

A.T. Still University Provider Agreement for Clinical Experience Participation

This Agreement is entered into this _____, 2018 by and between A.T. Still University of Health Sciences "ATSU" by and through its School of Osteopathic Medicine in Arizona (SOMA) and School of Health Science in Arizona (SHSA) (collectively referred to herein as "UNIVERSITY") located at 5850 E. Still Circle, Mesa, AZ 85206, and the County of Tulare, by and through the Tulare County Health and Human Services Agency (PROVIDER), located at 520 E. Tulare Ave., Visalia, CA 93292 ("PROVIDER") (both UNIVERSITY and PROVIDER sometimes referred to herein individually as "Party" or collectively as "Parties").

Every notice required or contemplated by this Agreement by any Party may be delivered in person, by courier, fax email, express, certified or registered mail, addressed to the Party for whom it is intended, at the address specified below. Any Party may change its address by giving notice to the other Parties of the change.

Communication regarding this agreement shall be made to the Parties as follows:

To SOMA:

A.T. Still University
School of Osteopathic Medicine in Arizona
5850 E. Still Circle
Mesa, AZ 85206

Attention: Clinical Education Department

To PROVIDER:

County of Tulare
Health & Human Services Agency
520 E. Tulare Ave.
Visalia, CA 93292

Attention: Contracts Unit

To SHSA:

A.T. Still University
School of Health Science in Arizona
5850 E. Still Circle
Mesa, AZ 85206

Attention: Clinical Affairs

UNIVERSITY wishes to participate with PROVIDER in providing a clinical experience to its medical Students to increase familiarity with primary care/specialty rotations and assess as a future career choice and to increase clinical competency through observation and (hands on) experience (the "Clinical Experience").

IT IS MUTUALLY AGREED AS FOLLOWS:

1. Students. The Clinical Experience to be provided by PROVIDER for UNIVERSITY student(s) will be confirmed in writing, executed by SOMA and/or SHSA as designated in the "Letter of Good Standing for the Clinical Experience Student". The Students provided by UNIVERSITY are enrolled in the Clinical Experience Participation Program for educational purposes only, and are not considered employees or agents of PROVIDER or UNIVERSITY for any purpose, including, but not limited to, compensation for services, and welfare and pension benefits. Students will participate in the Clinical Experience Participation Program in exchange for course credit and/or externship hours, with the understanding that participation in the Program is not a guarantee of employment with the PROVIDER and does not confer any employment rights to the Students.

2. Placement and Qualifications. The Parties must agree to the Students' participation and either Party may remove any Student from the Clinical Experience program based upon perceived lack of competency on the part of the Student, the Student's failure to comply with the rules and policies of UNIVERSITY or the Clinical Experience program.

3. Administration, Coordination and Facilities. The PROVIDER shall provide an appropriate framework for the management and supervision of the Student and shall provide a staff member (as designated on the "Letter in Good Standing for the Clinical Experience Student") whose responsibility is to assist in the coordination and scheduling of the Clinical Experience program and who shall assist UNIVERSITY in performance evaluations of

the Student. The PROVIDER shall make available to the Student sufficient and adequate facilities for the program. To carry out the programs covered by this Agreement, the responsibility for selecting and designating competent personnel including program coordinators and staff will be assumed by the PROVIDER.

The PROVIDER shall be responsible for the supervision of Student. The immediate and direct supervision of all Students assigned to the PROVIDER and the various health and educational programs it operates is the responsibility of the PROVIDER and its professional staff. A responsible licensed physician, or other certified or licensed clinician or professional, shall be present when care is rendered at any time a Student is providing patient care or services in any form. The responsible licensed physician, or other certified or licensed clinicians or professionals, will review and authorize all such care and services performed by Students. Acceptable schedules and training assignments for the Student will be developed jointly to ensure non-interference with the primary mission of the PROVIDER. PROVIDER agrees to notify its staff of the obligations covered by and agreed to in this Agreement.

4. Liability Insurance.

a. UNIVERSITY acknowledges and agrees that it will be responsible for procuring and maintaining in force professional liability for each student participating in the program during the full period of any clinical experience with PROVIDER. Professional Liability Insurance shall be in amounts reasonably necessary to protect the student against liability arising from any and all negligent acts or incidents caused by the student. Coverage under such professional liability insurance shall not be less than \$1,000,000 for each occurrence and \$3,000,000 in the aggregate and general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such coverage is to be obtained from a carrier rated A or better by AM best. UNIVERSITY shall provide to PROVIDER evidence of professional liability insurance for each student participating in the program. Professional liability coverage provided by the University does not cover nor defend for malpractice events outside the United States.

b. Students participating in the program are not employees of PROVIDER and are not entitled to workers' compensation insurance from PROVIDER. UNIVERSITY agrees to provide Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than ~~\$1,000,000~~ \$500,000 per accident for bodily injury or disease. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the PROVIDER for recovery of damages to the extent these damages are covered by workers' compensation and employer's liability.

c. PROVIDER shall at all times maintain in full force and effect throughout the term of this Agreement: professional liability insurance in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate; general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and, workers' compensation insurance as required by law. It is understood that the insurance coverage required shall be a continuing obligation and condition of this Agreement.

5. Indemnification. UNIVERSITY shall hold harmless, defend and indemnify PROVIDER, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including PROVIDER's property, arising from, or in connection with, the performance by UNIVERSITY or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against the PROVIDER by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against PROVIDER alleging Civil Rights violations by UNIVERSITY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on PROVIDER for UNIVERSITY's failure to provide FORM DE-542, when applicable.

PROVIDER shall hold harmless, defend and indemnify UNIVERSITY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including UNIVERSITY's property, arising from, or in connection with, the performance by the PROVIDER or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that maybe made against UNIVERSITY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against UNIVERSITY alleging Civil Rights violations by UNIVERSITY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on PROVIDER for UNIVERSITY'S failure to provide FORM DE-542, when applicable.

6. Term; Termination; and Modification. This agreement is effective upon execution and will continue in effect until June 30, 2021. Any party may terminate this agreement without cause at any time by giving ninety (90) days' prior written notice, *provided however*; Students on rotation at the time of termination shall be given an opportunity to complete their rotation unless Student(s) has been removed pursuant to section 2. All amendments or modifications of this Agreement must be in writing and signed by an authorized officer or representative of each Party.

7. Delegation. PROVIDER shall not delegate to persons or entities not affiliated with PROVIDER all or any part of the work to be performed under this Agreement unless the persons or entities are able to fulfill the obligations under this Agreement. In instances where PROVIDER delegates its duties under this Agreement to persons or entities not affiliated with PROVIDER, such delegate shall be an agent of PROVIDER.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and cancels all previous negotiations, agreements, representations, commitments, understandings, and writings and be binding by the Parties.

9. Severability. If any of the provisions or portions of this Agreement are invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted. Otherwise, the remaining part or parts of this Agreement shall be enforced and fully performed.

10. Relationship of the Parties. Nothing contained shall be deemed or construed as creating the relationship of principal and agent, partnership or joint venture between the Parties. This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, landlord/tenant, or association between the UNIVERSITY and the PROVIDER and their employees, Students, or agents, but rather is an Agreement by and between two independent parties. Each Student that is placed with the PROVIDER as part of the Clinical Experience Participation Program is receiving education as part of his/her academic curriculum. Duties performed by a Student are not performed as an employee of PROVIDER but rather in fulfillment of the academic requirements of his/her educational experience and are performed under field supervision by PROVIDER personnel. UNIVERSITY acknowledges that nothing in this Agreement shall be construed to confer any right upon the UNIVERSITY or UNIVERSITY Personnel to participate in, control, or direct operations at the PROVIDER. As UNIVERSITY is not PROVIDER's employee, UNIVERSITY is responsible for paying all required state and federal taxes for its employees. In particular, PROVIDER will not

- a. Withhold FICA (Social Security) from UNIVERSITY'S payments.
- b. Make state or federal unemployment insurance contributions on UNIVERSITY'S behalf.
- c. Withhold state or federal income tax from payments to UNIVERSITY.
- d. Make disability insurance contributions on behalf of UNIVERSITY.
- e. Obtain unemployment compensation insurance on behalf of UNIVERSITY

Notwithstanding this independent contractor relationship, PROVIDER shall have the right to monitor and evaluate the performance of UNIVERSITY to ensure compliance with this Agreement.

11. Waiver. Failure of UNIVERSITY or PROVIDER to enforce any provision of this Agreement shall not constitute a waiver of such provision, and continuing waiver.

12. Governing Law. This Agreement is entered into and shall be governed and construed in accordance with the laws of the State of California.

13. Compliance With Law: UNIVERSITY must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to UNIVERSITY'S employees, UNIVERSITY must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

14. Records And Audit: UNIVERSITY must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, UNIVERSITY must maintain complete

and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, UNIVERSITY must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.

15. Conflict Of Interest:

(a) At all times during the performance of this Agreement, UNIVERSITY must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests; including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including UNIVERSITY for this purpose, from making any decision on behalf of PROVIDER in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any PROVIDER decision that has the potential to confer any pecuniary benefit on UNIVERSITY or any business firm in which UNIVERSITY has an interest, with certain narrow exceptions.

(b) UNIVERSITY agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform PROVIDER and provide all information needed for resolution of this question.

16. Further Assurances: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

17. Construction: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

18. Headings: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

19. No Third-Party Beneficiaries Intended: Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

20. Nondiscrimination; HIPAA; and FERPA. The Parties agree to comply with all laws, rules and regulations of Title VII of the Civil Rights Act, the Health Insurance Portability and Accountability Act and the Family Educational Rights and Privacy Act.

As trainees, and solely for the purposes provided in this section, Students shall be considered as members of PROVIDER's "workforce" as defined by the HIPAA regulations at 45 CFR § 160.103, and shall be subject to PROVIDER's policies protecting the confidentiality of personal health information, as well as any other confidential information that may arise out of performance of this agreement. PROVIDER shall provide Students with substantially the same training that it provides to its employees for such purposes.

21. Authority to Execute Contract. The persons executing this Agreement represent and warrant that they have the full power and authority to enter on behalf of the entities for which they are signing. The Parties have entered into this Agreement to be effective on the date first above written.

22. Compensation: There are no fees or compensation associated with this agreement.

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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

ATSU-UNIVERSITY

By: 

Printed Name: Norman Gevitz, PhD.

Title: Senior VP-Academic Affairs

5850 E. Still Circle
Mesa, AZ 85206 (ATSU-UNIVERSITY)

800 W. Jefferson St.,
Kirksville, MO 63501 (ATSU-KCOM)

PROVIDER

By: _____

Printed Name: J. Steven Worthley

Title: Chairman, Board of Supervisors

ATTEST: MICHAEL C. SPATA
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By: _____

Deputy Clerk

Approved as to Form
County Counsel

By: 

Deputy

Matter #

2018483