C.F.R. §§ 164.524(f) and 164.508(a)(3)(ii), and any other implementing regulations or guidance that may be issued or amended from time to time.

3.5 Business Associate shall not Disclose PHI to a health plan for payment or Health Care Operations purposes if and to the extent that Covered Entity has informed Business Associate

that the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, consistent with 42 U.S.C. § 17935(a) and 42 C.F.R. § 164.522(a)(1)(vi).

3.6 Business Associate may Use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

4. **Obligations of Covered Entity.** Covered Entity agrees as follows:

4.1 Covered Entity shall notify Business Associate of any limitations in its Notice of Privacy Practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

4.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

4.3 Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

5. **Term and Termination.** The parties agree as follows:

5.1 Term. This Agreement shall become effective as of the date of execution of this Agreement by Covered Entity, and shall terminate as of the termination date of the Underlying Agreement or on the date that the Covered Entity terminates for cause as authorized in Section 5.2, whichever is sooner.

5.2 Termination for Cause.

a. A breach or violation by Business Associate of any provision of this Agreement, as determined by Covered Entity, shall constitute a breach of the Underlying Agreement and shall provide grounds for termination of the Underlying Agreement by Covered Entity.

b. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall notify Business Associate and provide a reasonable time for Business Associate to cure the breach. If Business Associate does not cure the breach within such reasonable time, or if cure is not feasible, Covered Entity may terminate the Services immediately. If termination is not feasible, Covered Entity shall report the problem to the Secretary of Health and Human Services.

6. **Effect of Termination.** It is agreed and understood that, upon termination of this Agreement, Business Associate shall either return or destroy all PHI received from, or created or received by the Business Associate on behalf of the Covered Entity that the Business Associate still maintains in any form. Business Associate shall retain no copies of such information. If for any reason, such return or destruction is infeasible, Business Associate shall (a) retain only that PHI

which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that the Business Associate still maintains in any form; (c) continue to extend the protections of this Agreement to the PHI for as long as Business Associate retains the PHI; (d) limit any further Uses and Disclosures of such PHI to those purposes that make the return or destruction of the information infeasible and subject to the same conditions set out at Section 3 above, which applied prior to termination; and (e) return to Covered Entity 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.

7. Miscellaneous.

7.1 Regulatory References. A reference in this Agreement to a section in the Privacy, Breach Notification, or Security Rules means the section as in effect or as amended, and for which compliance is required.

7.2 Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA, the HIPAA Regulations, or the HITECH Act.

7.3 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HIPAA Regulations, and the HITECH Act.

7.4 Survival. The respective rights and obligations of Business Associate shall survive the termination of this Agreement as long as Business Associate and its subcontractors or agents are in possession of any Covered Entity's PHI.

7.5 Governing Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

7.6 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

7.7 Massachusetts Data Security Law. Business Associate shall comply with the Massachusetts Data Security Law and the regulations codified at 201 CMR §17.00 et al., as may be amended from time to time.

7.8 Notices. All notices required or permitted under this Agreement shall be in writing and sent to the other party as directed below or as otherwise directed by either party, from time to time, by written notice to the other. All such notices shall be deemed validly given upon receipt of such notice by certified mail, postage prepaid, facsimile transmission or personal or courier delivery:

