

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF TULARE
AND
FRESNO PACIFIC UNIVERSITY**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into between the County of Tulare, Health and Human Services Agency (hereinafter called COUNTY) and Fresno Pacific University (hereinafter called UNIVERSITY), a California non-profit religious corporation, to provide field placement of Master of Science in Nursing Nurse Practitioner Program as interns in the nursing field. This MOU will establish and/or ratify existing relationships and procedures between these parties effective the date of execution.

WHEREAS, the UNIVERSITY has established approved programs of special training for a Master of Science in Nursing Nurse Practitioner Program, hereinafter referred to as "the Program"; and

WHEREAS, the Program requires facilities where students can obtain the learning experience required in the curriculum; and

WHEREAS, the COUNTY has the setting and equipment needed by the Program trainees as part of their practical learning experience; and

WHEREAS, it is to the mutual benefit of the parties hereto that students have opportunities to use the facilities of the COUNTY for their learning experience.

ACCORDINGLY, IT IS AGREED:

- I. **PURPOSE:** The purpose of this MOU is to establish procedural guidelines authorized by the COUNTY and by the UNIVERSITY to provide each UNIVERSITY student assigned to COUNTY as mutually agreed by both parties with information about the field education component of the curriculum and the responsibilities of each participant in field education.
- II. **POPULATION TO BE SERVED:** The COUNTY intends to establish an Internship Program for nursing students to be a collaborative project with the UNIVERSITY to provide the field education component of the curriculum for the UNIVERSITY.
- III. Recognizing that the specific nature of the Field Practicum experience may vary, it is agreed by the COUNTY and the UNIVERSITY, upon execution of this MOU and within the scope of its provisions, the parties will meet and confer on the nature of practical experience to formalize operational detail of the Field Practicum. All parties will sign and adhere to any Departmental Letter Agreements developed to implement this MOU (See Exhibit A attached).
- IV. **FINGERPRINTING:** Students must submit to live-scan fingerprinting as part of a criminal history check, which will be provided to students by the COUNTY. The UNIVERSITY student's participation in the Internship Program will be contingent upon the criminal history/ Live Scan results. Convictions will be assessed by Human Resources and Development for relatedness to the Internship Program.

Students with criminal convictions may be still be accepted into the program if there are mitigating circumstances or if the conviction is not related to the field practicum.

- V. **DATA COLLECTION:** The UNIVERSITY students will need to read and sign the data collection packet forms for Tulare County Health and Human Services Agency. The UNIVERSITY students are expected to abide by the policies while partaking in the internship program.

Data Collection Packet will consist of:

Personnel Rule 14: Equal Employment/Discrimination/Sexual Harassment Policy

Personnel Rule 20: Dress Code

Personnel Rule 21: Drug Free Workplace

Health & Human Services Agency HIPAA Sanction Policy

Health & Human Services Agency Confidentiality

County of Tulare Policy on violence and threats of violence in the workplace & safety in the workplace policy & code of safe practices

County of Tulare summary of the information technology (IT) security policy

Tulare County Health & Human Services Agency Mandated Reporting.

- VI. **WORKSTATION:** The COUNTY will provide facilities as presently available and as necessary for the development and maintenance of a program student. This MOU is a complete statement of the responsibilities and commitment of both parties to the COUNTY work training by the UNIVERSITY students.
- VII. **FIELD PRACTICUM INSTRUCTOR:** The COUNTY will designate a qualified individual to coordinate each student's learning experience in the Program.
- VIII. **STUDENT SUPERVISION:** COUNTY shall permit students to perform services for clients only when under the supervision of a professional on COUNTY's staff. Such clinicians or professionals are to be certified or licensed in the discipline in which supervision is provided. Students shall assist staff, perform assignments, and participate in research, etc. Students are to be regarded as student interns, not employees, and are not to replace the COUNTY's staff. There will be no expectation of employment by the COUNTY after completion by the student of the Internship Program.
- IX. **GROUNDS FOR REMOVAL:** COUNTY may request that UNIVERSITY remove from the Internship Program any student whose performance after appropriate instruction and counseling continues to fall below the level required to maintain appropriate practice standards, or whose conduct inhibits desirable relationships

COUNTY has with the public or other agencies, or who fails to follow COUNTY's administrative policies, procedures, rules, and regulations. UNIVERSITY agrees to immediately remove such students at COUNTY's request.

- X. TERM: This MOU will commence upon signature and will remain in effect until June 30, 2022, unless otherwise terminated as provided in this MOU.
- XI. NON EMPLOYEE STATUS: The parties expressly understand and agree that the students enrolled in the Program are in attendance for educational purposes, and such students are not considered employees of either COUNTY or UNIVERSITY for any purpose, including, but not limited to, compensation for services, workers' compensation or welfare and pension benefits. In addition, participation in the Internship Program is not a guarantee of employment with the COUNTY and does not confer any employment rights to the student interns.
- XII. This MOU 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 COUNTY and their employees, students, or agents, but rather is an MOU by and between two independent parties. Each student that is placed with the COUNTY as part of the Internship Program is receiving education as part of his/her academic curriculum. Duties performed by a student are not performed as an employee of COUNTY but rather in fulfillment of the academic requirements of his/her educational experience and are performed under field supervision by COUNTY personnel. UNIVERSITY acknowledges that nothing in this MOU shall be construed to confer any right upon the UNIVERSITY or UNIVERSITY Personnel to participate in, control, or direct operations at the COUNTY. As UNIVERSITY is not COUNTY's employee, UNIVERSITY is responsible for paying all required state and federal taxes for its employees. In particular, COUNTY will not
 - a. Make state or federal unemployment insurance contributions on UNIVERSITY'S behalf.
 - b. Make disability insurance contributions on behalf of UNIVERSITY.
 - c. Obtain unemployment compensation insurance on behalf of UNIVERSITY.
- XIII. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of UNIVERSITY to assure compliance with this MOU.
- XIV. COMPLIANCE WITH LAW: UNIVERSITY shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to UNIVERSITY'S employees, UNIVERSITY shall 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.
- XV. AMENDMENTS: Amendments or modifications to the terms of this MOU must be made in writing and approved by all parties hereto, in order to maintain compliance

with changes pursuant to federal or state laws, regulations, or policies affecting MOUs rulings, pertinent regulations, or funding.

- XVI. **RECORDS AND AUDIT:** UNIVERSITY shall maintain complete and accurate records with respect to the services rendered under this MOU. In addition, UNIVERSITY shall maintain complete and accurate records with respect to any employees or subcontractors performing work under this MOU. All such records shall be prepared in accordance with generally accepted accounting and/or record keeping procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, UNIVERSITY shall make such records available within Tulare County to the COUNTY or its designee, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of expiration or termination under this MOU.
- XVII. **INSURANCE:** Prior to approval of this MOU by the COUNTY, Contractor shall file with the Clerk of the Board of Supervisors, evidence of the insurance as set forth in Exhibit B attached, which outlines the minimum scope, specifications and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in Exhibit B shall not be used to reduce limits available to County as an additional insured from the Contractor's full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer (s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of this Agreement.
- XVIII. **STUDENT WORKERS' COMPENSATION INSURANCE:** Students participating in the internship program are not employees of COUNTY and are not entitled to workers' compensation insurance from COUNTY. UNIVERSITY agrees to provide workers' compensation insurance in accordance with the EXHIBIT B for any injury or disease arising out of STUDENTS' participation in the Nurse Practitioner Program.
- XIX. **STUDENT PROFESSIONAL LIABILITY INSURANCE:** UNIVERSITY acknowledges and agrees that it will be responsible for procuring and maintaining, in force, professional liability insurance for each STUDENT participating in the program during the full period of any internship with COUNTY 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 \$1,000,000 in the aggregate. Coverage is to be obtained from a carrier rated A or better by AM Best and UNIVERSITY shall provide to COUNTY evidence of such insurance prior to STUDENT'S participation in the program.
- XX. **INDEMNIFICATION:** The UNIVERSITY shall hold harmless, defend and indemnify COUNTY, 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 COUNTY property, arising from, or in

connection with, the performance by the UNIVERSITY or its agents, officers and employees under this MOU. This indemnification obligation shall continue beyond the term of this MOU as to any acts or omissions occurring under this MOU or any extension of this MOU.

XXI. The COUNTY 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 property, arising from, or in connection with, the performance by the COUNTY or its agents, officers and employees under this MOU. This indemnification obligation shall continue beyond the term of this MOU as to any acts or omissions occurring under this MOU or any extension of this MOU.

XXII. TERMINATION:

(a). Without Cause: Either party will have the right to terminate this MOU without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination.

(b). With Cause: This MOU may be terminated immediately by either party should the other party:

- (1) be adjudged or bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this MOU, or
- (5) materially breach this MOU.

In addition, COUNTY may terminate this MOU based on:

- (6) Material misrepresentation, either by UNIVERSITY or anyone acting On UNIVERSITY'S behalf, as to any matter related in any way to this MOU or the Internship Program, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impairs the ability of UNIVERSITY to competently provide the services under this MOU, or exposes the COUNTY to an unreasonable risk of liability.

(c). Effects of Termination: Expiration or termination of this MOU shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the MOU, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where UNIVERSITY'S services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the UNIVERSITY.

(d). Suspension of Performance: Independent of any right to terminate this MOU, the authorized representative of COUNTY for which

UNIVERSITY's services are to be performed, may immediately suspend performance by UNIVERSITY or participation by student in the Internship Program, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by UNIVERSITY to comply with the provisions of this MOU, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

- XXIII. NOTICES: Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

TULARE COUNTY HEALTH & HUMAN SERVICES AGENCY
CONTRACTS UNIT
5957 S. MOONEY BLVD
VISALIA, CA 93291
Phone No. (559) 624-8000
Fax No. (559) 737-4059

FRESNO PACIFIC UNIVERSITY:

NURSING DEPARTMENT
5 RIVER PARK WEST STE 303
FRESNO, CA 93720
Phone No.: (559) 573-7835
FAX NO.: (559) 453-5558

- XXIV. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this MOU, COUNTY is relying on the personal skill, expertise; training and experience of UNIVERSITY employees and no part of this MOU may be assigned or subcontracted by UNIVERSITY.
- XXV. DISPUTE RESOLUTION: If a dispute arises out of or relating to this MOU, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties; otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.
- XXVI. 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 MOU.
- XXVII. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this MOU do not intend to provide any other party, including the students

participating in the Internship Program, with any benefit or enforceable legal or equitable right or remedy.

XXVIII. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY: This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit or the MOU to either party is lost, the MOU may be terminated at the option of the affected party. In all other cases the remainder of the MOU shall continue in full force and effect.

XXIX. ASSURANCES OF NON-DISCRIMINATION: UNIVERSITY shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

- (a). It is recognized that both the UNIVERSITY and the COUNTY have the responsibility to protect the County employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace.
- (b). Accordingly, UNIVERSITY agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities.
- (c). The County in its sole discretion, has the right to require UNIVERSITY to replace any employee who provides services of any kind to County pursuant to this MOU with other employees where County is concerned that its employees or clients may have been or may be subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this MOU with or without cause as provided for herein.

XXX. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):

- (a). UNIVERSITY shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate exhibit, as set forth in EXHIBIT C attached.
- (b). At termination of this MOU, UNIVERSITY shall, if feasible, return or destroy all protected health information received from, or created or received by, UNIVERSITY on behalf of COUNTY that UNIVERSITY still maintains in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protection of this MOU to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information feasible.

(c). COUNTY may immediately terminate this MOU if COUNTY determines that UNIVERSITY has violated a material term of this provision.

- XXXI. GOVERNING LAW: This MOU shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.
- XXXII. CULTURAL COMPETENCE AND DIVERSITY: UNIVERSITY shall comply with the Cultural Competence exhibit, as set forth in EXHIBIT D attached.

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

COUNTY OF TULARE

Date: 4-2-19 BY *Kyle Cochran*
Chairman, Board of Supervisors

ATTEST: Jason T. Britt
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By *Mercedes Lomas*
Deputy Clerk



FRESNO PACIFIC UNIVERSITY

Date: 7 Mar 19 By *Robert Lippard*
CFO

Approved as to Form
County Counsel

By *JMG for den*
Deputy 20171948

Date 3/19/19

Exhibit A

Services

FY 2018/2019-2020/2021

Contractor: Fresno Pacific University

i. Role of Contractor

- a. Designate the students who are enrolled in the Program of the Contractor to be assigned for field experience at the County, in such numbers as are mutually agreed to by both parties.
- b. Establish a rotational plan for the field experience by mutual agreement between the County's Coordinator and the Contractor's Coordinator or their duly authorized representative(s).
- c. Supervise all instruction and field experience given at the County to the assigned students and provide the necessary instructors for the field experience program provided for under this agreement.
- d. Keep all attendance and academic records of students participating in said program. The trustees, through the Contractor, shall allow County access to its records upon 24 hour prior written notice, for review of such records to ensure compliance with County policies, procedures, regulations, requirements and restrictions pertaining to this County.
- e. Certify to County at the time each student first reports at County to participate in said program that said student will comply with the Health Plan for Students.
- f. Advise students to be professional in conduct and activities while at the County. Require every student to conform to all applicable County policies, procedures, and regulations, and all requirements and restrictions specified jointly by representatives of the Contractor and County.
- g. Require Contractor's instructors to notify County's assigned staff in advance of:
 1. Student schedules
 2. Placement of students in field assignments.
 3. Changes in field assignments.

The particular activities and assignments of the Interns shall be subject to the discretion of the County and may be based upon the availability of County

Personnel or such other criteria as the County may determine; provided however; that such activities shall afford the Intern the opportunity to meet the objectives contained in the Program Description.

- h. In consultation and coordination with the County's staff arrange for periodic conferences between appropriate representatives of the Contractor and County to evaluate the field experience of the program.
- i. Provide and be responsible for the care and control of the Contractor's education supplies, materials, and equipment used for instruction during said program.
- j. Distribute to each student, a statement which explains the hazards of drug abuse in the profession.
- k. The Contractor understands that internship experience hours are allotted based on need and the County cannot guarantee availability for hours with specific treatment/specialties. The Contractor will communicate this with their students, and that the County is not responsible for any deadlines or hours which are imposed on the students.

II. Role of the County

- a. Permit each student who is designated by the Contractor pursuant to Paragraph I.A above to receive field experience at the County and furnish and permit such students and Contractor's instructors' free access to appropriate field facilities for such field experience;
- b. Furnish appropriate facilities, in such a manner that there will be no conflicts in the use thereof between the Contractor's students and students from other educational Contractors, if any.
- c. Maintain the County facilities used for the field experience in such a manner that said facilities shall conform to all requirements of applicable State Board(s), and/or Business and Professions Codes.
- d. Assure a nurse to student ratio of 1 to 1, so that staff is adequate in number and quality to insure safe and continuous management of the student program in cooperation with the field coordinator.
- e. Provide instructors and students taking part in the field experience, based on availability, the following:
 - 1. A conference-type space suitably furnished for small groups.
 - 2. A storage area for instructional materials
 - 3. Access for each instructor to the medical library.
 - 4. A lecture room equipped with desks and chairs.
 - 5. Field transportation, if appropriate.
 - 6. Lockers for each instructor.
 - 7. Other incidentals that may be mutually agreeable

- f. Provide emergency first aid for any student who becomes sick or injured by conditions arising out of or in the course of said student's participation in the field experience at the County, and providing prompt notification to the Contractor. Students will be responsible for all related cost of emergency care.
- g. Permit and encourage members of the resident staff and attending medical staff of the County to participate in the instructional phase of the field experience.
- h. Permit the County's designated personnel to attend meetings of the Contractor's Faculty, or any committee thereof, to coordinate the field experience program provided for under this agreement.
- i. Have the right after consultation with the Contractor, to refuse to accept for further field experience any of the Contractor's students who in the County's judgment, are not participating satisfactorily.

Exhibit B

PROFESSIONAL SERVICES CONTRACTS **INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. 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 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the county by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*

d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to the COUNTY.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CONTRACTOR, and represent the following:

(mark X if applicable)

Automobile Exemption: I certify that _____ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

Workers' Compensation Exemption: I certify that _____ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name Robert Lippert Date: 7 Mar 19

Contractor Name Fresno Pacific University

Signature Robert Lippert

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

This Exhibit shall constitute the Business Associate Agreement (the "Exhibit") between Contractor, (the "Business Associate") and the County of Tulare (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Agreement (as defined below).

Business Associate acknowledges and agrees that all Protected Health Information ("PHI") that is created or received by Covered Entity and disclosed or made available in any form, including but not limited to 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.

1. Purpose. This Exhibit is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to PHI (as defined below) that the Business Associate may create, receive, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity. Such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act") and amendments to include HIPAA's Administrative Simplification provisions.

2. Regulatory References. All references to regulatory Sections, Parts and Subparts in this Exhibit are to Title 45 of the Code of Federal Regulations, parts 160 and 164 (the "HIPAA Privacy Rule" and the "HIPAA Security Rule") as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. Definitions. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings ascribed in the HIPAA Regulations; provided that PHI shall mean Protected Health Information, as defined in 45 C.F.R. section 160.103, limited to the Protected Health Information Business Associate received from, created, or received on behalf of Covered Entity as its Business Associate.

4. Obligations and Activities of Business Associate.

Business Associate agrees to:

- a. Acknowledge that it is required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, including the Security Rule's Administrative, Physical and Technical safeguard requirements and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.
- b. Not use or further disclose PHI other than as permitted or required by this Exhibit, or as required by law.
 1. Use appropriate safeguards to maintain the security, including compliance with Subpart C of 45 CFR Part 164, with respect to electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.
 2. To the extent practicable, Business Associate will secure all PHI by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.
- c. Report breach disclosures immediately to Covered Entity. Business associate: 1) shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement on the first day the Business Associate knows or should have known about it; 2) notify the Covered Entity of any and all breaches of PHI, and provide detailed information to the Covered Entity about the

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

breach, along with the names and contact information, when available, of all individuals whose PHI was involved. *(See Section 6 of this Exhibit for further detail.)* 3) agrees that such notification will meet the requirements of Section 13402 of the HITECH Act and § 164.410 of the amended HIPAA regulations.

- d. Enter into a written agreement with any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) if applicable. *(See Section 11 of this Exhibit for further detail.)*
- e. Make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to the Covered Entity or to the Secretary of the United States Department of Health and Human Services ("Secretary"), for purposes of determining Business Associate's compliance with the HIPAA Privacy Rule and Security Rule. *(See Section 12 of this Exhibit for further detail.)*
 - 1. Business Associate shall concurrently provide to the Covered Entity a copy of any PHI that Business Associate provides to the Secretary.
- f. Maintain and make available the information required to provide an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an account of disclosures of PHI in accordance with 45 CFR § 164.528.

5. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).
Unless otherwise limited in this Exhibit, Business Associate may:
- b. Use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered

Entity as necessary to perform the services described in Exhibit A to the Agreement, or as otherwise specified in the Master Exhibit, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

- c. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - d. Disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains the appropriate medical release from the person whose PHI is being disclosed and the person to whom the PHI is disclosed provides reasonable assurances in writing that the PHI will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - e. Use PHI to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).
- #### 6. Reporting Unauthorized Uses and Disclosures.
- a. Business Associate agrees to notify Covered Entity of any breach, or security incident involving PHI of which it becomes aware, including any access to, or use or disclosure of PHI not permitted by this Exhibit. Such notification will be made immediately after discovery and will include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the PHI involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

information that the Covered Entity is required to include in its notification to the individual under Section 164.404(c) at the time of the initial report or within three (3) days of the information becoming available.

- b. In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.
- c. A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.
- d. In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Exhibit, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Exhibit and the Agreement.

7. Mitigation of Harmful Effects.

- a. Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the following actions: breach, security incident, or unauthorized access, use or disclosure of PHI by Business Associate or its employees, officers, subcontractors, agents, or other representatives.
- b. Following the actions listed in Section 7(a) of this Exhibit, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.
- c. Except as required by law, Business Associate agrees that it will not inform any third party of a

breach or unauthorized access, use or disclosure of PHI without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

8. Indemnification.

Business Associate agrees to:

- a. Hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 7 of this Exhibit.
- b. Assume responsibility for any and all costs associated with the Covered Entity's notification of individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.
- c. Hold harmless, defend at its own expense and indemnify Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Exhibit or from any acts or omissions related to this Exhibit by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorney's fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

Indemnified Party shall survive the expiration or termination of the Agreement.

9. Individuals' Rights.

Business Associate agrees to:

- a. Provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under Section 164.524.
- b. Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an individual, and in the time and manner designated by the Covered Entity.
- c. Document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- d. Provide to Covered Entity or an individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 9(c) of this Exhibit, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- e. Comply with any restriction to the use or disclosure of PHI that Covered Entity agrees to in accordance with Section 164.522.

10. Obligations of Covered Entity.

Covered Entity shall:

- a. Provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.
- b. Provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

11. Agents and Subcontractors of Business Associate.

- a. Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Exhibit to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of PHI of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.
- b. Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

12. Audit, Inspection, and Enforcement.

- a. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.
- b. With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of PHI to determine compliance with the terms of this Exhibit. Business Associate shall promptly correct any violation of this Exhibit found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under the Agreement.

13. **Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

14. **Term and Termination.**

- a. The terms of this Exhibit shall remain in effect for the duration of all services provided by Business Associate under the Agreement and for so long as Business Associate remains in possession of any PHI received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all PHI.
- b. Upon termination of the Agreement, Business Associate shall recover any PHI relating to the Agreement and this Exhibit in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such PHI, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the PHI, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (2) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Agreement and this Exhibit shall be extended to any PHI for so long as Business Associate maintains such PHI, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.
- c. Covered Entity may immediately terminate the Agreement if it determines that Business

Associate has violated a material term of this Exhibit.

15. **Amendment.** The Parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Privacy and Security Rules and the HITECH Act.

16. **Lost Revenues; Penalties/Fines.**

- a. **Lost Revenues.** Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.
- b. **Penalties/Fines for Failure to Comply with HIPAA.** Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.
- c. **Penalties/Fines (other).** Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

17. **Entire Agreement.** This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

Revised 6/29/16/ SDF/ 2015418/ 930874_2

EXHIBIT "D"

CULTURAL COMPETENCE AND DIVERSITY

The CONTRACTOR is encouraged to support Tulare County Health and Human Services Agency in the journey to work effectively across and among all cultures. It is the desire of HHSA that services be sensitive to the diversity of the community served, including but not limited to ethnic, linguistic, sexual and cultural characteristics. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.

CONTRACTOR and COUNTY agree that:

- **Cultural competence** is the integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes used in appropriate cultural settings to increase the quality of services, thereby producing better outcomes. Competence in cross-cultural functioning means learning new patterns of behavior and effectively applying them in appropriate settings.

CONTRACTOR will strive to:

- Ensure that agents, employees or officers providing services are sensitive to the ethnic, linguistic, sexual and cultural diversity of the community served. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.
- Assure equal access for people with diverse cultural backgrounds and/or limited English proficiency. Limited English Proficiency includes literacy issues: those who cannot either read or write in any language.