

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into effect as of **September 01, 2020**, by and between **Town of Nags Head** ("Plan Sponsor") and **Flexible Benefit Administrators, Inc.** ("Business Associate").

Recitals

A. Plan Sponsor has entered into an agreement with Business Associate and may enter into future agreements with Business Associate (each a "Services Agreement"), whereby Business Associate will provide certain functions or services for or on behalf of Plan Sponsor, and in the course of providing those functions or services, will receive, create, maintain, or transmit certain information that may identify a participant of Plan Sponsor.

B. Plan Sponsor is subject to certain federal requirements to enter into this Agreement with Business Associate.

Agreement

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

2. Definitions. Capitalized terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules, as appropriate. Unless the context otherwise requires, the following terms have the following meaning as used in this Agreement:

(a) "Electronic Protected Health Information" or "ePHI" has the same meaning as the term "electronic protected health information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Plan Sponsor.

(b) "Financial Information" means the first name or first initial and last name of an individual who is linked to any one or more of the following data elements that relate to such individual, when the data elements are not Encrypted, Redacted, or publicly available information that is lawfully made available to the general public from federal, state, or local government records: (i) social security number, (ii) driver's license number or state identification card number, or (iii) financial account number, or credit or debit card number, alone or in combination with any required security code, access code or password that would permit access to such individual's financial account. As used above, (x) "Redacted" means the alteration or truncation of data such that no more than the following are accessible as part of the information: (1) five digits of a social security number, or (2) the last four digits of a driver's license number, state identification card number, or account number; and (y) "Encrypted" means the transformation of data through the use of algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process or key, or securing the information by another method that renders the data elements unreadable or unusable.

(c) "Financial Information Breach" means the unauthorized access and acquisition of Financial Information that compromises the security, confidentiality, or integrity of Financial Information and that actually or reasonably may cause identity theft to the individual to whom the Financial Information relates, but good faith acquisition of Financial Information by an employee or agent of Business Associate for the purposes of Business Associate is not a Financial Information Breach, provided that the Financial Information is not used for or is not subject to further unauthorized disclosure

(d) "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

(e) "Individual" has the same meaning as the term "individual" in 45 CFR § 160.103 and includes a Person who qualifies as a personal representative under 45 CFR § 164.502(g).

(f) "Protected Health Information" or "PHI" has the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Plan Sponsor.

(g) "Unsecured Protected Health Information" or "Unsecured PHI" has the same meaning as the term "unsecured protected health information" in 45 CFR § 164.402, limited to PHI.

3. Obligations and Activities of Business Associate. Business Associate agrees to:

(a) General Restrictions. Not Use or Disclose PHI other than as permitted or required by this Agreement or as Required by Law.

(b) General Safeguards. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to ePHI, to prevent Use or Disclosure of the PHI other than as provided for by this Agreement.

(c) Reporting. Report to Plan Sponsor any Use or Disclosure of the PHI not provided for by this Agreement of which it becomes aware, including a Breach of Unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware.

(i) Security Incidents. A report of a Security Incident:

- (A) Will be made promptly in writing, for any actual, successful Security Incident.
- (B) Will be made in writing on a reasonable basis after Plan Sponsor's written request, for any attempted, unsuccessful Security Incident.

(ii) Breach Notification. Without limiting its obligations under 45 CFR § 164.410, Business Associate will notify Plan Sponsor in writing of the Discovery of any Breach of Unsecured PHI. Such notice will be made not later than five (5) business days after Discovery and will include (x) such information then-known or then-available to

Business Associate that Plan Sponsor would be required to include in a notification to an Individual under 45 CFR § 164.404(c), including, without limitation, the date of Discovery of such Breach, and (y) such information required or helpful for Plan Sponsor to determine whether Business Associate constitutes Plan Sponsor's agent (determined in accordance with the federal common law of agency) with respect to such Breach. If Plan Sponsor notifies Business Associate of its determination that Business Associate was Plan Sponsor's agent with respect to such Breach, Business Associate will comply with all of its obligations under 45 CFR § 164.410 within five (5) business days after receipt of such notice. Business Associate agrees to cooperate with Plan Sponsor in preparing any notices by Plan Sponsor concerning such Breach, and if directed by Plan Sponsor, fulfill Plan Sponsor's obligations under Subpart D of 45 CFR Part 164, and provide verification of the same.

(d) Subcontractors. In accordance with 45 CFR §§ 164.502(e)(1)(ii), 164.308(b)(2), if applicable, ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

(e) Access to PHI. At the request of Plan Sponsor, make available PHI in a Designated Record Set, to Plan Sponsor or, as directed by Plan Sponsor, to an Individual or an Individual's designee as necessary to satisfy Plan Sponsor's obligations under 45 CFR § 164.524.

(f) Amendment to PHI. Make any amendment(s) to PHI in a Designated Record Set directed or agreed by Plan Sponsor to pursuant to 45 CFR § 164.526 or take other measures as necessary to satisfy Plan Sponsor's obligations under 45 CFR § 164.526.

(g) Accounting of Disclosures. Maintain and make available to Plan Sponsor or, as directed by Plan Sponsor, to an Individual or an Individual's designee, information required to provide an accounting of Disclosures as necessary to satisfy Plan Sponsor's obligations under 45 CFR § 164.528.

(h) Privacy Rule Compliance. To the extent Business Associate is to carry out one or more of Plan Sponsor's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Plan Sponsor in the performance of such obligations.

(i) Internal Practices. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

(j) Standards for Electronic Transactions. Business Associate agrees that if it (or an agent or subcontractor) conducts an electronic transmission for or on behalf of Plan Sponsor that qualifies as a Standard Transaction, Business Associate (or its agent or subcontractor, as those terms are used in 45 CFR Part 162) will comply with the requirements of the Standards for Electronic Transactions (45 CFR Parts 160 and 162) (the "Transaction Standards"). Business Associate further agrees that, in connection with the transmission of Standard Transactions, it will not (and will not permit any agent or subcontractor, as those terms are used in 45 CFR Part 162, with which it might contract to): (i) change the definition, Data Condition, or a Data Element or Segment in a Standard Transaction; (ii) add any Data Elements or Segments to the maximum

defined Data Set; (iii) use any code or Data Elements that are either marked "not used" in the Transaction Standards' implementation specification or are not in the Transaction Standards' implementation specification; or (iv) change the meaning or intent of the Transaction Standards' implementation specification(s). Business Associate agrees and understands that there exists the possibility that the Plan Sponsor might request an exception from the uses of the Transaction Standards as permitted by 45 CFR § 162.940, and, if such an exception is sought, Business Associate agrees to participate in a *test* modification. Business Associate (and any agent or subcontractor, as those terms are used in 45 CFR Part 162) agrees to abide by any changes to the Transaction Standards that might be applicable to the services supplied under the Services Agreements.

(k) Financial Information Breach. Without limiting its obligations under applicable law, Business Associate will notify Plan Sponsor in writing of the discovery of any Financial Information Breach. Such notice will be made not later than five (5) business days after discovery and will include such information then-known or then-available to Business Associate that Plan Sponsor would be required to include in a notification to an individual to whom the Financial Information relates under applicable law, including the identity of such individuals. Business Associate agrees to conduct in good faith a reasonable and prompt investigation to determine the likelihood that Financial Information has been or will be misused and cooperate with Plan Sponsor in preparing any notices by Plan Sponsor concerning such Financial Information Breach, and if directed by Plan Sponsor, fulfill Plan Sponsor's obligations under applicable law with respect to such notice and provide verification of the same.

(l) Mitigation. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a violation of the requirements of this Agreement, which may include, without limitation, investigating and remediating the harmful effects of any Breach of Unsecured PHI caused by Business Associate.

(m) Manner of Performance. Unless otherwise specified in this Section 3, Business Associate will perform its obligations under this Section 3 within a time and in a manner reasonable under the circumstances to allow Plan Sponsor to comply with its obligations under the HIPAA Rules. If Business Associate receives a request directly from an Individual with regard to Plan Sponsor's obligations under 45 CFR §§ 164.524, 164.526, or 164.528, Business Associate will promptly forward the request to Plan Sponsor and not respond to the Individual unless directed by Plan Sponsor.

4. Permitted Uses and Disclosures. Except as otherwise limited in this Agreement, Business Associate:

(a) Use and Disclosure. May only Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, Plan Sponsor as specified in the Services Agreements.

(b) Required By Law. May Use or Disclose PHI as Required By Law.

(c) Minimum Necessary. Agrees that its Use, Disclosure, or requests for PHI will satisfy the minimum necessary requirements of Subpart E of 45 CFR Part 164.

(d) Further Restrictions. May not Use or Disclosure PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Plan Sponsor, except as permitted under Section 5 of this Agreement.

5. Specific Use and Disclosure Provisions. Except as otherwise limited by this Agreement, Business Associate may:

(a) Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(b) Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the Person to whom the information is Disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the Person, and the Person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) If necessary to perform under a Service Agreement, provide Data Aggregation services related to Plan Sponsor's Health Care Operations.

6. Obligations of Plan Sponsor. Plan Sponsor will:

(a) Notify Business Associate of any limitation in Plan Sponsor's notice of privacy practices under 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

(b) Notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose such Individual's PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

(c) Notify Business Associate of any restriction to the Use or Disclosure of PHI to which Plan Sponsor has agreed or by which Plan Sponsor is required to abide under 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

(d) Not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 145 if done by Plan Sponsor, except as otherwise allowed under Section 5 of this Agreement.

7. Term and Termination.

(a) Term. The term of this Agreement will begin on the Effective Date and will terminate on the expiration or termination of all Services Agreements or on the effective date of termination by Plan Sponsor under Section 7(b) of this Agreement, whichever is sooner.

(b) Termination for Cause. Plan Sponsor may terminate this Agreement if Plan Sponsor determines Business Associate has violated a material term of this Agreement and, if such violation is capable of cure, Business Associate has not cured the breach or ended the violation within the time specified by Plan Sponsor. If the violation is not capable of cure, Plan Sponsor may terminate this Agreement immediately.

8. Obligations on Termination. Upon termination of this Agreement for any reason, Business Associate will:

(a) Retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities.

(b) Return to Plan Sponsor or, if agreed to by Plan Sponsor, destroy the remaining PHI that Business Associate maintains in any form, and retain no copies.

(c) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to ePHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section 8, for as long as Business Associate retains the PHI.

(d) Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in Sections 5(a) and 5(b) of this Agreement.

(e) Return to Plan Sponsor or, if agreed to by Plan Sponsor, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities, and retain no copies.

(f) At Plan Sponsor's request from time to time, provide Plan Sponsor a written certification of Business Associate's compliance with the obligations of this Section 8.

9. Indemnification. Business Associate agrees to indemnify, defend, and hold harmless Plan Sponsor, its affiliates, and their respective employees, directors, officers, agents, and Workforce members (each an "Indemnified Party") against all actual or direct losses, liabilities, profits, fines, penalties, costs, or expenses, including without limitation, reasonable cost of mitigation or remediation and attorneys' fees, that are or may be suffered by an Indemnified Party arising out of or related to any breach of this Agreement by Business Associate or its Subcontractors or notification made by Plan Sponsor due to a Breach of Unsecured PHI or a Financial Information Breach caused by Business Associate or its Subcontractors.

10. Miscellaneous.

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

(b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Survival. The respective rights and obligations of the parties under Sections 8 and 9 of this Agreement will survive the termination of this Agreement.

(d) Interpretation. Any ambiguity in this Agreement will be resolved to permit compliance with the HIPAA Rules.

(e) Integration and Amendment. This Agreement and the Services Agreements constitute the parties' only agreement with respect to PHI. All previous or contemporaneous oral, written, electronic, or other agreements concerning PHI, including all prior business associate agreements or terms (if any), are hereby terminated and superseded by this Agreement. When in conflict, the terms and conditions of this Agreement control over the terms of the Services Agreements. This Agreement may not be amended except in writing signed by the representatives of the parties.

This Business Associate Agreement has been executed by the parties as of the Effective Date.

Town of Nags Head as the Plan
Sponsor and on behalf of the Plan
Sponsors

Flexible Benefit Administrators, Inc.

By: _____

By: _____

Name: _____

Name: G. Landon Browning III

Title: _____

Title: Vice President

Date: _____

Date: _____

“Plan Sponsor”

“Business Associate”