

**NORTH CAROLINA**

**HEALTH PROFESSIONAL SERVICES AGREEMENT**

**BRUNSWICK COUNTY**

**THIS HEALTH PROFESSIONAL SERVICES AGREEMENT** (hereinafter referred to as the “Agreement”) is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “County”), party of the first part and Novant Health Medical Group Coastal Region, LLC, (hereinafter referred to as “Provider”), party of the second part.

**WITNESSETH:**

**1. SERVICES; FEES**

The services to be performed under this Agreement (hereinafter referred to collectively as the “Services”) and the agreed upon fees for said Services are set forth on Exhibit “A” attached hereto.

Any exhibits or attachments referenced herein are hereby incorporated by reference and made a part of this Agreement. Unless otherwise noted, any conflict between the language in an exhibit or attachment and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

**2. TERM OF AGREEMENT**

The term of this Agreement begins on 07/01/2021 (the “Effective Date”) and continues in effect until 06/30/2022, unless sooner terminated as provided herein. Provider may not render Services hereunder until this Agreement is executed by Provider and returned to County.

**3. TERMINATION**

- a. Without Cause. County may terminate this Agreement at any time without cause by giving sixty (60) days’ written notice to Provider. As soon as practicable after receipt of a written notice of termination without cause, Provider shall submit a statement to County showing in detail the Services provided under this Agreement through the effective date of termination.
- b. With Cause. County may terminate this Agreement for cause by giving written notice of a breach of the Agreement. Provider shall have fifteen (15) days to cure the breach following receipt of the notification. Failure to cure the breach within the fifteen (15) days shall result in immediate termination of the Agreement.
- c. Immediate Termination. Notwithstanding the foregoing, County may terminate this Agreement immediately and without notice to Provider if: (i) Provider’s license to practice medicine in the State of North Carolina or authorization to administer

medications, including controlled substances, is denied, modified, reduced, restricted, suspended or terminated (either voluntarily or involuntarily); (ii) Provider fails to notify County of any sanctions or other professional disciplinary action or criminal action of any kind against Provider which is either initiated, in progress or completed at any time during the term of this Agreement; (iii) Provider violates any material term of the Business Associate Agreement attached hereto as Exhibit "C"; (iv) Provider becomes insolvent, makes or has made an assignment for the benefit of creditors, is the subject of proceedings in voluntary or involuntary bankruptcy instituted on behalf of or against Provider, or has a receiver or trustee appointed for substantially all of its property; or (v) Provider allows any final judgment to stand against it unsatisfied for a period of forty-eight (48) hours.

#### **4. NONAPPROPRIATION**

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Provider of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

#### **5. COMPENSATION**

The County agrees to pay fees as specified in Exhibit "A" or as set out above for the Services satisfactorily performed in accordance with this Agreement. Unless otherwise specified, Provider shall submit monthly invoices to County, based on accurate time and travel records kept by Provider. Invoices must include detail of all Services delivered or performed under the terms of this Agreement, including the dates of service, the hours of service and any mileage for which reimbursement is being requested. All invoices shall be submitted within ninety (90) days of the date of service. County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, County will not pay late fees on any charges under this Agreement. If County disputes any portion of the charges on any invoice received from Provider, the County shall inform Provider in writing of the disputed charges. Once the dispute has been resolved, Provider shall re-invoice County for the previously disputed charges, and, per any resolution between County and Provider, the County shall pay those charges in full at that time. No advance payment shall be made for the Services to be performed by Provider under this Agreement.

#### **6. INDEPENDENT CONTRACTOR**

Both County and Provider agree that Provider shall act as an independent contractor and shall not represent itself as an agent or employee of the County for any purpose in the performance of its duties under this Agreement. Provider represents that it has or will secure, at its own expense, all personnel required in performing the Services under this Agreement. Accordingly, Provider shall be responsible for payment of all federal, state and local taxes arising out of its activities in accordance

with this Agreement, including, without limitation, federal and state income tax, social security tax, unemployment insurance taxes and any other taxes or business license fees as required. Provider shall not be entitled to participate in any plans, arrangements or distributions by the County pertaining to or in connection with any pension, stock, bonus, profit sharing or other benefit extended to County employees.

In the event the Internal Revenue Service should determine that Provider is, according to Internal Revenue Service guidelines, an employee subject to withholding and social security contributions, then Provider hereby acknowledges that all payments hereunder are gross payments, and the Provider is responsible for all income taxes and social security payments thereon.

## **7. RESPONSIBILITY TO OBTAIN ALTERNATE PROVIDER**

Should Provider be unable to provide Services hereunder at any time and for any reason, it shall be solely responsible for obtaining an alternate provider who possesses the minimum qualifications as set forth herein. Provider shall be solely responsible for payment of a qualified alternate provider.

## **8. MINIMUM QUALIFICATIONS**

Provider, and any alternate provider which Provider may designate from time to time, shall possess and maintain at all times during the term of this Agreement an unrestricted, current license to practice medicine in the State of North Carolina. Provider's license number is set forth on Exhibit "B." Provider shall immediately notify County of: (i) any modification, restriction, suspension or revocation of Provider's license; (ii) any modification, restriction, suspension or revocation of Provider's authorization to prescribe or administer medications, including controlled substances; (iii) the imposition of any sanctions against Provider under Medicare or Medicaid programs or any other governmental program; or (iv) any other professional disciplinary action or criminal action of any kind against Provider which is either initiated, in progress or completed at any time during the term of this Agreement.

## **9. PATIENT ELIGIBILITY**

Eligibility of patients for Services shall be determined by County in its sole and absolute discretion. Neither party shall discriminate against any patient on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation or age. The parties shall strictly adhere to the North Carolina Department of Health and Human Services departmental rules and regulations.

## **10. PATIENT RECORDS**

During the term of this Agreement, County shall make available to Provider all patient records and information reasonably necessary for the performance of Provider's duties hereunder. Provider agrees to maintain said records in accordance with County policy and subject to the provisions of the Business Associate Agreement attached hereto as Exhibit "C."

## **11. HIPAA REQUIREMENTS**

The parties acknowledge that they will comply with the Health Insurance Portability and Accountability Act of 1996, as more fully set forth in the Business Associate Agreement attached hereto as Exhibit "C."

## **12. FEDERAL RECORD-KEEPING REQUIREMENTS**

Until the expiration of four (4) years after the furnishing of Services pursuant to this Agreement, Provider shall make available, upon written request from the Secretary of the Department of Health and Human Services, or from the Comptroller General of the United States, or any of their authorized representatives, this Agreement, and all books, documents and records that are necessary to certify costs.

## **13. PROVIDER REPRESENTATIONS**

- a. Provider is a duly organized entity or corporation qualified to do business and in good standing under the laws of the State of North Carolina;
- b. Provider has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- c. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Provider to enter into and perform its obligations under this Agreement;
- d. In connection with Provider's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain and maintain all applicable permits and licenses;
- e. Provider shall not violate any agreement with any third party by entering into or performing the Services under this Agreement;
- f. Provider will perform all Services in conformity with the specifications and requirements of this Agreement;
- g. The Services performed by Provider under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third-party rights (including, without limitation, non-compete agreements); and
- h. Provider shall exercise reasonable care and diligence when performing the Services hereunder and will ensure that it adheres to the highest generally accepted standards in the industry when performing said Services.

#### **14. NON-ENDORSEMENT AND PUBLICITY**

County is not endorsing Provider or its Services, and Provider is not permitted to reference this Agreement or County in any manner without the prior written consent of County. Notwithstanding the foregoing, the parties agree that Provider may list the County as a reference in response to requests for proposals and may identify County as a customer in presentations to potential customers.

#### **15. NON-EXCLUSIVITY**

Provider acknowledges that County is not obligated to contract solely with Provider for the Services covered under this Agreement. Nothing in this Agreement shall be construed to restrict Provider from providing or entering into other contracts or agreements for the provision of health care services, provided that: (i) such activities do not hinder or conflict with Provider's ability to perform its duties and obligations hereunder; (ii) in rendering such services, Provider shall neither represent nor imply that such services are being rendered by or on behalf of County; and (iii) any professional services rendered by Provider outside the scope of this Agreement shall not be billed to County.

#### **16. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL**

Provider hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.

#### **17. DEBARMENT**

Provider hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Provider must notify County within thirty (30) days if debarred by any governmental entity during this Agreement.

#### **18. INDEMNIFICATION**

Provider shall defend, indemnify and hold harmless County, its officers, officials, agents and employees from and against all actions, liability, claims, suits, damages, costs or expenses of any kind which may be brought or made against County or which County must pay and incur arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due in part or in the entirety of Provider, its employees or agents. Provider further agrees to investigate, handle, respond to, defend and dispose of same at its sole cost and expense. Provider shall be fully responsible to County for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by it. This Section shall survive any expiration or termination of this Agreement.

## 19. INSURANCE

Provider shall procure and maintain in full force and effect at all times and at its sole cost and expense Commercial General Liability, Commercial Automobile Liability, Professional Liability and Workers' Compensation insurance, if applicable, and any additional insurance as may be required by County with limits acceptable to County. All insurance policies (with the exception of Workers' Compensation, if applicable, and Professional Liability) shall be endorsed, specifically or generally, to include County as an additional insured and as a certificate holder. Provider shall furnish a Certificate of Insurance from a licensed insurance agent in North Carolina with a rating of A-VII or better by A.M. Best verifying the existence of any insurance coverage required by County. The Certificate will provide for thirty (30) days' advance notice in the event of termination or cancellation of coverage. Provider shall have no right of recovery or subrogation against County (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the aforementioned insurance.

## 20. WORKERS' COMPENSATION

To the extent required by law, Provider shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event Provider is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, Provider shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents while fulfilling Provider's obligations under this Agreement.

Provider agrees to furnish County proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

## 21. REMEDIES

- a. Right to Cover. If Provider fails to perform the Services hereunder for any reason, the County may employ such means as it may deem advisable and appropriate to obtain the Services from a third party until the matter is resolved and Provider is again able to resume performance under this Agreement.
- b. Right to Withhold Payment. County reserves the right to withhold any portion, or all, of a scheduled payment if Provider fails to perform under this Agreement until such breach has been fully cured.
- c. Other Remedies. Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently in addition to any other available remedy.

- d. No Suspension. In the event that County disputes in good faith an allegation of breach by Provider, notwithstanding anything to the contrary in this Agreement, Provider agrees that it will not terminate this Agreement or suspend or limit any Services or warranties, unless: (i) the parties agree in writing; or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period shall be limited to ninety (90) days.

## **22. TAXES**

Provider shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Provider shall substantiate, on demand by the County, that all taxes and other charges are being properly paid.

## **23. HEALTH AND SAFETY**

Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performing the Services. Provider shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees in connection with performing the Services and other persons who may be affected thereby.

## **24. NON-DISCRIMINATION IN EMPLOYMENT**

Provider shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Provider shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Provider is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be cancelled, terminated or suspended in whole or in part by County, and Provider may be declared ineligible for further County agreements.

## **25. COMPLIANCE WITH E-VERIFY PROGRAM**

Pursuant to N.C.G.S. § 143-133.3, Provider understands that it is a requirement of this Agreement that Provider and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Provider agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Provider shall require its subcontractors to do the same. Upon request, Provider agrees to provide County with an affidavit of compliance or exemption.

## **26. NO ASSIGNMENT WITHOUT CONSENT**

Neither party shall assign this Agreement (or assign any right or delegate any obligation contained herein whether such assignment is of service, of payment or otherwise) without the prior written consent of the other party hereto. Any such assignment without the prior written consent of the other party hereto shall be void. An assignee shall acquire no rights, and County shall not recognize any assignment in violation of this provision.

## **27. GOVERNING LAW AND VENUE**

This Agreement shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions. All actions relating in any way to this Agreement shall be brought in the General Court of Justice of the State of North Carolina in Brunswick County or in the Federal District Court for the Eastern District of North Carolina, Wilmington division.

## **28. DISPUTE RESOLUTION**

Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.

## **29. GOVERNMENTAL IMMUNITY**

County, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

## **30. NON-WAIVER**

Failure by County at any time to require the performance by Provider of any of the provisions of this Agreement shall in no way affect County's right hereunder to enforce the same, nor shall any waiver by County of any breach be held to be a waiver of any succeeding breach or a waiver of this Section.

## **31. ENTIRE AGREEMENT**

This Agreement and the Exhibits hereto constitute the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral, related to the subject matter herein.

### 32. HEADINGS

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

### 33. SEVERABILITY

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If a provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

### 34. AMENDMENTS

No amendments or changes to this Agreement, or additional Proposals or Statements of Work, shall be valid unless in writing and signed by authorized agents of both Provider and County.

### 35. NOTICES

- a. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by facsimile to the intended recipient at the address set forth below.
- b. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by facsimile or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- c. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment or waiver of any provision of this Agreement shall be sent to:

- i. For the County: Brunswick County Manager  
P.O. Box 249  
Bolivia, NC 28422  
Fax: 910-253-2022

- ii. For the Provider: Novant Health Medical Group Coastal Region, LLC  
Attn: Dan Goodwin  
P. O. Box 90000  
Wilmington, NC 28402

**36. SIGNATURES**

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board /  
Deputy Clerk to the Board

By: \_\_\_\_\_  
Chairman, Board of Commissioners

[SEAL]

**NOVANT HEALTH MEDICAL GROUP COASTAL REGION, LLC**

By: Dan Goodwin

Printed Name: Dan Goodwin

Title: Executive Director

Date: 6/17/2021

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

Julie A. Miller  
Julie A. Miller, Director of Fiscal Operations  
Brunswick County, North Carolina

APPROVED AS TO FORM

Bryan W. Batton  
Robert V. Shaver, Jr., County Attorney /  
Bryan W. Batton, Assistant County Attorney

**EXHIBIT "A"**  
**SCOPE OF SERVICES/FEES**

Scope of Services:

1. The consulting physician of Provider: shall direct the non-surgical obstetric medical services of the OB/GYN Certified Nurse Midwife in accordance with approved methods and standards of practice of the North Carolina Medical Practice Act, the code of ethics of the American Medical Assoc., the Maternal Health Program of the North Carolina Dept. of Health and Human Services and this Agency.
2. Shall provide medical and clinical consultation services to OB/GYN Certified Nurse Midwife including review of historical, physical examination, laboratory and other data.
3. Shall provide protocols for care to OB/GYN Certified Nurse Midwife for obstetrical patients under "standing medical orders".
4. Shall provide telephone consultation to OB/GYN Certified Nurse Midwife between patient prenatal visits as necessary.
5. Shall assure that all lab reports, ultrasound reports and referrals for NHMGCR designated patients are faxed directly to Brunswick County Health Services in a timely manner.
6. Shall see all patients classified as high risk after initial Brunswick County Health Services visit.
7. Shall agree to patients having required lab work performed at the closest facility to patient.
8. All Brunswick County Health Services OB patients who are designated to deliver at NHMGCR, will be transferred at 39 weeks gestation to OB/GYN Specialists Clinic for their final visits.

The Certified Nurse Midwife or Professional's substitute will:

1. See all patients choosing to deliver at NHMGCR at Brunswick County Health Services for the initial visit and at each visit thereafter.
2. Consult by phone with OB/GYN Specialists physicians to discuss patient care and/or treatment as necessary.
3. Follow all written Brunswick County Health Services medical policies and procedures.
4. Refer all high risk NHMGCR patients directly to OB/GYN Specialists for care.

5. Transfer low risk OB patients who are designated to deliver at NHMGCR to OB/GYN Specialists beginning at 39 weeks gestation or at 36 weeks gestation if a cesarean delivery is required.
6. Refer patients for lab work to closest facility to patient.
7. Refer all OB patients who are designated to deliver at NHMGCR to Atlantic Maternal Fetal Medicine, OB/GYN Specialists, NHMGCR, or the Medical Mall for ultrasounds or to Novant Health - Brunswick Medical Center for Dating Ultrasounds.
8. Provide services to the Brunswick County Health Department Family Planning Clinic.

**Billing and Fees:**

1. County shall remit to Provider the sum of \$71.99 per hour, for up to twenty 27 hours per week, for the purpose of providing to Brunswick County Health Services, OB/GYN Certified Nurse Midwife services. Provider will submit a completed time sheet as supporting documentation to the accounting department, indicating the date, start and end time, program, and signature. This time sheet must be turned in at the end of each month worked. Telephone consultation, as set forth above, will be reimbursed in quarterly hour increments at the above rate.
2. Provider shall bill County no more frequently than monthly. However, billing should be submitted within ninety (90) days of service. All bills for services performed during the term of this Agreement shall be submitted on or before June 30 of the respective fiscal year.

**EXHIBIT “B”  
LICENSURE**

**Licensed to practice medicine in North Carolina.**

Physician: Laif B. Lofgren, MD  
License # 30834

Physician: Todd M. Beste, MD  
License # 6901229

Certified Midwife: Ashli Gibson  
License # CNM 256196

Certified Midwife: Pamela Irby  
License # CNM 227799

Certified Midwife: Henna Ables, CNM  
License # CNM 746

Certified Midwife: Diana Shawn Deviney, CNM  
License: # CNM #289

Certified Midwife: Sue Carney, CNM  
License: # CNM #440

**EXHIBIT “C”  
BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT is made and entered into by and between Brunswick County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as “Covered Entity”), and Novant Health Medical Group Coastal Region, LLC, (hereinafter referred to as “Business Associate”), (hereinafter referred to individually as a “Party” and collectively as the “Parties”).

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996 (hereinafter referred to as “HIPAA”), Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information;

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (hereinafter referred to as the “HIPAA Security and Privacy Rule”);

WHEREAS, Covered Entity and Business Associate have entered into a Health Professional Services Agreement of even date herewith for the provision of medical services by Business Associate, of which this Agreement is made an integral part thereof; and

WHEREAS, in fulfilling its obligations under the Health Professional Services Agreement, Business Associate may have access to Protected Health Information (as defined below).

NOW, THEREFORE, in consideration of the Parties’ continuing obligations and compliance with the HIPAA Security and Privacy Rule, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both Parties.

**WITNESSETH:**

**I. DEFINITIONS**

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control.

The term “Protected Health Information” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including

without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information" as defined below.

The term "Electronic Protected Health Information" means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

## II. TERM

The term of this Agreement runs concurrent with the Health Professional Services Agreement of which it is a part, unless sooner terminated as provided herein.

## III. CONFIDENTIALITY AND SECURITY REQUIREMENTS

### a. Business Associate agrees:

- i. to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship; or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Health Professional Services Agreement (if consistent with this Agreement and the HIPAA Security and Privacy Rule), or the HIPAA Security and Privacy Rule; and (3) as would be permitted by the HIPAA Security and Privacy Rule if such use or disclosure were made by Covered Entity;
- ii. at termination of this Agreement, the Health Professional Services Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those

purposes that make the return or destruction of the information not feasible;  
and

- iii. to ensure that its agents, including any subcontractor or alternate provider to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information, and agrees to implement reasonable and appropriate safeguards to protect any of such information which is Electronic Protected Health Information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.
- b. Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:
- i. if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met.
    - 1. The disclosure is required by law; or
    - 2. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially 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.
  - ii. for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- c. Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security and Privacy Rule.

- d. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Security and Privacy Rule.
- e. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

#### IV. AVAILABILITY OF PROTECTED HEALTH INFORMATION

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule.

#### V. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Health Professional Services Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Health Professional Services Agreement immediately.

#### VI. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Security and Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate hereunder shall survive any expiration, termination, or cancellation of this Agreement, the Health Professional Services Agreement and/or the business relationship of the parties.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Security and Privacy Rule, such party shall notify the other party in writing, for a period of up to thirty (30) days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Security and Privacy Rule, then either party has the right to terminate this Agreement and the Health Professional Services Agreement immediately.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

VII. SIGNATURES

This Agreement, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Agreement may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-358.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Agreement by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board /  
Deputy Clerk to the Board

By: \_\_\_\_\_  
Chairman, Board of Commissioners

[SEAL]

**NOVANT HEALTH MEDICAL GROUP COASTAL REGION, LLC**

By: Dan Goodwin

Printed Name: Dan Goodwin

Title: Executive Director

Date: 6/17/2021

APPROVED AS TO FORM

Bryan W. Batton  
Robert V. Shaver, Jr., County Attorney /  
Bryan W. Batton, Assistant County Attorney