

Affiliation Agreement

This Affiliation Agreement (this "**Agreement**"), entered into and effective as of December 1, 2016 (the "**Effective Date**"), by and between the University of Houston on behalf of its Health and Human Performance Department ("**University**"), which is a state-supported institution of higher education established pursuant to sections 111.01 et seq. of the Texas Education Code, and is located at 4800 Calhoun, Houston, Texas 77204, and Mt. Diablo Unified School District ("**Facility**"), which is located at 1936 Carlotta Drive, Concord, CA 94519. University and Facility shall be known collectively as the "**Parties**" and singularly as a "**Party**." This Agreement incorporates by reference the any and all attached exhibits, schedules and/or addenda, and expressly includes any additional terms and conditions stated in such exhibits as if set out herein.

Whereas, Parties seek to provide supervised practice educational experiences for Dietetic Interns ("**Students**") enrolled in the Dietetic Internship Program (the "**Program**") at University; and

Whereas, it is agreed by Parties hereto to be of mutual interest and advantage that Students be given the opportunity to utilize Facility for clinical educational purposes.

Now, therefore, Parties agree as follows:

ARTICLE 1 – RESPONSIBILITIES OF UNIVERSITY

University shall fulfill the following terms, obligations, and covenants:

1. Inform Facility of the name, address, and phone number of a Program Director who will be available to assist Facility personnel and Students of Program and who will be responsible for maintaining ongoing contact with Facility's designated representative;
2. Develop, organize, and assist Facility in implementing and operating a Program that is suitable to each Student, including those who may be disabled;
3. Acquaint Facility's designated representative with methods, objectives, goals, and specifics of Program;
4. Assign to Facility only Students who have fulfilled University's prerequisites for supervised practice experience and provide Facility with information requested by Facility about the Student. If required by Facility, University shall provide evidence of drug testing, health care and criminal background checks;
5. Assign only one (1) Students to the Program, subject to increase or decrease as mutually agreed upon by Facility and University;
 - a. Prior to assigning a Student to the Program and/or Facility, University shall obtain written evidence of the Student's immunization against rubella, rubcola, mumps, Hepatitis B, and lack of active tuberculosis;
6. Notify Facility as soon as possible of the names and arrival dates of Students;
7. University will procure and maintain throughout the Term professional liability insurance in minimum amounts of one million dollars (\$1,000,000.00) per occurrence and three million dollars (\$3,000,000.00) in the aggregate for the Students. Upon request, University shall provide Facility with certificates of insurance evidencing said coverage at the commencement of and upon each successive renewal of this Agreement. University shall use commercially reasonable efforts to notify Facility at least thirty (30) days in advance of any proposed cancellation or material reduction of said coverage. Facility retains the right to terminate this Agreement or suspend Students' access to Facility immediately if University fails to maintain

- insurance required in this paragraph. University agrees to have its faculty and students involved in the Program named as additional insureds on said policies of insurance;
8. Require Students to provide transportation, appropriate supplies, and uniforms, as applicable;
 9. Inform Students about their obligation to adhere strictly to all applicable administrative policies, rules, standards, schedules, and practices of Facility;
 10. Inform Students and Faculty members who are supervising Students about their obligation to maintain confidentiality of all Facility matters, proceedings, and information, including, but not limited to client records and information. This confidentiality provision shall survive termination of this Agreement;
 11. Upon notice to University, inform Facility of any adverse circumstances to which Facility may be exposed because of the activities or health status, including the mental health status, of a Student;
 12. Upon notice to University, notify Facility of any complaint, claim, investigation, or lawsuit involving a Student that is related to clinical experiences provided under this Agreement;
 13. Notify Students about their obligation to comply with Facility policies and procedures, state law, and OSHA blood borne and tuberculosis pathogen regulations in the training, vaccination, testing, prevention, and post-exposure treatment of Students, where applicable in the performance of duties required by Program;
 14. Accept full responsibility for the training, qualifications, competency level and, subject to Facility's obligation pursuant to Article 2 Section 3, evaluation of each Student; and
 15. CONFIDENTIALITY
 - a. FACILITY AND PATIENT INFORMATION; TERMS OF AGREEMENT. University and its agents, students, faculty, representatives and employees agree to keep strictly confidential and hold in trust all confidential information of Facility and/or its patients and not disclose or reveal any confidential information to any third party without the express prior written consent of Facility. University shall not disclose the terms of this Agreement to any person who is not a party to this Agreement, except as required by law or as authorized by Facility. Unauthorized disclosure of confidential information or of the terms of this Agreement shall be a material breach of this Agreement and shall provide Facility with the option of pursuing remedies for breach, or, notwithstanding any other provision of this Agreement, immediately terminating this Agreement upon written notice to University.
 - b. HIPAA COMPLIANCE. University agrees to comply with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320 through d-8 ("**HIPAA**"), and the requirements of any regulations promulgated thereunder, including, without limitation, the federal privacy regulations as contained in 45 C.F.R. Part 164, and the federal security standards as contained in 45 C.F.R. Part 142 (collectively, the "**Regulations**"). University shall not use or further disclose any protected health information, as defined in 45 C.F.R. 164.504, or individually identifiable health information, as defined in 42 U.S.C. § 1320d (collectively, the "**Protected Health Information**"), other than as permitted by this Agreement and the requirements of HIPAA or the Regulations. University will implement appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as contemplated by this Agreement. University will promptly report to Facility any use or disclosures, of which University becomes aware, of Protected Health Information in violation of HIPAA or the Regulations. In the event that University contracts with any agents to whom University provides Protected Health Information, University shall include provisions in such agreements pursuant to which University and such agents agree to the same restrictions and conditions that apply to University with respect to Protected Health Information. University will make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to the Secretary of the United States Department of Health and Human Services to the extent required for determining compliance with HIPAA and the Regulations. No attorney-client, accountant-client or other

legal or equitable privilege shall be deemed to have been waived by University or Facility by virtue of this Subsection.

- c. SURVIVAL. The provisions set forth herein shall survive expiration or other termination of this Affiliation Agreement, regardless of the cause of such termination

ARTICLE 2 – OBLIGATIONS OF FACILITY

Facility shall fulfill the following terms, obligations, and covenants:

1. Provide necessary instruction for prescribed supervised practice experiences for Students, as agreed upon by both Parties, including but not limited to preceptor-faculty to supervise practice instruction for Students during experiential rotations at the Facility. Appointment of preceptor-faculty is subject to University's reasonable prior approval.
 - a. Preceptor-faculty will assist the Students to comply with the grading criteria and terminal competencies for the course.
 - b. Facility shall ensure that preceptor-faculty have appropriate professional malpractice insurance coverage in order to fulfill any obligations that may or do arise under this Agreement.
2. Where appropriate, provide qualified supervisory personnel to work in conjunction with Program faculty;
3. Provide University's designee with a performance appraisal for each Student in the form prescribed by University;
4. Report any unsatisfactory conduct or performance of a Student in a form prescribed by University;
5. Permit designated faculty members the right to counsel with and to observe Students at Facility; and
6. Facility acknowledges that certain information about the Students is contained in records that the Facility may create, receive from or on behalf of University, or have access to pursuant to this Agreement and that this information can be confidential by reason of the Family and Educational Rights and Privacy Act of 1974 ("**FERPA**") (20 U.S. C. 1232g) (collectively referred to as the "**FERPA Records**") and related University policies unless valid consent is obtained from the University's students or their legal guardians. Both parties agree to protect the FERPA Records in accordance with FERPA and University policy. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities. University shall advise Facility whenever any Students have provided consent to release information to an extent broader than as provided for by FERPA or University policy. Facility represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Contract, (b) required by law, or (c) otherwise authorized by the University in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Facility protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Agreement. At the request of University, Facility agrees to provide University with a written summary of the procedures Facility uses to safeguard the FERPA Records. The provisions set forth herein shall survive expiration or other termination of this Agreement, regardless of the cause of such termination.

ARTICLE 3 – OBLIGATIONS OF PARTIES

Parties mutually agree to fulfill the following terms, obligations, and covenants:

1. Neither University, Students, nor any University personnel, including faculty, shall be considered employees, agents, borrowed servants, partners, or joint ventures of Facility;
2. Facility is not responsible for wages, social security taxes, hospitalization insurance, or workers' compensation insurance for Students. In the event a Student should, independent of this Agreement, be employed by Facility, this section and the preceding section shall not apply during the hours in which such Student is performing services as an employee of Facility;
3. Nothing in this Agreement is to be construed as transferring financial responsibility from one Party to another;
4. Without limitation of any provision set forth in this Agreement, Parties expressly agree to abide by all applicable federal and/or state equal employment opportunity statutes, rules, and regulations;
5. Facility shall have the right to refuse to allow Students who do not have requisite skills, attitude, previous training, or health status for proper provision of patient care to participate in Program; and
6. To the extent permitted by the constitution and laws of the State of Texas and without the waiver of sovereign immunity or any other defense that University is or may be entitled to assert, University shall indemnify and hold Facility harmless from and against any claims, costs, including reasonable attorneys' fees, liabilities, or causes of action arising out of or from any negligent acts or omissions by Students or University personnel who are engaged in activities at Facility that are directly related to Program. In the event that University and Facility are legally adjudged to have been jointly negligent in causing injury or damage, each shall be obligated to satisfy its proportionate share of such judgment based upon the percentage of liability attributed to it in such judgment, but, if, in addition, University is adjudged to be liable for the acts or omissions of Facility and/or any employee, personnel, or agent provided by Facility, then University shall be indemnified by Facility to the extent of such vicarious liability. Neither Party hereto shall be obligated to indemnify the other for such other Party's negligence or intentional act(s). This indemnification provision shall survive termination of this Agreement.

ARTICLE 4 – TERM AND TERMINATION

1. The term of this Agreement (the "*Term*") shall commence on the Effective Date and remain in effect until the end of University's academic year and shall automatically renew for up to four (4) additional term(s) consisting of succeeding University's academic year, unless sooner terminated in accordance with applicable provisions of this Agreement. University's academic year begins on September 1 and ends on August 31 of the following calendar year.
2. Any breach of the covenants stated in Article I of this Agreement by University shall be considered a material breach of this Agreement. In the event of a material breach, Facility shall have the right to terminate this Agreement immediately.
3. Notwithstanding any other provision in the Agreement, either Party shall have the right to terminate this Agreement after ninety (90) consecutive days' written notice is given to the other Party. If either Party exercises this option, the Students in training status in the Program on the date of the notice of termination will be allowed to complete the stipulated course of study.
4. Facility shall further have the right to demand immediate removal of any Student from its premises upon a determination by the administrator in charge that the Student poses a threat to the health, safety, or welfare of Facility's patients, clients, or personnel or to the orderly business function of Facility.

ARTICLE 5 - GENERAL PROVISIONS

1. Parties agree that this Agreement will be construed by the laws of the State of Texas and venue for purposes of alternative dispute resolution, claims, or litigation shall be Houston, Harris County, Texas.
2. The terms and conditions of this Agreement may be modified upon mutual written consent of Parties at any time.
3. This Agreement and all terms and conditions contained herein shall become effective as of the date noted as the Effective Date that first appears in paragraph one of this document.
4. Any notice required or permitted under this Agreement shall be considered effective as of the date sent by certified mail, return receipt requested, as follows:

UNIVERSITY:

Provost
University of Houston
4800 Calhoun
Houston, TX 77204

with a copy to:

Dean, College of Liberal Arts
and Social Sciences
University of Houston
4800 Calhoun
Houston, TX 77204

FACILITY:

Administrator/CEO

with a copy to:

5. Neither Party may assign any rights or obligations under this Agreement without the prior written consent of the other Party.
6. Each individual executing this Agreement on behalf of any Party expressly represents and warrants that he/she has authority to do so, and thereby to bind Party on behalf of which/whom he/she signs, to the terms of this Agreement.
7. If any part of the Agreement should be determined to be invalid, illegal, inoperative, or contrary to applicable law, statute, regulation, or University or Facility policies, that part of the Agreement shall be reformed, if reasonably possible, to comply with the applicable policies, provisions of law, statute, or regulation, and, in any event, the remaining parts of the Agreement shall be fully effective and operative insofar as reasonably possible.
8. A waiver by either Party of the breach or violation of any provision of the Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the Agreement.
9. Neither Party shall be liable nor deemed to be in default for any delay or failure in performance under the Agreement or other interruption of service deemed resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, hurricanes, floods, failure of transportation, strikes, or other work interruptions by either Party's employees, or any similar cause beyond the reasonable control of either Party.
10. This Agreement is entered into by and between Parties hereto and for their benefit. Unless explicitly provided in this Agreement, there is no intent by either Party to create or establish third Party beneficiary status or rights in any third party, and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.
11. Unless expressly provided herein, Parties do not assume or become liable for any of the existing or future obligations, liabilities, or debt of the other.
12. This is the entire Agreement between Parties and supersedes all prior agreements, proposals, or understandings, whether written or oral.

In witness thereof, Parties have executed this Agreement in multiple counterparts, to be effective as of the Effective Date.

UNIVERSITY OF HOUSTON

FACILITY

Signature Date
Name: Paula Short
Exec. AVP/AVC for Academic & Faculty Affairs

Signature Date
Name: *Dr. Nellie Meyer*
Title: *Superintendent*

Signature Date
Name: John W. Roberts
Dean, College of Liberal Arts and Social Sciences

Anna Fisher *11/17/16*

Signature Date
Name: *Anna Fisher*
Title: *Director, Food & Nutrition Services*

Note: Modification of this Form requires approval of OGC