AGREEMENT BY AND BETWEEN
OUTER BANKS PROFESSIONAL SERVICES, LLC
AND
TOWN OF NAGS HEAD

THIS AGREEMENT is made and entered into on _____, 2020, and is effective as of the date of last signature below ("Effective Date"), by and between Town of Nags Head ("Town") and Outer Banks Professional Services, LLC d/b/a The Outer Banks Hospital Center for Healthy Living ("Clinic"), hereinafter referred to individually as "the party" or collectively as "the parties."

W I T N E S S E T H

WHEREAS, Clinic is a limited liability corporation organized and existing under the laws of the State of North Carolina which provides personalized medical care in a positive and inspiring setting intended to complement a person's primary care physician; and

WHEREAS, Clinic uses lifestyle and integrative medicine to improve nutrition, manage stress and quit smoking, among other things; and

WHEREAS, Town is a municipality located in the State of North Carolina, which provides health care benefits to its employees through MedCost; and

WHEREAS, Town desires to contract with Clinic to permit the Clinic to provide immediate convenience care for acute complaints for its employees; and

WHEREAS, the Town's health plan allows its employees to receive services at Clinic without paying a co-payment; and

WHEREAS, Clinic is willing and able to provide services to Town employees pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained in this Agreement, the sufficiency of which are hereby acknowledged, the parties agrees as follows:

1. SCOPE OF SERVICES. Clinic agrees to provide its full complement of services to employees of Town. Walk-in visits are permitted and virtual visits are available.

2. PAYMENT. Clinic shall charge its usual and customary rates pursuant to its chargemaster but shall accept as payment in full from MedCost the allowable amount under the current network agreement between Clinic and MedCost. The Town warrants and represents that its health plan currently allows its employees to seek services at Clinic without paying a co-payment. The Clinic represents that the compensation set forth in this Agreement represents the

fair market value of the items and services to be provided under this Agreement. Further, this Agreement has been negotiated in an arm's length transaction, has not been determined in a manner which takes into account the volume or value of referrals or business that may otherwise be generated between the parties, and the items and services to be provided as set forth herein reflect the commercially reasonable needs of the parties. Further, the Clinic represents that this Agreement does not violate anti-kickback or any state or federal law governing billing or claim submission and does not involve the counseling or promotion of a business arrangement or other activity that violates the law.

3. TERM. The term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect for a period of one (1) year. Thereafter, this Agreement shall automatically renew for successive one (1) year terms unless the Agreement is terminated as provided herein. Unless otherwise provided herein, either party shall have the right to terminate this Agreement, with or without cause, upon the giving of thirty (30) days notice in writing to the other party.

4. ENTIRE AGREEMENT AND AMENDMENTS. This Agreement, any attachments, contains the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior written negotiations or agreements and all prior or contemporaneous oral negotiations or agreements between them regarding the subject matter hereof. This Agreement may be amended only in writing, which writing must be signed by both of the parties. Each of the statements set forth in the recitals to this Agreement are hereby incorporated herein by reference as a valid representation of the party or parties to whom such statement relates.

5. INDEPENDENT CONTRACTOR. The relationship between the parties to this Agreement shall be that of independent contractors, and no party shall be construed to be the agent, partner, employee, or joint venturer of the other parties to the Agreement. The parties shall not exercise control or direct the manner in which other parties perform their duties hereunder except to assure compliance with this Agreement.

6. ASSIGNMENT. This Agreement is personal to each of the parties hereto, and neither party may assign nor delegate any of its rights or obligations without first obtaining the written consent of the other party. Any purported assignment without prior written consent from the other party shall be null and void.

7. FORCE MAJEURE. The parties understand and acknowledge that neither shall be liable for any loss, damage, detention, delay or failure to perform in whole or part resulting in causes beyond their control including, but not limited to an act of God, fire, strikes, insurrections, riots, embargoes, shortages of motor vehicles, delays in transportation, and inability to obtain supplies of raw materials or requirements or regulations of the United States government or any other civil or military authority.

8. HOLD HARMLESS AND INDEMNIFICATION. As to the Clinic, the Town accepts responsibility for any and all losses, liabilities, or damages that may arise due to acts of

nonfeasance, malfeasance, misfeasance or negligence committed by itself or its agents, employees, or independent contractors while in the performance of their duties or assignments under this Agreement or for any breach of any warranty or covenant under this Agreement. As to the Town, the Clinic accepts responsibility for any and all losses, liabilities, or damages that may arise due to acts of nonfeasance, malfeasance, misfeasance or negligence committed by itself or its agents, employees, or independent contractors while in the performance of their duties or assignments under this Agreement.

9. INSURANCE. Each party agrees to procure and maintain general liability insurance covering claims, causes of actions, actions, losses, liabilities, damages, and expenses arising out of, caused by or otherwise resulting from the negligence or otherwise wrongful acts or omissions of it or its employees. The limits of liability of said insurance shall be at least one million dollars ($1,000,000.00) per occurrence and three million dollars ($3,000,000.00) in annual aggregate. The insurance shall be provided by an insurance company licensed to do business in North Carolina or a company approved in advance by the other party.

10. OBRA COMPLIANCE. The parties agree that upon request they will make their books, documents and records available to the Secretary of Health and Human Services, the comptroller general or their duly authorized representative to the extent required by Section 952 of the Omnibus Budget Reconciliation Act of 1980.

11. DEBARMENT CERTIFICATION. By signing this Agreement, each party hereby represents and warrants the following: (1) that such Party has not been debarred, excluded, suspended or otherwise determined to be ineligible to participate in federal health care programs (collectively, “Debarment” or “Debarred,” as applicable); (2) no basis for Debarment exists; and (3) that such party agrees to immediately notify the Chief Compliance Officer of the other in the event that the party (a) receives notice of action or threat of action with respect to its Debarment during the term of this Agreement; or (b) becomes Debarred. Upon receipt of such notice from a party, this Agreement shall automatically terminate without further action or notice.

12. RESTRUCTURING. It is the intention of the parties to comply with all applicable laws and regulations, including, but not limited to, the Internal Revenue Code of 1986, as amended, the Medicare and Medicaid Anti-Kickback statute, the “Stark II” anti-referral legislation, and any regulations promulgated thereunder. The parties acknowledge that legislation, regulations, an administrative ruling or other legally binding opinion may be adopted, amended, promulgated or issued which effectively renders this Agreement unlawful, could affect the tax-exempt status of either party or any affiliates thereof, could impose liability or exclusion from participation in the Medicare or Medicaid program or otherwise have a negative impact on either party. In such event, either party may by written notice propose the termination, restructuring or renegotiation of this Agreement in order to effect compliance. If such notice is given and the parties are unable within fifteen (15) days thereafter to reach an agreement with respect to the termination, restructuring or renegotiation of this Agreement, either party may terminate this Agreement by providing at least fifteen (15) days’ written notice to the other.

13. HIPAA. Each party agrees to comply with all federal and state laws and regulations, and all rules, regulations and policies of Clinic regarding the confidentiality of any individually identifiable patient or medical record information regarding Clinic patients ("protected health information"). It is the intent of the parties to comply with all provisions of the Health Insurance Portability and Accountability Act of 1996, now codified at Title XI, Part C of the Social Security Act and all regulations promulgated thereunder ("HIPAA"), when such federal code provisions and regulations take effect, and as they may change from time to time. Each party agrees not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Clinic in writing, any protected health information.

14. DISCLAIMER OF REFERRALS. The parties acknowledge that payment of considerations, whether direct or indirect, to induce referral of any patient, service or equipment reimbursable under the Federal Medicare/Medicaid Program is unlawful. Each of the parties agrees that no benefit accruing to either party pursuant to this Agreement shall be conditioned upon nor granted in consideration of the referral of any patient, service or equipment to any party. The parties specifically disclaim any requirement that any party refer patients to the other party for any reason whatsoever.

15. NOTICE. Any notice required or permitted to be given hereunder shall be deemed to have been given when delivered personally or three (3) days after being mailed by certified mail, return receipt requested, to the following addresses:

Outer Banks Professional Services Attn: Ronnie Sloan 4800 S. Croatan Highway Nags Head, NC 27959	Town of Nags Head Attn: Town Manager, 5401 S. Croatan Highway Nags Head, NC 27959

With a copy to:
Legal Affairs
P.O. Box 6028
Greenville, NC 27835-6028

16. E-VERIFY. Clinic complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, including the requirement for it to verify the work authorization of its employees through the federal E-Verify system.

17. ACCESS TO PERSON AND RECORDS. North Carolina's State Auditor and the County's internal auditor shall be provided access to persons and records that are generated as a result of, or are related to, this Agreement for the purposes of verifying accounts and data affecting fees or performance in accordance with N.C. General Statutes § 147-64.7 and N.C. Session Laws 2010-194, Section 21

18. THIRD PARTY BENEFICIARY. The parties do not intend to confer any rights, privileges or benefits upon any other individual(s) or entity(ies), not signatories to this

Agreement, arising out of this Agreement. The parties agree that nothing in this Agreement shall be construed or interpreted to confer any such rights, privileges or benefits upon any individual or entity not a signatory to this Agreement.

19. SEVERABILITY. If any provision of this Agreement is determined to be invalid or unenforceable, the provision shall be deemed to be severable from the remainder of the Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.

20. WAIVER. The failure by the party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time nor shall the waiver by either party of a breach of any provision hereof be taken or be held to be a waiver of such provision.

21. COUNTERPARTS AND FACSIMILES. This Agreement may be executed in one or more counterparts each of which may be deemed an original, but all of which constitute one and the same. An executed Agreement transmitted by facsimile to the other party may be relied upon as an original and if there is any inconsistency between such facsimile and an executed Agreement subsequently received by "hard-copy," the terms contained in the facsimile shall prevail.

22. JURISDICTION. This Agreement has been entered into in the State of North Carolina and all questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be governed by the laws of the State of North Carolina.

23. GENDER. Throughout this Agreement, wherever the context requires or permits, the neuter gender shall be deemed to include the masculine and the feminine, and the singular number, the plural and vice versa.

24. HEADINGS. The headings and numbers of sections and paragraphs contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the duly authorized representative of the parties hereto have set their hands and seals, the day and year first above written.

TOWN OF NAGS HEAD

By: _____
Name: _____
Title: _____

OUTER BANKS PROFESSIONAL SERVICES, LLC

By: _____
Ronnie Sloan, Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

By: _____
Name: _____
Title: CFO