

University of Houston Affiliation Agreement

This Agreement is entered into and is effective as of the 17th day of October, 2016 ("the Effective Date"), by and between the University of Houston ("UNIVERSITY"), which is a state-supported institution of higher education established pursuant to Section 111 of the Texas Education Code, and is located at 14000 University Boulevard, Sugar Land, Texas 77479-8000, and Lone Star Circle of Care ("FACILITY"), which is located at 205 East University Ave. Ste. 200, Georgetown, TX 78626. UNIVERSITY and FACILITY shall be known collectively as "the Parties" and singularly as "a Party" or "the Party." This Agreement incorporates by reference the attached exhibit(s) and expressly includes any additional terms and conditions stated in such exhibit(s), as if set out herein.

Whereas, the Parties seek to provide clinical and educational experiences for nursing students ("Students") enrolled in the UNIVERSITY's School of Nursing's Undergraduate and Graduate Programs ("the Program") at UNIVERSITY; and

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

Now, therefore, the 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 the 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 Students with disabilities;
- (3) Acquaint FACILITY's designated representative with methods, objectives, goals, and specifics of the Program;
- (4) Assign to FACILITY only Students who have fulfilled all prerequisites for clinical experience and provide FACILITY with information requested by FACILITY about the Student. If required by FACILITY, UNIVERSITY shall direct students to a third party vendor at Student cost for the purposes of performing drug testing, health care and criminal background checks. All results will be submitted by the vendor to the FACILITY without involvement by the UNIVERSITY;
- (5) Assign only the number of Students mutually agreed upon by FACILITY and UNIVERSITY;
- (6) Collaborate with FACILITY to determine as soon as possible of the names and feasible arrival dates of Students at Facility;
- (7) Inform Student that student shall not (1) be considered FACILITY's employee, and (2) FACILITY

shall not be responsible for health insurance or Workmen's Compensation Insurance for students.

- (8) Provide to FACILITY satisfactory evidence that each participating Student is free from contagious disease prior to Student's placement at FACILITY. Further, each Student shall be required to pass any health examinations required by FACILITY. In addition, Student is required to attend LSCC orientation meetings and receive other training as deemed appropriate by FACILITY.
- (9) UNIVERSITY will ensure all participating Students assigned to the program have met, at a minimum, the immunization requirements established by Texas Administrative Code, Title 25, Rule 97.64. Each participating Student's record will document evidence of:
- a. negative TB screening;
 - b. proof of each Student's current immunizations, including:
 - i) Tdap or Td
 - ii) MMR
 - iii) Hep B
 - iv) Varicella
 - v) Bacterial Meningitis (unless student is 22 years or older)
 - c. proof of current basic life support (BLS) for health care providers;
 - d. confidentiality statement executed by each participating Student;
 - e. a statement that student is in good standing with the UNIVERSITY; and,
 - f. a current background check for Student showing no inhibitory issues.

UNIVERSITY shall obtain participating Student's permission to submit this data to FACILITY, upon request.

- (10) Ensure that Students who participate in the Program provide proof of insurance coverage in minimum amounts that are acceptable to FACILITY. The UNIVERSITY will issue the FACILITY a certificate of insurance as evidence that students and FACULTY have current medical professional liability insurance of not less than \$1,000,000 per incident and \$3,000,000 aggregate and will be kept current while students are assigned to the FACILITY.
- (11) Require Students to provide transportation, appropriate supplies, and uniforms, as applicable at Student's expense;
- (12) Inform Students about their obligation to adhere strictly to all applicable administrative policies, procedures, bylaws, rules, regulations, standards, schedules, and practices of FACILITY;
- (13) Inform Students and Faculty members who are supervising Students about their obligation to maintain confidentiality of all FACILITY matters, proceedings, and information to the

extent required by law, including, but not limited to facility records and information. This confidentiality provision shall survive termination of this Agreement;

- (14) 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;
- (15) 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;
- (16) Notify Students about their obligation to comply with FACILITY policies and procedures, state law, criminal background check and Occupational Safety and Health Administration ("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 FACILITY;
- (17) Accept the overall responsibility for the education, evaluation, qualifications, and competency development of each Student.
- (18) Advise faculty and students of the requirement to sign a Health Insurance Portability and Accountability Act ("HIPAA") agreement for the FACILITY. UNIVERSITY shall direct its Students to comply with the policies and procedures of FACILITY, including those governing the use and disclosure of individually identifiable health information under federal law, specifically 45 CFR parts 160 and 164. Solely for the purpose of defining the Students' role in relation to the use and disclosure of LSCC's protected health information, such Students are defined as part of FACILITY's workforce for HIPAA compliance purposes, as that term is defined by 45 CFR 160.103, when engaged in activities pursuant to this Agreement. Students are not and shall not be considered to be employees of FACILITY.

UNIVERSITY Students participating shall not disclose any Protected Health Information, defined by 45 CFR §160.103, to UNIVERSITY, which a Student accessed through the Program, or if FACILITY's members accessed through the provision of supervision, that has not first been de-identified as provided in 45 CFR §164.514(a). UNIVERSITY shall not access or request to access any Protected Health Information held or collected by or on behalf of FACILITY, from a Student or FACILITY faculty member, or any other source, that has not first been de-identified as provided in 45 CFR §164.514(a).

ARTICLE 2 - RESPONSIBILITIES OF FACILITY

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

- (1) Provide supervised learning experience for Students in accordance with agreed upon learning objectives, skill development areas, learning experiences, and intended learning outcomes;
- (2) Where appropriate, provide qualified supervisory personnel to work in conjunction with the UNIVERSITY's Program faculty;
- (3) Upon request, provide UNIVERSITY's designee with a performance appraisal for each Student in the form prescribed by UNIVERSITY;

- (4) Upon request, provide periodic performance information to the Student and to UNIVERSITY as prescribed;
- (5) Report any unsatisfactory conduct or performance of a Student;
- (6) Permit designated faculty members who have signed the HIPAA Confidentiality Agreement for Observers and Visitors the right to visit with Students and FACILITY supervisors regarding the progress of Students at the FACILITY;
- (7) Provide Students with essential conditions and materials for their work, including space, privacy, and technological supports.;
- (8) Provide an atmosphere for learning that is supportive and free of discrimination based, on race, ethnicity, religion, gender, disability, or sexual preference; and
- (9) Provide Students with information regarding policies and procedures of FACILITY, and with orientation experiences to ensure that Students will be able to meet the requirements of FACILITY.

ARTICLE 3 - RESPONSIBILITIES OF THE 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 venturers of FACILITY;
- (2) FACILITY is not responsible for wages, social security taxes, medical insurance, 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 responsibility from one Party to another;
- (4) Without limitation of any provision set forth in this Agreement, the Parties expressly agree to abide by all applicable federal and/or state equal employment opportunity statutes, rules, and regulations; and
- (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 the Program.
- (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 to which 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 the 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 own negligence. Notwithstanding anything herein to the contrary, FACILITY's indemnification obligations set forth above are limited to the extent permitted by the rules applicable to federally qualified community health centers and, in the case of claims for professional liability, to the extent permitted under the Federal Tort Claims Act. This indemnification provision shall survive termination of this Agreement.

ARTICLE 4-TERM AND TERMINATION

- (1) This Agreement shall remain in effect until the end of UNIVERSITY's academic year and shall automatically renew for additional terms consisting of the 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 1 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 Parties agree to make reasonable efforts so that Students already in training status will be allowed to complete the stipulated course of study as Facility's resources may allow.
- (4) FACILITY shall further have the right to immediate removal of any student from its premises, upon FACILITY's determination, 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, or has disclosed confidential information. FACILITY shall advise UNIVERSITY of such removal by sending UNIVERSITY written notice.

ARTICLE 5 - GENERAL PROVISIONS

- (1) The 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 Austin, Travis County, Texas.
- (2) The terms and conditions of this Agreement may be modified upon mutual written consent of the 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:

FACILITY:
General Counsel
Lone Star Circle of Care

UNIVERSITY:
Provost
University of Houston

205 East University Ave., Suite 200
Georgetown, TX 78626

311 E Cullen Building
Houston, Texas 77204

with a copy to:

with a copy to:

Associate Director of Nursing & Quality
2423 Williams Drive, Ste 107
Georgetown, TX 78628

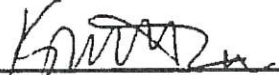
Dean, School of Nursing
University of Houston
14000 University Boulevard
Sugar Land, Texas 77479-8000


- (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 the Party on behalf of which/whom he/she signs, to the terms of this Agreement.
- (7) If any part of this Agreement should be determined to be invalid, illegal, inoperative, or contrary to applicable law, statute, regulation, or UNIVERSITY or FACILITY policies, that part of this 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 this 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 this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of this Agreement.
- (9) Neither Party shall be liable nor deemed to be in default for any delay or failure in performance under this 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 the 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, the 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 the Parties related to the subject matter contained herein and supersedes all prior agreements, proposals, or understandings, whether written or oral.

In witness thereof, the Parties have executed this Agreement in multiple counterparts, to be effective as of the date written on page one (1) of the Agreement.

FACILITY:

UNIVERSITY OF HOUSTON:


 10/26/16
Signature Date
Printed Name: Kathleen V. Butler, MD,
MBA, CMO, CPHO

 11-4-16
Signature Date
Printed Name: Paula M. Short, PhD

Title: CMO

Senior VC/VP for Academic Affairs and Provost

Signature Date

 Nov. 2, 2016
Signature Date

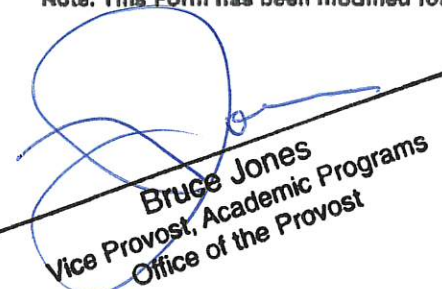
Printed Name: _____

Kathryn Tart, RN, MSN, EdD

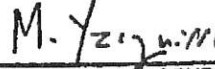
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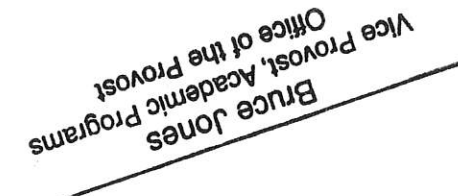
Dean, School of Nursing

Note: This Form has been modified for this transaction.


Bruce Jones
Vice Provost, Academic Programs
Office of the Provost

APPROVED AND TO FORM BY:
(AS MODIFIED) BY:


OFFICE OF THE GENERAL COUNSEL
UNIVERSITY OF HOUSTON SYSTEM


Bruce Jones
Vice Provost, Academic Programs
Office of the Provost


Sabrina Hassumani
Associate Provost, Finance & Administration

EXHIBIT A

An Addendum to the Affiliation Agreement

concerning

The Health Insurance Portability and Accountability Act ("HIPAA")

I. 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 Agreement, regardless of the cause of such termination.