

Hospital Vendor Contract – Summary Sheet

1. Name of Contract: **Tyto Care, Inc. Telehealth Platform**
2. Contracted Parties: **Tyto Care, Inc. and Mangum City Hospital Authority**
3. Contract Type Services: **Remote telehealth diagnosis and treatment**
4. Description of Services: **Tyto Care has developed, operates and manufactures proprietary innovative telehealth platform solutions to meet the health needs of target populations. Using the Tyto solutions patients and clinicians may perform online remote medical visits using state of the art diagnosis tools.**
5. Cost: ☒ _____ (Monthly) -and- ☒ **\$91,400** (Purchase Price)
6. Term: **5 Years**
7. Termination Clause: **No Cancellations. All sales final.**



Tyto Care Inc.
215 West 40th St.
9th Floor
New York, NY 10001
T +1 (866) 971 8986

Quote Date: June 10, 2021
Expiration Date: June 30, 2021
Quote #: QUO-03787-M4H5G1

To:

Mangum Regional Medical Center
Attn: Dale Clayton
1 Wickersham Dr., Suite 100
Mangum, OK 73554

CONTACT PERSON	SHIPPING METHOD	PAYMENT TERMS	PAYMENT METHOD
Dale Clayton	UPS Ground	Pre-Paid	Invoice

PRODUCT	UNIT PRICE	QUANTITY	TOTAL
TytoClinic Stationary Subscription (60 months) Tyto Pro iPad (32GB, Wi-Fi, Space Gray) Heckler Design Storage Drawer and iPad Stand Headphones, Sony MDR-ZX310AP Router, TP-Link AC750 Wireless Wi-Fi Gigabit Router Pulse Oximeter, Nonin 3230 BT Blood Pressure Cuff Omron BP7000 EVOLV	\$10,800.00	5	\$54,000.00
TytoClinic Mobile Subscription (60 months) Tyto Pro iPad 9.7" (32GB, Wi-Fi + 4G LTE enabled, Space Gray) Adjustable Pasonomi iPad Stand Traveling Bag / Bobby Anti-theft backpack by XD Design Headphones, Sony MDR-ZX310AP Pulse Oximeter, Nonin 3230 BT Blood Pressure Cuff Omron BP7000 EVOLV	\$10,800.00	5	\$54,000.00
Implementation	\$5,000.00	1	\$5,000.00
SUBTOTAL			\$113,000.00
STRATEGIC PARTNERSHIP DISCOUNT			\$21,600.00
SALES TAX*			\$0.00
TOTAL DUE			\$91,400.00

*Tyto will work with client to implement TytoCare, create user accounts, train super-user(s) also known as "train the trainer". The super-users will be responsible for future implementations, setup and training following this initial implementation.

*5 Year Agreement includes 24/7/365 support, Advanced Replacement, Unlimited Accounts and Visits

* Amounts do not include tax



**** Shipping fee will be assessed on the final invoice.**

Quotation prepared by: John Haas

This is a quotation on the goods named, subject to the conditions noted below:

	Carson VanZant	June 10, 2021
Accepted by (signature)	Name (printed)	Date

If you have any questions concerning this quote, contact John Haas, sales@tytocare.com



Master Services Agreement

Company Information
Mangum City Hospital Authority dba: Mangum Regional Medical Center 1 Wickersham Dr. Mangum, OK 73554
Matt Moran – mmoran@mangumregional.org Johnnie Hughes – johnnie.hughes@cohesivehealthcare.net

This Master Services Agreement (“**Agreement**”) entered into this 10th day of June, 2021 (“**Effective Date**”) Tyto Care, Inc., a Delaware corporation, headquartered at 215 West 40th Street, 9th Floor, New York, NY 10018 (“**Tyto**”), and Mangum City Hospital Authority dba: Mangum Regional Medical Center, with an address as set forth above (“**Company**”). Both Tyto and Company may individually be referred to as a “**Party**” (“**Tyto**”), and Mangum Regional Medical Center, (“**Company**”), headquartered at 1 Wickersham Drive, Mangum, OK 73554. Both Tyto and Company may individually be referred to as a “**Party**” or collectively as “**Parties**”.

Whereas Tyto has developed, operates and manufactures proprietary innovative telehealth platform solutions including the Tyto Solution as described in more detail hereunder;

Whereas Company operates and delivers health care services to Patients to meet the health needs of target populations (“**Company’s Health Services**”); and

Whereas, the Parties wish to enter into an agreement under which Company may order and procure from Tyto and Tyto may provide to Company, deployment and access to the Tyto Solution, Tyto Devices or Third Party Devices and/or certain limited licenses and rights of use thereof, in the scope of Company’s Health Services business.

Therefore, in consideration of the mutual covenants of the Parties contained herein, the Parties agree as follows:

1. DEFINITIONS

- 1.1. “Affiliate” means any individual or entity that directly or indirectly controls, is controlled by, or is under common control with, the individual or entity in question and any successors or assigns of such person or entity; and the term “control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an individual or entity whether through ownership of voting securities, by contract or otherwise.
- 1.2. “Authorized Users” shall have the meaning attributed under section 4.3 below.
- 1.3. “Alternate Platform” means a third-party telehealth service integrated into or otherwise connected to or with any part of the Tyto Solution.
- 1.4. “Company’s Health Services” shall have the meaning attributed under the preamble to this Agreement.
- 1.5. “Clinicians” shall mean any individual natural person associated with Company’s Health Services, providing health services to End Users using the Tyto Solution or otherwise using or accessing the Tyto Solution as facilitating means pursuant to this Agreement (including pursuant to any applicable Purchase Order).
- 1.6. “Diagnosis Information” shall mean medical diagnosis, prognosis, anamnesis and prescription information.



- 1.7. "Documentation" shall mean the standard generally available written materials regarding the Tyto Solution provided by Tyto via its on-line website portal and/or together with the Tyto Device packaging and/or otherwise under this Agreement.
- 1.8. "End User" shall mean Patients, Clinicians and Authorized Users.
- 1.9. "Integration Elements" means any software or hardware developed for the purpose of enabling or optimizing the integration of the Tyto Solution with Company's services or products, and which is derived from the Tyto Solution or from any part thereof, except for software which interfaces with the application programming interface made available by Tyto ("API") in accordance with the API Documentation.
- 1.10. "Integrated Products" shall mean the products and/or services which result from the combination of the Tyto Solution or any part thereof together with the Company's services or products or with the Alternate Platform.
- 1.11. "M&S Services" shall mean the services set forth in the Service Level Agreement, attached hereto as **Appendix B** (the "**SLA**").
- 1.12. "Patient" shall mean individual natural persons using the Tyto Solution (as defined below) in the scope of their private consumption of Company's Health Services or otherwise being subject to the use of the Tyto Solution in such scope.
- 1.13. "Product Data" shall mean all data processed or conveyed through any use of the Tyto Solution, consisting of individual medical or health indicators, Diagnosis Information, and any other information in whatever form or medium including images, videos, graphs, audio signals, texts or any other expressions thereof.
- 1.14. "Purchase Order" shall have the meaning attributed thereto under Section 2.1 below. Purchase Orders shall be considered an integral part of this Agreement, however in any event of conflict between the Purchase Order and the terms of this Agreement the latter shall prevail unless the conflicting provision in such Purchase Order is made expressly notwithstanding the terms of this Agreement.
- 1.15. "Services" shall mean M&S Services, Installation and Training Service, Professional Services and any other services that may be commissioned by Company or otherwise provided by Tyto to Company hereunder.
- 1.16. "Territory" shall mean the territories listed in **Appendix A**.
- 1.17. "Third Party Devices" shall mean collectively the devices and products procured under this agreement whether hardware or software, which are manufactured, created or licensed by 3rd parties as indicated in the applicable Purchase Order and that are authorized by Tyto for integration into or with the Tyto Solution.
- 1.18. "Tyto Devices" – The device designed, developed manufactured and distributed by Tyto (including all hardware and firmware components therein) to be used by Clinicians and Patients for examination of certain physical health indicators such as ear, throat, lungs, heart-beat, as part of the Tyto Solution (as defined below), and as further detailed in the Documentation
- 1.19. "Tyto Mobile Application" or "Tyto App" shall mean a software application for use through a mobile device, website browser or other personal computer, which connects and communicates with the Tyto Device and with the Tyto Platform, for the collection, processing, analyzing, transmitting, presenting and managing of Product Data.



- 1.20. "Tyto Licenses" shall mean collectively the software licenses or rights of use with respect to the Tyto Solution procured by Company under this Agreement and any relevant valid Purchase Order.
- 1.21. "Tyto Platform" shall mean Tyto's cloud-based software as a service (SaaS), which connects and communicates with Tyto Devices through the Tyto App, for the collection, processing, analyzing, transmitting, presenting and managing of Product Data. The Tyto Platform enables clinicians to login via the Tyto App to review Product Data sent to them (exam-and-forward), perform online remote medical visits with patients in conjunction with a 'Tyto Exam', or perform online remote medical visits with patients without a 'Tyto Exam'.
- 1.22. "Tyto Solution" shall mean collectively the Tyto Devices the Tyto Platform, the Tyto Mobile Application, and all access and co-operability there and between including all various components thereof, and any other Services provided by Tyto hereunder.

2. SCOPE OF SERVICES.

- 2.1. Purchase Order. Subject to the terms and conditions hereof and pursuant to an applicable mutually agreed upon and executed written (including by email) instrument issued in accordance with the price list attached hereto as **Appendix A** (the "**Price List**") referencing this Agreement, which sets forth such items and services to be supplied to Company (including applicable Tyto Devices quantities, Third Party Devices, Tyto Licenses, Tyto Platform access permissions, Services, and applicable Tyto price quotes) (such written instrument hereafter the "**Purchase Order**"), Tyto shall deliver to Company, such number of items and services and other deliverables to be used solely as part of the Tyto Solution, in accordance with and as specified in, such Purchase Order and under the terms hereof. Tyto reserves the right to unilaterally amend the Price List at any time, by providing Company with sixty (60) days written notice of the same provided that such notice shall not affect any price quotes issued by Tyto to Company prior to such notice. Any changes to a Purchase Order, including quantity, dates or other details must be mutually approved in writing.
- 2.2. Supply of Devices. Unless otherwise agreed and set forth in an applicable Purchase Order, subject to payment by Company in accordance herewith, and pursuant to a valid relevant Purchase Order, Tyto shall deliver Tyto Devices and Third Party Devices ExWorks (Incoterms 2010) Tyto's supply facility. Risk of loss to the purchased products shall pass to Company at the collection thereof by Company shipping agent, from the Tyto supply facility.
- 2.3. No Cancellations; Acceptance. All sales under a valid Purchase Order, from Tyto to Company shall be final, non-cancellable and non-refundable, and no sale from Tyto to Company shall be deemed to be on consignment or on a "sale or return" basis. Any claim as to shortage in quantity or damaged delivery of the Tyto Devices and/or Third Party Devices delivered to Company in accordance with section 2.2 above (and prior to their distribution to End Users or Clinicians), which can be reasonably detected by visual inspection, shall be presented in writing by Company to Tyto within seven (7) days following the date of such delivery thereof to the Company. Tyto shall either provide reimbursement to Company or make up and replace any Tyto Devices or Third Party Device duly returned and/or duly reported as damaged or missing, within thirty (30) days of the date of such Company's written claim, at no additional cost to Company. Provided however that such shortage in quantity or damaged delivery did not result from a faulty shipping, delivery, handling process which occurred following delivery by Tyto in accordance section 2.2 above, or from Company's performance not in accordance with the terms hereof or from any other negligent act or omission by Company or anyone on its behalf. If no such written notice is delivered to Tyto within such time as detailed hereunder,

and without derogating from Tyto's product warranty to which Company is entitled hereunder, all claims as to non-acceptance shall be conclusively considered to have been irrevocably waived by Company, and the delivered Tyto Devices and/or Third Party Devices (if applicable) shall be deemed accepted.

- 2.4. Handling of Devices Inventory; Packaging and Storage. Restrictions. Company undertakes that in the event Company holds under its possession any inventory acquired from Tyto of Tyto Devices and Third Party Devices if applicable, Company shall ensure that such Devices are held, warehoused, stacked, transported and handled by or on behalf of Company in proper and reasonable conditions for electronic devices, including without limitation under climate control conditions reasonably prescribed by Tyto. The physical flow of the Tyto Devices from stock storage to points of sale or to Company and End Users, shall be based on a first-in, first-out system.
- 2.5. Tyto Licenses and Access to Tyto Solution. Tyto shall further supply to Company such Tyto Licenses and access rights to the Tyto Solution, in connection with the delivered Tyto Device(s) as further detailed in Section 3 and 4 of this Agreement and in accordance with the relevant valid Purchase Order.
- 2.6. Training and Installation. Tyto shall provide Company, at a cost specified on an applicable Purchase Order training and installation services in a scope agreed between the Parties in such Purchase Order ("**Installation and Training Services**"). Such training service may include basic training with respect to the Tyto Solution, including training for first (1st) level support providers and Clinicians' training.
- 2.7. First (1st) Tier Level Support. Company will provide 1st tier level support with respect to the Tyto Solution to Company's End Users, Clinicians and Authorized Users, to whom Company distributes the Tyto Device(s) or who have access to the Tyto Solution, in accordance with the provisions set forth herein and the SLA.
- 2.8. Initial Purchase Order. Simultaneously with the execution of this Agreement, the parties shall execute an initial Purchase Order, attached hereto as **Appendix C**, governed by the terms hereof.
- 2.9. Future Opportunities. In the event Company identifies business opportunities for distribution of the Tyto Solution to third parties in the Territory who are not End Users, Company may approach Tyto in such respect and the Parties shall enter into good faith discussions regarding distribution of the Tyto Solution by Company, to such third parties, under terms similar to the terms of this Agreement. Notwithstanding the above it is clarified that neither Party shall be obliged to enter into any contract or business cooperation or assume any obligations in the scope of such good faith discussions.
- 2.10. Professional Services. Additional services such as consulting, configuration, adaptation, non-recurrent engineering services or other services ("**Professional Services**") may be commissioned by Company from Tyto for a separate fee under a mutually agreed upon fully executed applicable Purchase Order in accordance with a relevant statement of work to be annexed thereto, to the extent required. In the event Company requires any Professional Services it will communicate such requirement to Tyto and to the extent practical Tyto shall issue an appropriate quote to Company with respect to such Professional Services.

3. LICENSE



- 3.1. License. Subject to compliance with the terms and conditions hereunder and in accordance with a relevant valid Purchase Order, Tyto hereby grants Company a non-exclusive, revocable, non-transferable, non-sub-licensable license for the duration of the Term, to (i) distribute the Tyto Devices purchased under this Agreement, solely in the Territory, to such Patients receiving Company Health Services and/or to Clinicians providing Company Health Services, (ii) allow End-Users in the Territory to access the Tyto Solution deployed by Tyto hereunder, (iii) provide 1 Tier Level of support to its End Users as further detailed in the SLA.

4. SOFTWARE AS A SERVICE SUBSCRIPTION

- 4.1. Subscription. Subject to Company's compliance with the terms hereunder and payment of the relevant subscription fees set forth in such applicable Purchase Order (the "**Platform Fees**"), and pursuant to the terms of any relevant Purchase Order, Tyto hereby grants to Company a time limited, non-transferrable, non-sublicensable, revocable license to use and access the Tyto Platform (the "**Subscription**") as deployed by Tyto hereunder, solely in the scope of use by Company of the Tyto Solution pursuant hereto, and in connection with (i) each Tyto Device supplied hereunder, once such Device is activated; or (ii) any Tyto Device activated by any End User and designating Company as the chosen health care provider for such End User or (iii) any Company Health Services provided using the Tyto Solution or (iv) any Company Health Services provided via a third party telehealth platform with which the Tyto Platform is integrated to supplement the third party telehealth platform with remote medical examination capabilities.
- 4.2. API. Where the purchase order expressly includes purchase by Company of the rights to integrate the Tyto Solution with any other component including by using and accessing the API license, then Tyto grants to Company a non-exclusive, time-limited worldwide, non-transferrable, non-sublicensable (except to the extent expressly provided herein), royalty-bearing, and revocable license to combine the Tyto Solution or any part thereof together with Company's system/product and/or Alternate Platform including by utilizing the API, or any Integration Elements, to form the Integrated Product, all pursuant to and solely in accordance with the integration work description set forth in the relevant Order or hereto (the "**Integration Description**"). Unless expressly agreed otherwise between the parties in the Integration Description, Tyto shall have no liability with respect to damages arising from the use of the Integrated Product where such damages would not have arisen had the Tyto Solution been used on a standalone basis (i.e. not as part of the Integrated Product).
- 4.3. Third Party Networks Use. It is agreed and acknowledged that End Users will not be restricted from using and/or connecting their Tyto Devices with any other third party healthcare services provider making its services available to such End Users through the Tyto Solution ("**Third Party Networks**").
- 4.4. Access Credentials. Subject to and in accordance with the payment terms hereto and pursuant to an applicable fully executed Purchase Order, Tyto shall issue and provide personal access credentials ("**User IDs**") for Company's system administrators, personnel and/or Clinicians designated to use the Tyto Platform on its behalf ("**Authorized Users**"). Company, and its Authorized Users may only access and use the Tyto Platform and the Tyto Solution through the User IDs issued to them by Tyto. Company is responsible for maintaining the confidentiality of the User IDs provided to its Authorized Users. Any instruction, action, omission or activity occurring through any such User IDs provided by Tyto to Company shall be deemed to be provided and/or taken by Company, and Company shall be solely responsible for all instructions, actions, omissions or activities that occur under such User IDs,



including for any unauthorized use of such User IDs or any other breach of security, or any related damage or loss.

- 4.5. Company Restrictions. Company may use the Tyto Platform solution solely within Company's organization and solely in connection with the use by End Users of the Tyto Solution. Unless otherwise expressly provided herein or in an applicable Purchase Order, Company agrees that it will not, nor will it allow any third party on its behalf to: (i) distribute, license, sublicense, loan, sell or otherwise directly or indirectly grant access to the Tyto Platform or other content contained or displayed in the Tyto Platform except to End Users in accordance herewith; (ii) modify, alter, copy, emulate or create any derivative works of the Tyto Solution or any part thereof; (iii) reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from the Tyto Solution or any part thereof; or (iv) remove, alter or obscure any copyright, trademark or other proprietary rights notice, on or in, the Tyto Solution or any part thereof. In addition, Company undertakes to (i) ensure that its Authorized Users are fully skilled and familiar with the use and operation of the Tyto Solution; and (ii) use the Tyto Solution only in accordance with the applicable Documentation.

5. END USERS LICENSE

- 5.1. Terms of Use. Company will be responsible to distribute the Tyto Devices to End Users in their original packaging, as originally delivered by Tyto. Any and all use or access of the End Users to any portion of the Tyto Solution shall be governed by the end user license agreement and/or terms of use and privacy policy distributed by Tyto to End Users (as part of the Tyto App, the Tyto Device or as part of the Documentation) ("**Tyto Solution Terms of Use**") and which are also located at https://static-cloud.tytocare.com/manuals/terms_of_use.pdf.

6. RIGHT TO DISCONNECT ON BREACH

- 6.1. Without prejudice to Tyto's rights and available remedies under applicable law and under the applicable Tyto Solution Terms of Use, Company hereby acknowledges Tyto's right to disconnect, deactivate, prevent access or otherwise prevent Company's, Authorized Users, Clinicians or Patients' use of the Tyto Platform as provided to Company and deployed by Tyto hereunder or any part thereof, in the event of breach of the terms and conditions hereof by Company, Authorized Users and/or other personnel or Clinicians and/or with respect to specific Patients, in the event of breach by such Patients of the Tyto Solution Terms of Use, or in the case of termination of this Agreement; provided that Tyto notified Company in writing at least ten (10) days in advance and Company did not remedy such breach within such notice period.

7. PRODUCT DATA.

- 7.1. Product Data. As part of the engagement contemplated hereunder, Company, Authorized Users, Clinicians and Patients may provide Product Data through their use of the Tyto Solution. Additionally, the Tyto Platform collects and processes data required for Tyto to provide the benefits and features of the Tyto Solution. All such aforementioned data is considered Product Data and to the extent such Product Data is not owned solely by Patients, Company hereby grants Tyto a non-exclusive, non-assignable, non-transferable license to use such Product Data (including for the collection storage, processing, analysis, display, transfer and create derivatives, thereof) for the purpose of providing the Tyto Solution as contemplated hereunder. Tyto shall maintain the Product Data for such period of time necessary, or required, in order to provide the Tyto Solution and any other related services and/or subject to Tyto Privacy Policy located at [LINK] (the "**Tyto PP**") and in accordance with

the Business Associate Agreement attached hereto as **Appendix E** (the "**BAA**"). In any conflict between the terms of the Tyto PP, the terms hereof and the terms of the BAA with respect to privacy obligations and privacy rights, the conflicting terms of the BAA shall precede.

- 7.2. Use of Product Data. Company hereby grants Tyto a non-exclusive, non-transferable, irrevocable, perpetual worldwide license to collect, store, process, analyze, transfer, display and otherwise use Product Data which has been anonymized, and that cannot be used to identify or otherwise understood to be related to Company or its personnel, Authorized Users, Clinicians and Patients, for the purpose of internal research, development, sustaining and enhancement of Tyto Solution and related products services. (No reference to HIPAA)
- 7.3. HIPAA Compliance. The Parties shall abide by all applicable state and federal regulations concerning the security and confidentiality of patient medical records, including without limitation the Health Insurance Portability and Accountability Act of 1996, as amended ("**HIPAA**") and the requirements of any regulation promulgated thereunder. The Parties agree to be bound by the BAA attached hereto as Appendix E.

8. INTELLECTUAL PROPERTY

- 8.1. Intellectual Property Rights. Any ideas, inventions, improvements, technology, designs, software, algorithms, documents and other materials, techniques or works of authorship in any form, or any other intangible assets or intellectual property which may be included in or relate to the Tyto Solution or any part thereof and any derivative works or modifications of the aforementioned, including any patents, copyrights, trademarks, trade secrets, mask works or other Intellectual Property rights therein (collectively, "**Intellectual Property**"), is owned by Tyto and its licensors, shall remain at all times owned by Tyto and its licensors, and is protected by copyright law, patent law, and/or other laws protecting intellectual property rights and international treaty provisions. No license, express or implied, in or to the Intellectual Property of Tyto of its affiliates of its licensors (including with regard to any trademark of Tyto or its affiliates or licensors) is granted to Company and/or its End users under this Agreement, other than as explicitly stated hereunder. Company shall not remove, alter, cover or obfuscate any proprietary rights notices, such as patent, copyright, mask work or trademark, or confidentiality notices, placed or embedded by Tyto on or in connection with the Tyto Solution, any part thereof, or any related Documentation provided by Tyto.
- 8.2. Feedback. In the course of the collaboration between the Parties, Company may make suggestions or provide its input concerning the Tyto Solution or technologies or anything lacking therein ("**Feedback**"), it being understood and agreed that Tyto would own all such Feedback and any know-how or understanding derived therefrom. Accordingly, Company hereby forever irrevocably assigns to Tyto all of its right, title and interest in all suggestions, ideas, inventions or other subject matter relating to the Tyto Solution, Feedback, or any portion thereof disclosed by Company to Tyto. Any Feedback is provided by Company "as is" without any representation of warranty.
- 8.3. Integrated Elements. In the event that the Parties agree in writing that Company or anyone on its behalf shall develop or otherwise contribute to the development of any Integration Elements, Company expressly agrees that all such Integration Elements, including any and all associated intellectual property thereto, shall be exclusively owned by Tyto, and Company expressly warrants that all said Integration Elements shall not infringe upon any third party intellectual property, and shall not include any unauthorized open source code which was not approved in writing and in advance by Supplier. Company shall also ensure that the Integrated Products shall bear the Tyto trademarks as set forth in Appendix [X]. Any of Tyto's trademarks



used in relation to the Integrated Products shall be presented legibly and separated from other trademarks and symbols, so that each appears to be a trademark in its own right, distinct from the other mark, and in accordance herewith.

9. REPRESENTATIONS

9.1. Company's Representation

9.1.1. Adherence. Company will not permit any third party, Company contractors, service providers, Clinicians, Authorized Users or Patients to use, the Tyto Solution or any part thereof for or in furtherance of any unlawful purpose, not in accordance with applicable law or in violation of the terms and conditions of this Agreement.

- (i) Company warrants and represents that it possesses all approvals and authorizations required under applicable law or regulations for its use and distribution of the Tyto Solution and related services as contemplated hereunder and specifically for introducing, transmitting, and accessing the Product Data or any other information in connection with the Tyto Solution. Company warrants and represents to Tyto that to Company's knowledge, all Product Data provided to Tyto under This Agreement by Company, Authorized Users or Clinicians, is true, complete and accurate. For the avoidance of doubt, any act or omission by a Company's employee, contractor, agent, representative or service provider that would have constituted a breach of any term or condition of this Agreement were it performed by Company, shall be deemed a breach of this Agreement by Company.

9.1.2. Safe Medical Devices Act Compliance. Company acknowledges that it is familiar with the Safe Medical Devices Act of 1990 (the "**Devices Act**") and the reporting obligations imposed on device users thereunder. In this regard, Company shall notify Tyto within ten (10) days of the occurrence of any event identified in the Devices Act imposing a reporting obligation on a Party (except for events representing an imminent hazard that require notification to the United States Food and Drug Administration (the "**FDA**") within seventy-two hours, in which case, such notice will be delivered to the other Party immediately). Company shall also maintain adequate tracking for Tyto Devices for Tyto Devices to enable Tyto to meet the FDA requirements applicable to the tracking of medical devices.

9.1.3. Compliance. Company warrants and represents that (i) any and all Company's Clinicians (and if applicable other Authorized Users), are licensed to provide health care services as required and applicable in the jurisdiction where they are using the Tyto Solution or any other applicable jurisdiction, and such license(s) have not been repealed or revoked. In any event that Company becomes aware of an adverse change in any Clinician or Authorized User applicable licensing status as a health services provider, and/or in the event Company becomes aware of any ethical, criminal, or other proceedings initiated or about to be initiated against its Clinician or Authorized User, Company shall promptly notify Tyto of such event and at Tyto's request immediately revoke such Clinician's or Authorized User's authorization to use the Tyto Solution; (ii) no health services shall be provided via the Tyto Solution by Company and/or its Authorized Users or Clinicians to any Patients under the age of 18 unless Company has obtained in advance any all relevant authorizations and approvals of such Patients' parents or legal guardian(s), as required under applicable law. Representations. Company shall not make any promises, representations, warranties or guarantees with respect to the Tyto Solution not in accordance with the Documentation or without prior written consent of Tyto.

9.1.4. Healthcare Services. Company warrants and represents that it shall be exclusively responsible and accountable for any healthcare services provided by or on behalf of



Company through the Tyto Solution, None of Company or its personnel (including any User) will provide any health service via the Tyto Solution to any patients under the age of 18 unless Company has obtained in advance any all relevant authorizations and approvals of such patients' parents or legal guardian(s), as required under applicable law;

9.2. **Tyto's Representations**

- 9.2.1. Tyto has full power to enter into this Agreement, to carry out its obligations under this Agreement and to grant the rights granted to Company hereunder.
- 9.2.2. The Tyto Solution when utilized by Company in accordance with this Agreement shall not subject Company or Company End Users to any third-party encumbrances, royalties, restrictions or requirements, including as a result of any GPL or LGPL (GNU General Public License or Lesser General Public License), open source or any other third party license requirements.
- 9.2.3. Tyto represents that the Services and the Tyto Solution (including updates, upgrades and bug fixes to software and firmware) are to Tyto's knowledge upon delivery by Tyto free of any and all viruses, Trojan horses, trap doors, protecting codes or any other internal components, devices or mechanisms which are intended to cause the Services or Tyto Solution to perform any material functions other than those described in the Documentation or hereunder.
- 9.2.4. To Tyto's knowledge, there have been no voluntary or administratively enforced recalls of its products, and no proceeding, investigation, or enforcement action is pending or threatened regarding a mandatory recall as of the Effective Date.
- 9.3. Each Party represents and warrants to the other Party as follows:
 - 9.3.1. It is duly organized and validly existing under the laws of the jurisdiction under which it has been incorporated; it has full corporate power and authority to execute this Agreement and to perform its obligations hereunder;
 - 9.3.2. In the performance of this Agreement or with respect to any activity concerning or related to the Tyto Solution, it will and will ensure that anyone on its behalf will, comply with all applicable federal, state, and local laws, rules, regulations, orders, and ordinances, including, without limitation, applicable privacy laws and HIPAA, including as set forth in the BAA;
 - 9.3.3. This Agreement, when executed and delivered by it, will constitute a valid and legally binding obligation on its part, enforceable in accordance with its terms;
 - 9.3.4. Nothing in this Agreement requires Company to refer any person in any improper manner to the Company or any other health care provider for any item or service reimbursed by a health plan, including any federal health care program;
 - 9.3.5. **No Sanctioned or Excluded Personnel.** Each Party warrants and represents that neither the Party nor or any of its employees, officers, directors, contractors, representatives and agents providing any services under this Agreement: (a) are "sanctioned persons" under any federal or state program or law; (b) have been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (c) have been listed on the General Services Administration's List of Parties Excluded from Federal Programs; (d) have been listed on the United States Department of Treasury, Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; (e) have been convicted of a



criminal offense related to health care; or (f) are debarred or a suspended contractor under any law or rules of any state of the United States.

9.3.6. The execution, delivery and performance of this Agreement will not result in the breach or violation of any law or regulation applicable to it or any contract or commitment by which it is bound;

9.3.7. It has the required knowledge, experience and financial capacity to fulfill its obligations hereunder.

10. TERM; TERMINATION

10.1. Term. This Agreement shall continue in full force and effect from the Effective Date for a period of 60 months unless earlier terminated by either Party in accordance herewith (the "Initial Term"). Thereafter, this Agreement shall be renewed automatically, for consecutive periods of one (1) year each (the "Renewal Term(s)") unless either Party notifies the other Party in writing of non-renewal not less than 60 days prior to the beginning of the then next Renewal Term (the Renewal Terms together with the Initial Term shall be referred to as the "Term"). This Agreement may be terminated by either Party without cause upon three (3) months prior written notice to the other Party.

10.2. Termination for Cause. Either Party may terminate this Agreement immediately if the other Party breaches or otherwise fails to comply with any provision of this Agreement and such breach or failure is not cured within thirty (30) days after receipt of written notice of such breach or failure.

10.3. Effect of Termination. Upon termination of this Agreement, (i) all subscriptions, rights and licenses granted herein, and all services provided by Tyto hereunder shall terminate immediately; (ii) each Party shall return to the other Party all Confidential Information in its possession, custody, or control. Furthermore, upon termination or expiration of this Agreement; (iii) Company shall cease all further distribution of Tyto Devices to End Users, and (iv) all outstanding invoices shall immediately become due and payable to Tyto. If Company requests the return of its Product Data, then, at Company's cost, Tyto will export all such Product Data from the TytoVisit Platform into a compressed file (the "**Archive Package**") in a mutually agreed-upon format on media to be provided by Company. Company may make such request for a period of not more than thirty (30) days after the termination of this Agreement. For the avoidance of doubt, termination of this Agreement shall not release Company from its obligations to pay Tyto all fees which have accrued under this Agreement prior to termination. It is agreed and acknowledged that in any event of termination or expiration of this Agreement Tyto shall ensure that Patients who have obtained Tyto Devices as contemplated under this Agreement shall be entitled to continue using the Tyto Devices by connecting to other health services providers with which such Patients have engaged directly or by making use of the Tyto Device and Tyto App on a stand-alone basis. Notwithstanding the aforementioned in any event of termination or expiration of this Agreement other than as a result of a Party's breach of this Agreement, both Parties shall remain obligated to perform hereunder with respect to any outstanding Purchase Orders for M&S Services and Tyto Licenses, submitted to Tyto and accepted prior to the termination or expiration date of this Agreement, for the shorter of (a) the time remaining until the expiration of such Purchase Orders, or (b) for a period of twelve (12) months.

10.4. Retained Confidential Information. Notwithstanding anything to the contrary herein, if a Party has possession of the other Party's Confidential Information which is stored on the



recipient Party's automated backup systems consistent with such Party's standard data backup and deletion policies, or if applicable law requires the recipient Party to retain such data, then the recipient Party may retain such copies on the condition that such retained copies remain subject to the confidentiality terms under this Agreement.

- 10.5. Survival. The provisions of Sections 1, 4, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19 and any other terms and conditions which by their nature extend beyond the expiration or termination of these Terms shall survive the termination or expiration of this Agreement.

11. FEES AND PAYMENT

- 11.1. Fees; Invoicing and Payment. In consideration for the supply of the Tyto Solution any portions thereof, Company shall pay Tyto the amounts set forth in a fully executed Purchase Order issued by Tyto pursuant to this Agreement. Except as otherwise specified herein or in a valid applicable Purchase Order (i) all fees are based on services, subscriptions and products purchased under the relevant Purchase Order, (ii) Purchase Orders are non-cancellable and fees paid are non-refundable, (iii) all fees are to be paid within 30 days of the applicable invoice date as provided by Tyto, and (iv) Tyto shall be entitled to invoice Company in accordance with any applicable invoicing terms provided in a valid Purchase Order or in the absence of such invoicing terms, upon the execution of the applicable Purchase Order.
- 11.2. Overdue Charges. Failure to make any payment to Tyto by its due date shall result in a late charge on any unpaid balance at an annual interest rate of 1.5% for each month, or part thereof, beyond its invoice or payment due date. Company shall pay all costs incurred by Tyto to collect unpaid amounts, including collection agency and attorney's fees.
- 11.3. Suspension of Subscription. If any payment owing by Company is thirty (30) days or more overdue, without limiting Tyto's other rights and remedies, Tyto shall be entitled to suspend Company's access to the Tyto Solution and services provided there-through until such amounts are paid in full, provided that Tyto has given Company ten (10) or more days' written notice that Company is late on payment and its account is overdue prior to such suspension and Company did not make full payment of such outstanding amounts within such notice period.
- 11.4. Payment Disputes. Company shall not exercise its rights under the "Suspension of Subscription" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 11.5. Taxes. Unless otherwise stated, fees due to Tyto hereunder are exclusive of all applicable taxes, levies or duties imposed by taxing authorities, including without limitation customs duties, tariffs, sales tax, use tax, value added tax, excises, goods and services taxes, withholding taxes or any other federal, state, local or other similar taxes or other charges imposed as a result of any action by the government of any applicable state or country or local government, or any agent or thereof, as well as any bank charges which may apply to any payment. Company shall be solely responsible for payment of all such taxes, levies or duties.
- 11.6. Forecast. At least ten (10) days prior to the end of each annual calendar quarter, Company shall submit to Tyto in writing, a rolling non-binding forecast, including all relevant information, of the Tyto Solution it expects to order during each of the next six (6) annual calendar quarters. Company's initial forecast shall be submitted promptly after the execution hereof. The forecast shall be provided in the form attached hereto as **Appendix D**.

12. MAINTENANCE AND SUPPORT



- 12.1. The SLA attached hereto as **Appendix B** sets forth the terms and conditions governing M&S Services to be provided by Tyto to Company in connection with the Tyto Solution and the 1st level support services to be provided by Company to End Users, all pursuant to a fully executed Purchase Order and as part of the Subscription.
- 12.2. Company shall further ensure that in any such event that the Tyto Devices are used by Company personnel, Authorized Users or Clinicians, whether on behalf of Company or as part of any assistance provided by Company to End Users, then the Tyto Devices shall be used by properly trained persons, in a manner that shall not harm or diminish the capabilities and/or features of the Tyto Device and the Tyto Solution (as applicable), and in accordance with any Documentation and instructions provided by Tyto.

13. WARRANTY

- 13.1. WARRANTY PERIOD. TYTO WARRANTS THAT AS OF DELIVERY TO COMPANY AND FOR THE DURATION OF THE WARRANTY PERIOD AS STATED ON APPENDIX A ("**WARRANTY PERIOD**"), THE TYTO DEVICES SOLD HEREUNDER, SHALL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AND WILL MATERIALLY CONFORM TO THE SPECIFICATIONS SET FORTH IN APPENDIX A (THE "**SPECIFICATIONS**").
 - 13.1.1. TYTO PLATFORM AND TYTO APP: TYTO WARRANTS THAT DURING THE TYTO PLATFORM AND TYTO APP WARRANTY TERM, THE TYTO PLATFORM AND TYTO APP LICENSED TO COMPANY HEREIN (A) SHALL BE FREE FROM MATERIAL DEFECTS IN DESIGN AND WORKMANSHIP, (B) SHALL PERFORM AND CONFORM IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH TYTO'S SPECIFICATIONS DESCRIBED HEREIN.

THE "**TYTO PLATFORM AND TYTO APP WARRANTY TERM**" MEANS (I) WITH RESPECT TO ANY SOFTWARE USAGE FEES BILLED ON A SUBSCRIPTION BASIS HEREIN, THE DURATION OF SUCH SUBSCRIPTION FOR SO LONG AS COMPANY REMAINS CURRENT ON ITS OBLIGATIONS HEREIN, AND (II) WITH RESPECT TO ANY SOFTWARE USAGE FEES BILLED ON ANY MANNER OTHER THAN A SUBSCRIPTION BASIS, ONE (1) YEAR FROM THE DATE THAT SUCH TYTO PLATFORM AND TYTO APP IS FIRST MADE AVAILABLE TO THE COMPANY.
- 13.2. IF THE TYTO DEVICES DO NOT CONFORM AS WARRANTED IN 13.1 ABOVE, TYTO SHALL, AT ITS OPTION, AND AS COMPANY'S EXCLUSIVE REMEDY FOR THE MERE UNAVAILABILITY OF SUCH DEVICES, EITHER FIX AND MAKE THE CORRECTIONS AS REQUIRED FOR COMPLIANCE WITH THE ABOVE WARRANTY OR PROVIDE CREDIT FOR OR REFUND TO COMPANY THE PRICE PAID TO TYTO FOR SUCH DEVICES, OR REPLACE THE NON-COMPLIANT DEVICES WITH THE SAME OR EQUIVALENT NEW DEVICES THAT MEETS THIS WARRANTY, ALL WITHIN 21 DAYS OF TYTO RECEIVING THE NON-COMPLIANT DEVICE AND AS MAY BE SUPPLEMENTED BY THE SLA. TYTO'S LIABILITY IS LIMITED TO CORRECTION, REPLACEMENT, CREDIT OR REFUND AS SHALL BE ELECTED BY TYTO AT ITS SOLE DISCRETION. COMPANY MUST PROVIDE WRITTEN NOTICE OF NONCONFORMING TYTO DEVICES WITHIN THE WARRANTY PERIOD AND RETURN THEM TO TYTO WITHIN 30 DAYS OF SUCH NOTICE, IN ORDER TO EXERCISE ITS RIGHTS UNDER THE WARRANTY.
- 13.3. CONTINUED USE, ACCESS TO, OR POSSESSION OF THE TYTO DEVICES AFTER EXPIRATION OF THE WARRANTY PERIOD SHALL BE CONCLUSIVE EVIDENCE THAT THE WARRANTY HAS BEEN FULFILLED TO THE FULL SATISFACTION OF COMPANY.



13.4. ALL WARRANTIES COVER ONLY DEFECTS ARISING UNDER REASONABLE USE PERMITTED HEREUNDER AND APPROPRIATE CARE, AND DO NOT INCLUDE MALFUNCTIONS OR FAILURES RESULTING FROM MISUSE, ABUSE, NEGLIGENCE, IMPROPER INSTALLATION, HANDLING, STORAGE, OR TRANSPORTATION, MODIFICATION, ALTERATION, UNAUTHORIZED REPAIR OR USE FOR PURPOSES, OTHER THAN AS AUTHORIZED BY TYTO IN WRITING, AS DESCRIBED IN THE DOCUMENTATION OR RESULTING FROM TYTO'S PERFORMANCE, OR PERFORMANCE OF ANYONE ACTING ON TYTO'S BEHALF. THIS WARRANTY SHALL NOT BE EXPANDED, AND NO OBLIGATION OR LIABILITY WILL ARISE, DUE TO TECHNICAL ADVICE OR ASSISTANCE, COMPUTERIZED DATA, FACILITIES OR SERVICE TYTO MAY PROVIDE IN CONNECTION WITH COMPANY'S PURCHASE.

13.5. EXCEPT AS EXPRESSLY SET FORTH HEREUNDER, THE TYTO SOLUTION AND ANY PART THEREOF ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND EXPRESS OR IMPLIED, AND TYTO MAKES NO WARRANTIES OR REPRESENTATIONS AS TO PERFORMANCE OF THE TYTO DEVICES, TYTO PLATFORM, TYTO APP, AND ANY PART THEREOF, AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED. WITHOUT DEROGATING FROM THE AFOREMENTIONED TYTO FURTHER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, AS TO ANY THIRD PARTY DEVICE WHETHER OR NOT SUPPLIED BY TYTO HEREUNDER.

13.6. This warranty extends to Company only and may be invoked only by Company. Company may not provide or offer End Users (i) any warranty in a scope other than the scope of the warranty provided by Tyto hereunder or in the Documentation, or (ii) any maintenance and supports services which exceed the M&S Services provided by Tyto in the SLA.

1.1. No Medical Advice. No part of the Tyto Solution is intended as a diagnosis or treatment of any medical condition, and the Tyto Solution is not a substitute for, or to be used in place of, the independent judgment of a licensed health care professional. The Tyto Solution is designed only to support, not replace, the relationship that exists between a patient and his/her health care practitioner. Use of the Tyto Solution to provide a diagnosis requires the intellect and judgment of physician. Product Data or other content that is on or made available through the Tyto Solution is not exhaustive, should not be considered complete, and does not cover all treatments, medical conditions, diseases, ailments, physical or mental conditions. Tyto is not responsible for the content of any information transmitted or received through the Tyto Solution or the interpretation of such content by the Company or any Clinician, Authorized User or End User. Company acknowledges and agrees that the Tyto Solution is not designed or certified for use in and should not to be used in components of systems intended for, or in relation to the operation of life-support activity, critical medical care, or for any other application in which the failure of the Tyto Solution to comply with the Specifications, could create a situation where personal injury or death may occur

14. REGULATORY & QUALITY MANAGEMENT SYSTEM REQUIREMENTS

14.1. To comply with the Tyto Global Regulatory and Quality System requirements, Company hereby undertakes to comply with the following:

14.1.1. To sell Tyto Devices for their intended use only;

- 14.1.2. To store Tyto Devices under Tyto specified conditions and if no special storage conditions are specified, in a cool and dry place;
 - 14.1.3. To handle Tyto Devices with necessary care to avoid causing damage to the packaging;
 - 14.1.4. Not to re-package and/or re-label Tyto Devices without receiving written consent from Tyto or in accordance the Tyto written procedures;
- 14.2. To comply with the Tyto global Regulatory and Quality System requirements with respect to selling Tyto Devices, Company hereby undertakes to maintain accurate and retrievable records under the following guidelines:
- 14.2.1. To maintain records related to Tyto Devices to allow traceability of Company's activities and that these records are available for inspection; such records will include the following information:
 - 14.2.1.1. Name and address of the customer;
 - 14.2.1.2. Date of shipment;
 - 14.2.1.3. Quantity shipped, and, if applicable, serial number of the Tyto product.
 - 14.2.2. To retain records for at least seven years from their recordation and to include details that will enable Tyto to trace problematic Tyto Devices and support a product recall and all the recall activities as required.
 - 14.2.3. To receive, retain and immediately report to Tyto any complaint that reasonably suggests that a Tyto product has, or may have caused or contributed to death, serious injury or serious deterioration in the state of health of a Patient, User and/or other person, that is received by the Company within 24 hours from receipt.
 - 14.2.4. To maintain records of all complaints, whether in written, electronic and/or oral communication that allege deficiencies related to the identity, quality, durability, reliability, usability, safety, effectiveness or performance of Tyto product received from Customers. Such complaints will be handled by the Company within five (5) working days (in order to complete the handling process) and will be referred to Tyto for investigation and handling within two (2) business days.
 - 14.2.5. To provide a monthly written report regarding Customer service activities that include the following information:
 - 14.2.5.1. Details of proactive services provided to Customers;
 - 14.2.5.2. Documentation of phone support activities provided to Customers;
 - 14.2.5.3. Troubleshooting activities and/or Customer requests for guidance when using Tyto Devices received during a certain month;
 - 14.2.5.4. Written reports must contain all relevant information about the Customer, the nature of the customer service activity and the answers that were given to the Customer.

Post-Marketing Activates. Company will assist Tyto in its post-marketing activities, and

shall submit to manufacturer feedback received from End Users regarding the field behavior of the manufacturer products.

15. CONFIDENTIALITY

- 15.1. Definition of Confidential Information. As used herein, "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including without limitation, non-public Documentation, business information and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party or that are otherwise related to Disclosing Party's business. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) as evidenced by written records, was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to or use of the Confidential Information.
- 15.2. Protection of Confidential Information. The Receiving Party undertakes to take every precautionary measure to protect and maintain the confidentiality of the Confidential Information of the Disclosing Party; said precautionary measures shall be at least equivalent in scope and effect to the measures that the Receiving Party itself takes to protect the disclosure of its own confidential information and to prevent such disclosure or at least reasonable measures. The Receiving Party undertakes (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound to confidentiality protection provisions no less stringent than those herein.
- 15.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided that the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information, it shall in any event make reasonable efforts to obtain confidential treatment of the information disclosed, as long as legally possible.

16. INDEMNIFICATION

- 16.1. Tyto shall defend Company against any claim, demand, suit or proceeding made or brought against Company by a third party resulting from (i) the infringement of the intellectual property rights of such third party as a result of use of the Tyto Solution or any part thereof as permitted hereunder (a "**Infringement Claim Against Company**") (ii) Tyto's non-compliance with the terms of the DPA, and (iii) any bodily injury arising from any warranty event hereunder, ((i)-(iii) shall be referred to collectively hereunder as an "**Indemnifiable Claim**"; and Tyto shall indemnify Company for any damages, reasonable legal advisor's fees and costs awarded by a court of competent jurisdiction against Company as a result of, or for amounts paid by Company under a court-approved settlement of, an Indemnifiable Claim against Company; provided that Company (i) promptly gives Tyto written notice of the Indemnifiable Claim against Company, (ii) allows Tyto to assume sole control of the defense and settlement of the Indemnifiable Claim (provided that Tyto may not settle any Indemnifiable Claim against

Company unless it unconditionally releases Company of all liability), and (iii) provides to Tyto all reasonable assistance, at Tyto's expense.

16.2. In the event of an Infringement Claim Against Company, a threat thereof, or if as a final result of any litigation of which Tyto is obligated or permitted to take control, the use by Company of the Tyto Solution or any part thereof is prevented by an injunction, or if Tyto believes at its sole discretion that it is advisable, Tyto may in its discretion and at no cost to Company: (A) modify the Tyto Solution or any part thereof so that it no longer infringes or misappropriates any third party intellectual property rights, without non-negligible deviation from the Specifications, or (B) obtain a license for Company's continued use of the Tyto Solution in accordance with this Agreement. In the event continued use of the Tyto Solution as contemplated hereunder is enjoined and if Tyto reasonably determines that options (A) or (B) are not reasonably possible, Tyto shall have the right to immediately terminate this Agreement and cease providing the Tyto Solution. In case of such termination Tyto shall refund Company any prepaid unused fees and shall not have any further liability with respect to such termination.

16.3. Notwithstanding anything to the contrary, Tyto assumes no obligation or liability for, any expenses, damages, costs or losses resulting from any claim or action arising from (i) the use of the Tyto Solution or any part thereof by Company, Patients, Clinicians, Authorized Users or other third parties in combination with any other hardware and/or software not authorized for such use by Tyto or not permitted hereunder, if the claim would not have occurred but for such use; (ii) the modification, repair or adaptation of the Tyto Solution or any part thereof other than by Tyto or other than as permitted hereunder, if the claim would not have occurred but for such modification, repair or adaptation; or (iii) the failure of Company or any of its employees, Clinicians, Authorized Users or agents to comply with the terms of this Agreement or the failure of any End Users to comply with the Tyto Solution Terms of Use.

16.4. Company will indemnify, defend and hold Tyto harmless at Company's expense, from and against any claim, demand, suit or proceeding made or brought against Tyto by a third party resulting from (i) the Company's breach of its representations under section 9 to this Agreement, (ii) breach by Company or anyone acting on its behalf of the license restrictions set forth under section 4.4, (iii) breach by Company of the DPA, (iv) use or handling of the Tyto Solution not as permitted hereunder or not in accordance with the Documentation, (v) any healthcare services provided by the Company, or on its behalf, (a **"Claim Against Tyto"**), and shall indemnify Tyto for any damages, costs and expenses (including without limitation any reasonable legal advisor's fees and costs), awarded by a court of competent jurisdiction against Tyto, as a result of, or for any amounts paid by Tyto under a court-approved settlement of, a Claim Against Tyto; provided that Tyto (i) promptly gives Company written notice of the Claim Against Tyto, (ii) allows Company to assume sole control of the defense and settlement of the Claim Against Tyto (provided that Company may not settle or defend any Claim Against Tyto unless it unconditionally releases Tyto of all liability), and (iii) provides to Company all reasonable assistance, at Company's expense.

16.5. This Section 16 states the entire liability and obligation of either party and the exclusive remedy of the other Party with respect to any Indemnifiable Claim against Company or any Claim against Tyto (as applicable).

17. LIMITATION OF LIABILITY

17.1. EXCEPT WITH RESPECT TO A BREACH OF SECTION 15 (CONFIDENTIALITY), TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF REVENUES, LOSS OF PROFITS, LOSS OF BUSINESS, OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES



RESULTING FROM A PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THESE TERMS AND CONDITIONS, OR THE FURNISHING, PERFORMANCE OR USE OF ANY GOODS OR SERVICES SOLD PURSUANT HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, THE NEGLIGENCE OF TYTO, OR OTHERWISE.

- 17.2. EXCEPT WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER, THE LIABILITY FOR WHICH WILL BE LIMITED TO US \$2,000,000 IN THE AGGREGATE, OR WITH RESPECT TO ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHERWISE, SHALL EITHER PARTY'S LIABILITY BE GREATER THAN THE AMOUNTS WHICH HAVE ACTUALLY BEEN PAID TO TYTO BY THE COMPANY IN RESPECT OF THE TYTO SOLUTION DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM.

18. PERMITS AND AUTHORIZATIONS.

- 18.1. Company will obtain and maintain at all times throughout the Term, at its sole cost, expense and risk, all necessary permits, licenses, government permissions, regulatory approvals, consents, approvals and authorizations required for it to perform under this Agreement and to carry out its activities contemplated hereunder, including any export and import control permits, to the extent needed, and shall provide proof of such permits or authorizations to Tyto, upon reasonable request.
- 18.2. Company shall notify Tyto of all Territory specific permits, licenses, government permissions and regulatory approvals required from time to time, for Tyto, to distribute the Tyto Solution in, operate in and import the Tyto Devices into, or that are in any way specific to the Tyto Solution in the Territory, to be obtained from and issued by government agencies and public institutions in the Territory (the "**Territory Permits**").
- 18.3. Unless agreed otherwise in a Purchase Order, Tyto undertakes to obtain and maintain and to the extent possible, register in Tyto's name, at all times throughout the Term, at Tyto's sole cost and expense, all such Territory Permits to the extent they are required for the performance hereunder. It is agreed and acknowledged that all Territory Permits shall be exclusively owned by Tyto and subject to Tyto's exclusive control, regardless of the named holder of such Territory Permits.
- 18.4. Each of the Parties, agrees to comply strictly and fully with all export controls imposed on it with respect to the Tyto Solution within the Territory and with all applicable international, national, regional and local laws, including all relevant commodity control laws and regulations of the Territory in performing its duties hereunder.

19. MISCELLANEOUS

- 19.1. Governing Law; Jurisdiction. This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflict of law provisions. Each Party irrevocably agrees that any claim brought by it in any way arising out of this Agreement must be brought solely and exclusively in state or federal court located in New York, New York, and each Party irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and unconditionally, with respect to any action, suit, or proceeding brought by it or against it by the other party. The Parties agree that each may bring claims against the other only in an individual capacity, and not as a plaintiff, class

member, or private attorney general in any purported class, representative, or private-attorney-general proceeding. The Party prevailing any proceeding or action hereunder shall be entitled to all costs and reasonable attorneys' fees incurred in connection with such proceeding. EACH PARTY WAIVES A TRIAL BY JURY AS TO ANY MATTER ARISING UNDER THIS AGREEMENT.

- 19.2. Books and Records Access. To the extent this Agreement is subject to Section 1861(v)(1)(I) of the Social Security Act, Tyto agrees to make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, this Agreement and any other books, documents, or records of Tyto that are necessary to certify the nature and extent of costs incurred by Company under this Agreement until the expiration of four (4) years after the expiration or termination of this Agreement for any reason. Tyto agrees that if Tyto carries out any of the services under this Agreement through a contract or subcontract with a value of \$10,000 or more over a twelve (12) month period, such contract or subcontract shall require this same access to the books, documents, and records of such contractor or subcontractor.
- 19.3. Relationship of the Parties. This Agreement does not render either party as an employee, agent, or legal representative of or a joint-venturer or partner with the other party for any purpose whatsoever. Neither party is granted, nor shall it represent that it has been granted, any right or authority to assume or create any obligation or responsibility, expressed or implied, on behalf of, or in the name of the other party, to incur debts or make collections for the other party or to bind the other party in any manner whatsoever.
- 19.4. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, provided however that nothing herein limits any change in control in either Party (including by means of merger, acquisition or purchase of all or substantially all of the assets of the assigning Party).
- 19.5. Remedies Cumulative. Unless expressly stated, no remedy afforded to a Party under this Agreement shall preclude other remedies available under this Agreement, at law or in equity.
- 19.6. Publicity. Notwithstanding Section 15 hereto, during the Term, each Party shall be entitled to indicate that the other Party is its customer or supplier (as applicable) in its website or marketing material, and each Party shall be allowed to disclose the terms of this Agreement solely to potential investors or acquirers who are bound by appropriate confidentiality obligations. Any additional marketing or publication mentioning the other Party shall be subject to written mutual approval of both Parties.
- 19.7. Entire Agreement; Severability; Headings. This Agreement, including all appendices thereto and Purchase Orders issued executed and acknowledged in accordance with the terms of this Agreement constitute the entire agreement with regard to the Tyto Solution and Services referred to in a given Purchase Order, and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating thereto. The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it hereunder, shall not be construed as waiving such provision or any other provision of this Agreement, and the same shall continue in full force and effect. This Agreement shall be binding upon the heirs, successors, and assigns of the Parties hereto. No modification or amendment of this Agreement or any Purchase Order shall be binding upon a Party unless made in writing and signed by both Parties. If any provision of this Agreement is adjudged to be unenforceable in whole or in part, such adjudication shall not affect the validity or the remainder of this Agreement. Each provision of this Agreement is severable from every other provision and constitutes a separate, distinct and binding covenant. Headings are



inserted solely for convenience of reference, shall not constitute a part of this Agreement and shall not otherwise affect the interpretation hereof.

No Third Party Beneficiaries. Unless expressly indicated to the contrary, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person other than the Parties hereto any rights or remedies under or by reason of this Agreement.

- 19.8. Force Majeure. Except for payment obligations, neither Party will be liable under this Agreement for any failure of or delay in performance of its obligations hereunder, if performance is delayed or prevented by acts of God, fire, explosion, war, epidemics, pandemics, terrorism, earthquakes, riots, global pandemic, governmental laws or regulations, or other similar causes beyond such Party's control, and provided that such failure could not have been avoided through the exercise of due care (each, a "**Force Majeure Event**"), but only to the extent of and during continuance of such event and only provided such Party gives the other Party prompt notice of such Force Majeure Event. During the pendency of any Force Majeure Event, the Party affected will work diligently to cure the Force Majeure Event to the extent commercially reasonable. However, if the Force Majeure Event continues for thirty (30) consecutive days, the Party not directly affected by it may terminate this Agreement immediately without penalty.
- 19.9. Notices All notices or other communications required or permitted to be made or given hereunder by one Party to the other Party shall be deemed so made or given when hand-delivered or recorded as delivered when sent in writing by certified mail, postage prepaid return receipt requested, or as specified in a transmission approval when sent by facsimile, and in each case properly addressed to such other Party as set forth in the applicable Purchase Order or such other address as may be specified by either party hereto by written notice similarly sent or delivered.
- 19.10. Counterparts. This Agreement may be executed by hand, facsimile or other electronic means in any number of counterparts, and such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

The Parties' authorized signatories have duly executed this Agreement as of the Effective Date:

TYTO CARE, INC.

By: _____

Print Name: _____

Title: _____

Date: _____

Mangum City Hospital Authority

By: 1-1-20

Print Name: Carson VanZant

Title: Chairman of Board

Date: June 10, 2021

APPENDIX A

Specifications

Price List



APPENDIX B

SERVICES LEVEL AGREEMENT

Tyto will offer Maintenance and Support Services for its products to the Company in accordance with the specific services and commitments outlined below.

Definitions

"Advance Hardware Replacement" means a delivery service for replacement of any Hardware to Company for devices under warranty, whereby after Tyto approves an RMA, Tyto will deliver replacement Hardware to the Company before the Company has returned any faulty Hardware to Tyto.

"Business Day" means normal working hours in the Company's time zone.

"Tier 1 Level Support" means the ability to provide guidance on setup and basic use of the Tyto Solution; troubleshoot Company and/or End Users' connectivity infrastructure; gather relevant data for Tyto Support's investigation.

"Interim Solution" means a short-term work around, code-fix delivered as a hotfix or a patch from Tyto to the customer.

"Permanent Solution" means any action (software/hardware or workflow) by which the reported problem has been resolved to conform to the Tyto's product specification contained in the Documentation.

"Work Around" means a temporary solution to a problem. A Work Around will be replaced with a Permanent Solution unless otherwise agreed to by Customer.

"Resolution" means the outcome of any reasonable efforts to resolve the reported issue or problem experienced by the Company. Methods are not limited to, and may include, configuration changes, reinstalling software, replacing failed Hardware, etc.

"Hardware" means the Tyto Device and any non-disposable accessory or peripheral item shipped with the Tyto Device.

"Response Time" means the measure of time between the initial contact by the Company to Tyto Support and the acknowledgment response by Tyto Support staff.



"RMA" means Return Material Authorization, and refers to the process utilized, upon authorization by Tyto Support, to replace Hardware that have been deemed faulty by Tyto Support.

Tyto Support Obligations

1. Technical Support

Entitled customers will be provided Technical Support which may include but are not limited to:

- a) Access to Tyto Technical Representatives who will work with the Company to diagnose the issue and provide a resolution;
- b) Access to product update releases once made generally available.

2. Tyto Hardware Replacement

Tyto will make reasonable efforts to replace faulty or defective Hardware during the Warranty Period when deemed necessary towards issue resolution.

3. Exclusions

Tyto has no obligation to provide support under the following circumstances:

- a) Any part of the Tyto Solution is altered, damaged or incorporated with or into other software or hardware not authorized by Tyto;
- b) Product issues occurring because of customer negligence, misuse or actions other than intended use as specified in the Tyto user documentation;
- c) Products that are beyond the warranty expiration date.

Company Obligations

- 1. The Company agrees to identify and allocate its resources for basic training provided by Tyto with respect to the Tyto Solution. Training delivery may be conducted onsite or via telepresence, to be determined mutually by Tyto and the Company.
- 2. Company will designate internal resources who will provide Tier 1 Level Support with respect to the Tyto Solution to Company's End Users, Clinicians and Authorized Users, to whom Company distributes the Tyto Device(s) or who have access to the Tyto Solution.
- 3. When the Advance Hardware Replacement process is utilized, the Company agrees to ship back all faulty Hardware, suitably packaged to prevent damage in transit, to Tyto within thirty (30) days of delivery of the replacement device or other defective hardware. Tyto reserves the right to bill the Company up to the full list price for any faulty hardware unreturned beyond the thirty (30) day grace period referenced in the Distribution Agreement between Tyto and Company.

Engaging Tyto Technical Support



To allow Tyto the opportunity to deliver optimal support services, all problems, issues or enhancement requests must be reported by the Company to Tyto Support. New support requests must be initiated by email to helpdesk@Tyto.com or by phone. On initial contact with Tyto Support, the Technical Representative will collect and validate Company, contract, Tyto Solution and entitlement information as relevant to the technical support investigation. A unique service record number will also be assigned to the investigation and provided to the customer for tracking purposes.

Tier Descriptions

The following section describes in detail the guidelines for Tier 1, Tier 2 and Tier 3 support.

Tier 1 Support:

- Receiving the support request from the End User (via the web, phone or email)
- Collecting relevant technical problem identification information
- Filtering non-technical problems from technical issues
- Validating that the technical root cause resides within the Tyto Product
- Assigning a severity level to the call (based on technical issue)
- Creating a case documenting the problem via Customer Portal
- Establishing and maintaining End User communications
- Providing general product information
- Escalating the case to Tier 2, Tyto Support, as necessary
- Obtain sufficient information to replicate the problems (i.e. configuration, data, etc.)
- Collect and provide Tyto with product feature request

Tier 2 Technical Product Support

- Performing basic research and triage
- Problem isolation and product defect determination
- Providing general product information for supported functionality and features
- Establishing, researching and maintaining FAQs and Solutions knowledgebase about Tyto Products
- Debugging issues
- Lab simulation
- Action plan definition
- Escalating the case to Tier 3 as necessary

Tier 3 Development Product Support

- Validation of Tyto Product defect



- Action plan definition
- Fix software / hardware issues or generate work-arounds
- Troubleshoot issues, cases and issues that Tier 2 support is unable to bring to resolution
- Escalate case to engineering for bug issues
- Coordinate software patches / hardware replacement with Tier 2 support organization

When and How Tyto will Respond to Requests for Problem Resolution

A knowledgeable Tyto support professional will respond to Company's request for problem resolution based on the case severity level, as described below.

1. Support Response Objectives

Case Severity	Support
High	Within 2 hours after logging the issue, provided the issue is reported between 9:00 am EST and 9:00 pm EST Monday through Friday excluding statutory US holidays. Issues reported outside the above hours will be responded to on a best effort basis, no later than the following business day.
Normal	Within 2 working days after logging the issue.
Low	Within 1 working week after logging the issue.

2. Problem Resolution

Resolution will consist of a Work Around, an Interim Solution or a Permanent Solution. Problems that require an Interim Solution will be considered resolved when the test used to reproduce the problem demonstrates the corrected behavior.

3. Resolution Objectives

Case Severity	Work Around	Interim Solution	Permanent Solution
1	Provided within 48 hours.	Provided within 1 working week if no Work Around is possible.	Included in next release.
2	Provided within 1 working week.	Provided within 1 working month.	Included in next release.
3	N/A	N/A	When deemed feasible by Tyto.

4. Severity Definitions

Severity Level	Description
1	A Severity 1 problem exists if any Tyto Product or major function thereof is (i) inoperative, or (ii) is experiencing terminable/intermittent problems that render the containing application or part(s) of the containing application inoperable.
2	A Severity 2 problem exists if functionality of the Tyto Product is found to be defective or becomes unavailable, or contains a problem that renders Tyto Product difficult, but not impossible to use.
3	A Severity 3 problem exists if the End User experiences a non-critical degradation of performance, or experiences minor problems that need correction in either Tyto Product or the relevant Tyto product manuals. This is also the default severity level for Product feature requests.

When and How to Make Requests for Problem Resolution

1. Customers have access to an automated e-mail reporting service through which support requests are logged and Tickets (IDs) issued. This service can be reached at support@tytocare.com
2. In cases where Company is not able to reach Tyto Technical Support via e-mail or the ticketing system, or an End User has a Severity 1 problem and has received no replies from Technical Support, Company can call the support number during business hours to reach the Tyto Technical Support department.

Support Request Channels	Phone: 866.971.8986 Ext 2 Email: support@tytocare.com
Hours of Availability	24x7x365
Target Response Times (non-urgent calls):	Phone: 24 hours Email: 1 business days

APPENDIX C

Initial Purchase Order

APPENDIX D**Form of Rolling Forecast**



APPENDIX E

Business Associates Agreement

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“*Agreement*”) is dated as of the 7th day of June, 2021 (the “*Effective Date*”) between Mangum City Hospital Authority DBA: Mangum Regional Medical Center (“*Covered Entity*”) and TYTO CARE, INC., a Delaware corporation (“*Business Associate*”).

WHEREAS, Business Associate may create, receive, maintain or transmit protected health information on behalf of Covered Entity in connection with Business Associate’s performance of its obligations under any and all prior, existing and future agreements and arrangements between the parties (collectively, the “*Underlying Agreement*”); and

WHEREAS, the parties wish to ensure the confidentiality and security of protected health information in accordance with applicable law, including, without limitation, HIPAA, HITECH and the HIPAA Regulations;

NOW, THEREFORE, the parties agree as follows:

1. **DEFINITIONS.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules, 45 CFR Parts 160 and 164: Breach, Data Aggregation, De-identify, De-identified, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms have under HIPAA, HITECH and the HIPAA Regulations.

2. **BUSINESS ASSOCIATE OBLIGATIONS**

2.1. **Use or Disclosure.** Business Associate agrees not to use or disclose protected health information (“*PHI*”) created, received, maintained or transmitted by Business Associate on behalf of Covered Entity other than as expressly set forth herein or as required by law.

2.2. **Safeguards.** Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. To the extent Business Associate creates, receives, maintains or transmits Electronic PHI, Business Associate shall comply with Subpart C of 45 CFR Part 164 (the Security Rule), as applicable.

2.3. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect caused by Business Associate in violation of this Agreement of which Business Associate becomes aware.

2.4. **Breach Notification.**

- (a) Business Associate agrees to notify Covered Entity in writing of any use or disclosure of PHI other than as provided for herein of which it becomes aware, including Breaches of Unsecured PHI as required by 45 CFR §164.410, or any Security Incident of which it becomes aware, as promptly as possible, but in no event later than ten (10) business days of Business Associate’s discovery thereof. All notifications shall be sent to the Covered Entity’s Security or Privacy Officer at the Covered Entity’s address maintained by Business Associate.
- (b) To the extent possible, such Breach notifications shall identify the individuals whose PHI has been or is reasonably believed to have been Breached; state the date(s) of the Breach and its discovery; describe the steps taken to investigate the Breach, mitigate its effects and prevent future Breaches;

the sanctions imposed on members of the Business Associate's workforce involved in the Breach; and any other available information that Covered Entity is required to include in notification to the individual under 45 CFR § 164.404(c). A Breach shall be treated as discovered as of the first day on which such Breach is known or reasonably should have been known by Business Associate as provided under 45 CFR § 164.410(a)(2).

- (c) The parties stipulate and agree that this Section 2.5 constitutes notice by Business Associate to Covered Entity with respect to any Unsuccessful Security Incident, which is defined under this Agreement to mean any Security Incident that does not result in unauthorized access, use, disclosure, modification or destruction of electronic protected health information of Covered Entity or interference with system operations adversely affecting the ability of Business Associate to maintain, process or safeguard electronic protected health information of Covered Entity. By way of example, such Unsuccessful Security Incidents may include: (i) pings on the firewall of Business Associate; or (ii) port scans; or (iii) attempts to log on to a system or enter a database with an invalid password or username; or (iv) denial-of-service attacks that do not result in a server being taken off-line; or (v) malware (worms, viruses, etc.). The parties further stipulate and agree that with respect to any such Unsuccessful Security Incident, no further or more detailed report to Covered Entity is needed or required under this Agreement.
- (d) Business Associate agrees to provide the Covered Entity with any reports necessary for the Covered Entity to respond to any inquiries pursuant to an investigation within ten (10) business days of Covered Entity's written request for such supplemental information unless extended by Covered Entity. Unless Business Associate's actions directly cause the Security Incident causing a Breach notification, Covered Entity will bear all costs of notification and remedies arising out of such event.

2.5. Subcontractors and Agents. Business Associate shall enter into agreements with its subcontractors and agents which create, receive, maintain or transmit PHI on its behalf which impose upon the subcontractors and agents the obligations, restrictions, and requirements of Business Associate set forth herein. Furthermore, if Business Associate learns of a pattern, activity or practice of a subcontractor or agent that is a material violation of Business Associate's obligations under this Agreement, Business Associate agrees to take reasonable steps to cure the breach or end the violation, and if such steps are not successful, to terminate the sub-contract or arrangement or, if termination is not feasible, Business Associate shall report the situation to the Covered Entity.

2.6. Access. If an Individual makes a written request to Business Associate for access to his/her PHI, Business Associate shall forward the request to Covered Entity within seven (7) business days of receipt so that Covered Entity can respond to such Individual in accordance with 45 CFR § 164.524. Any denial of an Individual's request for access to his/her PHI shall be the responsibility of Covered Entity. If Covered Entity requests access to an Individual's PHI which Business Associate maintains in a Designated Record Set, Business Associate shall provide Covered Entity with access thereto for so long as such information is maintained in the Designated Record Set.

2.7. Amendment. Upon the written direction of the Covered Entity, Business Associate shall make any amendments to PHI in a Designated Record Set in Business Associate's possession or control that Covered Entity directs and which Covered Entity has agreed pursuant to 45 CFR § 164.526. Business Associate will promptly inform Covered Entity of any requests for PHI amendments received from an Individual.

2.8. Audit and Inspection. Within ten (10) business days of a written request by Covered Entity, Business Associate agrees to make its internal practices, books and records relating to the use, protection and disclosure of PHI available to Covered Entity, Covered Entities Designee and/or the, Secretary of the

United States Department of Health and Human Services or his/her designee (the “*Secretary*”) for the purposes of determining Covered Entity’s compliance with the HIPAA Regulations.

- 2.9. **Accounting.** Upon receipt of written request from Covered Entity, Business Associate will provide Covered Entity with documentation to respond to an accounting of the PHI disclosures made by Business Associate which are subject to an accounting under 45 CFR § 164.528. Business Associate will provide any information requested from Covered Entity hereunder at a reasonable cost-based fee due from Covered Entity under conditions permitted by HIPAA.
- 2.10. **Compliance with the Privacy Rule.** To the extent Business Associate is to carry out one or more of Covered Entity’s obligation(s) under the Privacy Rule, Business Associate agrees to comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s), including the minimum necessary requirements.

3. **PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

Except as otherwise limited in this Agreement:

- 3.1. **General Use and Disclosure Provisions.** Business Associate may use or disclose PHI as Required by Law or to perform services for or on behalf of Covered Entity under the Underlying Agreement provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- 3.2. **Specific Use and Disclosure Provisions.** Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to meet its legal responsibilities.
- 3.3. **Report Violations.** Business Associate may use and disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j)(1).
- 3.4. **Data Aggregation.** Business Associate may use and disclose PHI it receives to provide Data Aggregation services for the healthcare operations of Covered Entity provided that Business Associate notifies Covered Entity in advance of its intended Data Aggregation Services. Business Associate may De-identify PHI and use such De-identified data for its general business operations.

4. **OBLIGATIONS OF COVERED ENTITY.**

- 4.1. Covered Entity shall comply with HITECH and the Privacy and Security Regulations in its handling of PHI and ePHI. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity or that is not otherwise expressly permitted under this Agreement.
- 4.2. Covered Entity shall notify Business Associate of any limitation(s) in the 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 PHI under this Agreement.
- 4.3. Covered Entity shall notify Business Associate promptly 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 under this Agreement.
- 4.4. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI under this Agreement.

5. TERM AND TERMINATION.

- 5.1. **Term and Termination.** This Agreement shall be effective as of the Effective Date and shall continue for the term of the respective Underlying Agreement. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of this Agreement, then the party shall provide written notice of the breach or violation to the other party that specifies the nature of the breach or violation. The breaching party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching party within the specified time frame, or in the event the breach is reasonably incapable of cure, then the non-breaching party may, if feasible, terminate this Agreement by providing written notice of termination to the other party.
- 5.2. **Effect of Termination.** Upon termination of this Agreement and/or the respective Underlying Agreement to which it relates, Business Associate shall return or destroy all PHI that Business Associate or its subcontractors or agents created, received, maintained or transmitted on behalf of Covered Entity, provided, if Business Associate determines that returning or destroying the PHI is not feasible, Business Associate will notify Covered Entity in writing of such determination and Business Associate shall comply with the obligations and restrictions on use and disclosure of PHI for so long as Business Associate maintains such PHI. If it is infeasible for Business Associate to obtain from a subcontractor or agent any PHI in the possession of such subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, obligations and restrictions contained in the subcontractor's or agent's agreement as provided in Section 2.5 hereof. The obligations set forth herein shall survive the termination or expiration of this Agreement and/or the respective Underlying Agreement.

6. MICSELLANEOUS.

- 6.1. **Regulatory References.** A reference in this Agreement to a section in HIPAA, HITECH and the HIPAA Regulations means the section as in effect or as amended from time to time, and for which compliance is required.
- 6.2. **Amendment; Waiver.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Notwithstanding the foregoing, in the event a change in any federal or state law or regulation governing PHI requires an amendment to this Agreement to ensure a party's ongoing compliance with such law or regulation, the parties agree to amend this Agreement to the minimum extent necessary to reflect or accommodate any such change in law.
- 6.3. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, HITECH, the HIPAA Regulations, and any other applicable law protecting the privacy, security and confidentiality of PHI. To the extent that any provision of this Agreement conflicts with the provisions of the Underlying Agreement or any other agreement or understanding between the parties, this Agreement shall control.
- 6.4. **State Law and Limitations.** Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI in violation of the law governing the Underlying Agreement. Neither party shall be liable to the other party for any lost profits or consequential damages arising out of a party's breach under this Agreement.

- 6.5. **Injunctions.** Covered Entity and Business Associate agree that any violation of this Agreement by one party may cause irreparable harm to the other party. Accordingly, in addition to any other remedies available to a party at law or in equity, each party shall be entitled to an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
- 6.6. **Assignment.** Neither party may assign this Agreement or their rights and obligations hereunder without the other party's prior written consent.
- 6.7. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate and their respective successors and assigns any rights, obligations, remedies or liabilities.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

COVERED ENTITY

Mangum City Hospital Authority DBA: Mangum Regional
Medical Center

By: 

Title: Chairman of the Board

BUSINESS ASSOCIATE

Tyto Care, Inc.

By: _____

Title: _____

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") is entered into this 7 day of June ("Effective Date") by and between **Tyto Care, Inc.**, a company organized under the laws of Delaware and its parent company and its affiliates (the "Company"), and **Mangum City Hospital Authority DBA: Mangum Regional Medical Center**, (hereinafter referred to as "Participant"). Company and Participant are each a disclosing Party ("Disclosing Party") and a receiving Party ("Recipient"), as applicable, each may hereinafter be individually referred to as a "Party" and collectively the "Parties". The term "Recipient" includes its respective legal representatives, employees, advisors, attorneys, accountants and consultants (hereinafter sometimes referred to as the "Representatives").

WHEREAS, each of the Company and the Participant possesses certain Confidential Information (as defined below); and

WHEREAS, the Company and the Participant desire to enter into discussions and other exchanges of information related to a potential collaboration (the "Evaluation") and to induce such Evaluation the Parties need to exchange or to provide one another with access to the Confidential Information (as defined below), the Parties desire to undertake certain obligations of confidentiality and nondisclosure as set forth herein.

NOW THEREFORE, in consideration of the mutual undertakings and promises herein, the Parties hereto hereby agree as follows:

1. The term "**Confidential Information**" shall mean any and all information, know-how, trade secrets and technology disclosed by the Disclosing Party to the Recipient, in whatever form, whether oral or written, including but not limited to any and all formulae, concepts, discoveries, data, designs, formulae, ideas, inventions, methods, models, assays, research plans, procedures, designs for experiments and tests and results of experimentation and testing (including results of research or development), formulations, processes (including manufacturing processes, specifications and techniques), laboratory records, chemical, analytical and quality control data, trial data, case report forms, data analyses, reports, business plan, manufacturing data, specifications, prototypes, designs, equipment, samples, analyses, computer programs, trade secrets, data, methods, techniques, processes, memoranda, notes, marketing and customer information, projections, and other financial or business documentation and/or information related thereto, any intellectual property including registered patents or non-published patent applications (together with its attached documents and that such application has been submitted) and any other data or information (in whatever form), as well as improvements related thereto. Notwithstanding any other provision, any information disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgement, to be confidential, including information viewed or learned by a Party during a visit to the other Party's facilities, shall be deemed "**Confidential Information**".

"**Confidential Information**" shall not include information or matter that Recipient can demonstrate by documented dated, written records that (a) was already known to the Recipient prior to disclosure; (b) is independently developed by or for the Recipient without reference to or use of Confidential Information; (c) which at the time of disclosure by the Disclosing Party is generally available to the public or thereafter becomes generally available to the public other than through a breach of any obligation under this Agreement caused by an act or omission on the part of Recipient; or (d) is approved in writing by the Disclosing Party for release by the Recipient. The Confidential Information may be disclosed pursuant to the requirement or request of a governmental agency or court of competent jurisdiction to the extent such disclosure is required or

compelled by a valid law, regulation or court order to be disclosed, provided that the Recipient gives all reasonable prior notice to the Disclosing Party to allow it to seek protective or other court orders, and that Recipient discloses only that portion of Disclosing Party's Confidential Information that it is legally required to disclose.

2. This Agreement shall become effective as of the Effective Date and shall continue for a period of three (3) years. Either Party may terminate this Agreement at any time upon provision of thirty (30) days prior written notice to the other Party. In consideration of the willingness of the Parties to disclose their Confidential Information, and in recognition of the confidential nature thereof, for the duration of the term of this Agreement and for a period of five (5) years thereafter, Recipient agrees that Recipient shall: (i) treat all the Confidential Information disclosed to it as strictly confidential and not to exploit or make use, directly or indirectly, of such Confidential Information without the express written consent of the Disclosing Party, except to its Representatives, on a need-to-know basis, solely for purposes of the Evaluation and provided that prior to disclosing any Confidential Information to such Representatives, Recipient shall have ensured that they are aware of the provisions of this Agreement and have signed non-disclosure agreements with non-use, non-disclosure, and protection terms substantially similar to those contained in this Agreement, and (ii) not reproduce, reverse engineer, disassemble or decompile any Confidential Information provided by the Disclosing Party hereunder except with the express written authorization from the Disclosing Party. Recipient shall protect Confidential Information of the Disclosing Party with at least the same degree of care as it normally exercises to protect its own confidential information of a similar nature, but no less than a reasonable degree of care. The Recipient agrees to be liable for any breach of this Agreement by its Representatives as if performed by Recipient. Notwithstanding the foregoing, the obligations with respect to the non-use, non-disclosure, and protection of the Confidential Information which also constitutes a trade secret shall survive any expiration or termination of this Agreement indefinitely.

3. It is understood and agreed that the disclosure of Confidential Information by the Disclosing Party shall not grant the Recipient any express, implied or other license or rights to patents or trade secrets of the Disclosing Party or its suppliers, whether or not patentable, nor shall it constitute or be deemed to create a partnership, joint venture or other undertaking. Further, Recipient agrees that it shall not remove or otherwise alter any of the Disclosing Party's trademarks or service marks, serial numbers, logos, copyrights, notices or other proprietary notices or indicia, if any, fixed or attached to Confidential Information or any part thereof. None of the Confidential Information which may be disclosed by the Disclosing Party shall constitute any representation, warranty, assurance, guarantee or inducement by the Disclosing Party of any kind, and, in particular, with respect to the non-infringement of any intellectual property rights, or other rights of third parties or the Disclosing Party.

4. Neither this Agreement nor the disclosure or receipt of Confidential Information shall constitute or imply any promise or intention by either Party to make any purchase of products or services of the other or the other's affiliated companies, or any commitment by either Party or its affiliated companies with respect to present or future marketing of any products or services or any other business relationship.

5. All Confidential Information is provided 'as is' and shall remain the sole property of the Disclosing Party. It is agreed that all documents and other materials which embody the Confidential Information will be returned to the Disclosing Party immediately upon and at the request of the Disclosing Party, and no copies, extracts or other reproductions shall be retained by Recipient or the Representatives.

6. Recipient agrees that money damages may not be a sufficient remedy for any breach of this Agreement by the Recipient or its Representatives, and the Disclosing Party shall be entitled, in addition to money damages, to seek specific performance and injunctive relief and any other appropriate equitable remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

7. In the event that the Recipient conceives, develops or reduces to practice any modification, improvement, alteration, technology, idea, concepts, invention, discovery or design as a result of receipt of Confidential Information of the Company ("**Developments**"), such Developments shall constitute the sole property of the Company and Recipient shall and hereby assigns and transfers to the Company all right, title and interest in and to the Developments.

8. This Agreement shall constitute the full Agreement between the Parties with respect to the confidentiality and non-disclosure of the Confidential Information and shall supersede any and all prior agreements and understandings relating thereto. No change, modification, alteration or addition of or to any provision of this Agreement shall be binding unless in writing and executed by or on behalf of both Parties by a duly authorized representative. This Agreement may not be assigned by either Party without the consent of the other Party. Notwithstanding the foregoing, the Company may assign this Agreement in connection with a merger, acquisition, or sale of all or substantially all of the assets or shares of Company.

9. If any one or more of the terms contained in this Agreement shall for any reason be held to be excessively broad with regard to time, geographic scope or activity, that term shall be construed in a manner to enable it to be enforced to the extent compatible with applicable law. A determination that any term is void or unenforceable shall not affect the validity or enforceability of any other term or condition.

10. This Agreement shall be governed by and construed under the laws of the state of New York without reference to principles and laws relating to the conflict of laws. The courts of New York shall have exclusive jurisdiction over any disputes arising out of this Agreement.

11. DISCLOSING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY INFORMATION FURNISHED BY THAT DISCLOSING PARTY TO THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT.

12. This Agreement may be executed in facsimile counterparts, each of which counterpart, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

Tyto Care, Inc.

By: _____

Title: _____

Mangum City Hospital Authority DBA: Mangum Regional Medical Center

By: _____

Title: Chairman of the Board