

University of Houston

Affiliation Agreement

This Agreement is entered into and is effective as of the 2nd day of June, 2017 ("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 Roderick Diggs, MD ("FACILITY"), which is located at 4201 Garth Rd, Ste 301, Baytown, TX 77521. 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 College 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 the 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) Notify FACILITY as soon as possible of the names and arrival dates of Students;

- (7) 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 such person is assigned to the FACILITY.
- (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 to the extent required by law, 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, 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;
- (14) Accept the overall responsibility for the education, evaluation, qualifications, and competency development of each Student.
- (15) Advise faculty and students of the requirement to sign a Health Insurance Portability and Accountability Act ("HIPAA") agreement for the FACILITY.

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 Program faculty;

- (3) Provide UNIVERSITY's designee with a performance appraisal for each Student in the form prescribed by UNIVERSITY;
- (4) Provide periodic performance information to the Student and to UNIVERSITY as prescribed, and immediately report any unsatisfactory conduct or performance of a Student;
- (5) Permit designated faculty members the right to visit with Students and FACILITY supervisors regarding the progress of Students at the FACILITY.
- (6) Provide Students with essential conditions and materials for their work, including space, privacy, and technological supports, and reimbursements for work-related expenses;
- (7) Provide an atmosphere for learning that is supportive and free of discrimination based, on race, ethnicity, religion, gender, disability, or sexual preference;
- (8) 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. 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 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 Parties agree to make reasonable efforts so that Students already in training status 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) 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 Houston, Harris 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:

Form No. OGC-S-2015-07

Contract H48-17-0073

FACILITY:

Administrator/CEO
Roderick Diggs, MD
4201 Garth Rd. Ste 301
Baytown, TX 77521

with a copy to:

Director of Nursing

UNIVERSITY:

Provost
University of Houston
203 E. Cullen Building
Houston, Texas 77204

with a copy to:

Dean, College 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.

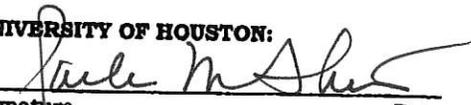
Form No. OGC-S-2015-07

Contract H48-17-0073

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:

 Signature _____ Date 5/15/17
 Printed Name: Roderick Diggs, MD
 Title: Administrator

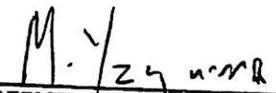
UNIVERSITY OF HOUSTON:

 Signature _____ Date _____
 Printed Name: Paula M. Short, PhD
 Title: Senior VC/VP for Academic Affairs and Provost

Signature _____ Date _____
 Printed Name: _____
 Title: _____

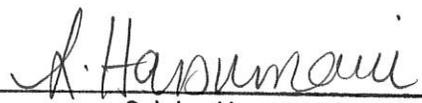

 Signature _____ Date 5-15-2017
 Printed Name: Kathryn Tart, RN, MSN, EdD
 Title: Dean, College of Nursing

Note: Modification of this Form requires approval of OGC

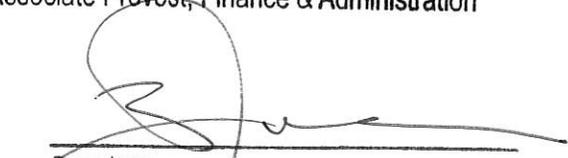
APPROVED AS TO FORM BY:



 OFFICE OF THE GENERAL COUNSEL
 UNIVERSITY OF HOUSTON SYSTEM



 Sabrina Hassumani
 Associate Provost, Finance & Administration



 Bruce Jones
 Vice Provost for Academic Programs
 & Interim Vice Provost and Dean of the Graduate School
 Office of the Provost

EXHIBIT A

An Addendum to the Affiliation Agreement

concerning

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

1. 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.