

AGREEMENT FOR TRAINING FOR ACADEMIC PURPOSES

This Agreement is between **Alta Bates Summit Medical Center**, a California nonprofit public benefit corporation (hereafter "FACILITY") and **Chabot College** (hereinafter "SCHOOL") and is effective as of **July 1, 2010**.

RECITALS

- A. FACILITY is a general acute care hospital and is an affiliate of Sutter Health.
- B. SCHOOL has a nursing program ("Program") for its student(s), and this Program requires training at FACILITY so that the student(s) can fulfill an academic requirement.
- C. It is to the mutual benefit of the parties to this Agreement that student(s)/instructor(s) participating in SCHOOL's Program may use the FACILITY for academic purposes.

NOW, THEREFORE, the parties agree as follows:

1. GENERAL INFORMATION

A. Primary Contacts. Both parties shall designate primary contacts ("Primary Contact") respectively, who shall coordinate with each other in the planning, implementation and coordination of the Program to be provided to the student(s). There will be ongoing communications and periodic evaluation between the parties relating to changes or issues involving staff, curriculum, policies and/or procedures.

B. Preliminary Information. Both parties, before the beginning of the training, shall agree upon the location(s), the number and identity of the student(s) participating under this Agreement, and the period of time for each student's training.

C. Supervision. SCHOOL shall maintain responsibility for student activities and conduct while in the FACILITY, and shall maintain supervision over the Program (including all grading). However, FACILITY shall provide appropriate training, and shall retain all professional and administrative responsibility for the services rendered pursuant to this Agreement to the extent required to comply with Title 22 of the California Code of Regulations.

D. Faculty/Clinical Preceptors. SCHOOL shall provide instructor(s) to supervise all instruction and student activities for the Program in FACILITY except for any particular course(s) that use clinical preceptors. FACILITY shall provide qualified staff to supervise any particular course(s) requiring clinical preceptor(s).

E. Orientation. Student(s) and instructor(s) participating in the Program at FACILITY must attend an orientation performed by FACILITY prior to student and instructor assignment (or at least annually). The location and time for such orientation shall be mutually agreed upon by the Primary Contacts.

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F. Status of Students/Instructors. It is expressly agreed and understood by SCHOOL and FACILITY that student(s) and instructor(s) under this Program are in attendance for educational purposes, and such student(s) and instructor(s) are not considered employees of FACILITY for any purpose, including, but not limited to, compensation for services, employee welfare and pension benefits, or workers' compensation insurance.

G. Non-Discrimination. The parties agree that student(s) participating in the Program at FACILITY pursuant to this Agreement shall be selected without discrimination on account of race, color, religion, national origin, ancestry, disability, marital status, age, gender, sexual orientation, veteran status, medical condition (cancer related or genetic characteristic) as defined in section 12926 of the California Government Code, citizenship, or any other protected status. * see addendum

2. SCHOOL'S RESPONSIBILITIES

A. Student/Instructor Contact Information. SCHOOL shall complete and send to FACILITY information for each student and instructor enrolled in the Program, which shall include the student's/instructor's name, address and telephone number prior to the beginning of the planned training. FACILITY shall regard this information as confidential.

B. Schedule of Assignments. SCHOOL shall notify the FACILITY of its planned schedule of student assignments and/or any changes in student assignments, including the name of the student, level of academic preparation, and length and dates of training not less than five (5) working days prior to the planned training.

C. Records. SCHOOL shall maintain all attendance and academic records of the student(s) participating in the Program, and personnel records for its instructor(s), in accordance with all legal requirements.

D. Rules and Regulations. SCHOOL shall enforce rules and regulations governing the student(s) as mutually agreed upon by SCHOOL and FACILITY.

E. Health Policy. SCHOOL shall provide FACILITY, prior to a student's arrival at the FACILITY, with proof of immunity consistent with FACILITY employee health policy (attached hereto as Exhibit A) and notify the FACILITY if student is a known carrier of an infectious or communicable disease. If such information indicates that patient(s) of FACILITY would be placed at risk by the presence of a particular student, FACILITY reserves the right to refuse to allow such student to participate in the Program at FACILITY. Immunity documentation shall include at a minimum a TB screening, and vaccinations or titers for rubeola, rubella, varicella, Hepatitis B and influenza. TB screening (two step process) requires that each student has a negative PPD skin test, or, if known to be PPD positive, a negative chest x-ray, and no symptoms of TB. FACILITY is not financially responsible for providing these tests for student(s). FACILITY has the same requirements for any SCHOOL instructor(s) participating under this Agreement.

F. Student/Instructor Responsibilities. SCHOOL shall notify each student and instructor that he/she is responsible for:

- 1) Following the policies, procedures, rules and regulations of FACILITY, including the dress code of the FACILITY and the FACILITY's Identity Theft Prevention Program.
- 2) Arranging for his/her own transportation and living arrangements when not provided by SCHOOL.
- 3) Arranging for and assuming the cost of his/her own health insurance.
- 4) Assuming responsibility for care for his/her personal illness, necessary immunizations, tuberculin test, and initial drug screening.
- 5) Maintaining confidentiality of patient information. No student or instructor shall have access to or have the right to receive any medical record, except when necessary in the regular course of the experience. The discussion, transmission or narration in any form by student(s) or instructor(s) of any patient information of a personal nature, medical or otherwise, obtained in the regular course of the Program is forbidden except as a necessary part of the practical experience. Student(s) and instructor(s) shall use de-identified information only in any discussions with SCHOOL (or SCHOOL's employees or agents not participating as on-site instructors), unless the patient has first given express authorization using a form approved by FACILITY that complies with applicable state and federal law, including the Health Insurance Portability and Accountability Act ("HIPAA") and regulations thereunder. To preserve patient confidentiality, student(s) and instructor(s) shall not be permitted to use any cameras or camera cell phones in FACILITY.
- 6) Wearing photo ID name badges identifying him/herself as a student/instructor of the SCHOOL.
- 7) Notifying FACILITY management immediately of any perceived or suspected violation of federal or State law at the FACILITY.
- 8) Participating in ward rounds, clinics, staff meetings and/or in-house educational programs as determined by SCHOOL and FACILITY.

G. Background Checks. FACILITY requires a lawful background check for each student and instructor before the planned training. FACILITY is not financially responsible for the background check. Details of the requirements for the background check are set forth in Exhibit B attached hereto. If any information obtained through the background check may indicate that patient(s) of FACILITY would be placed at risk by the presence of a particular student and/or instructor, FACILITY reserves the right to refuse to allow such student and/or instructor to participate in the Program at FACILITY

3. FACILITY'S RESPONSIBILITIES

A. Access to Facility. FACILITY shall allow student(s) and instructor(s) in the Program to access FACILITY as appropriate and necessary for the Program, provided that the student(s) or instructor(s) shall not interfere with FACILITY activities. FACILITY shall also provide space for conferences, as available, and access to FACILITY's Medical Resource Library during normal Library hours.

B. Emergency Health Care/First Aid. FACILITY shall provide to any student or instructor any necessary emergency health care or first aid for accidents or conditions arising out of or in the course of said student's or instructor's participation in the Program. Except as provided regarding such emergencies, FACILITY shall have no obligation to furnish medical or surgical care to any student or instructor. Student(s) and Instructor(s) will be financially responsible for all such care rendered in the same manner as any other patient.

4. CLINICAL TRAINING (IF APPLICABLE)

A. Training Capacity. If student(s) is participating in clinical training, student(s) shall perform in a training capacity only and shall not be used to treat patients in lieu of trained professionals employed by FACILITY. Student(s) shall perform services for patients only when under the supervision of a qualified FACILITY professional. FACILITY and SCHOOL shall coordinate all appropriate supervision.

B. Accreditation. FACILITY shall conform to the requirements of any appropriate accreditation agency overseeing the Program. Upon request, FACILITY shall permit the appropriate accreditation agency to make site visits to FACILITY to verify the instructional and academic experience of the SCHOOL's student(s).

5. INDEMNIFICATION

A. SCHOOL shall defend, indemnify and hold harmless FACILITY and its affiliates, parents and subsidiaries, and any of their respective directors, trustees, officers, agents, employees and volunteers from any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the SCHOOL, its officers, employees, agents, instructors or students.

B. FACILITY shall defend, indemnify and hold harmless SCHOOL, its officers, employees, agents and trainees from any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense,

attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the FACILITY, its officers, employees, or agents.

6. INSURANCE

A. SCHOOL shall procure and maintain during the term of this Agreement, at its sole cost and expense, commercial general liability insurance from an insurance company acceptable to FACILITY in an amount not less than One Million Dollars (\$1,000,000) for each occurrence and One Million Dollars (\$1,000,000) aggregate that protects it and FACILITY against liability arising from or incident to the use and operation of the FACILITY by the SCHOOL's student(s) or instructor(s).

B. If a student is participating in clinical training with direct patient care, SCHOOL shall procure and maintain during the term of this Agreement, at its sole cost and expense, professional liability insurance from an insurance company acceptable to FACILITY in an amount not less than One Million Dollars (\$1,000,000) for each occurrence and Three Million Dollars (\$3,000,000) aggregate that protects it and FACILITY against liability arising from or incident to the use and operation of the FACILITY by the SCHOOL's student(s) or instructor(s).

C. If any of the above-referenced insurance is made on a "claims-made" basis, and such coverage is later terminated or converted to an "occurrence" coverage (or vice versa), SCHOOL shall also acquire "prior acts" or "tail" coverage in the above amounts, covering all periods that this Agreement is or has been in effect, and for a period of three (3) years following termination of this Agreement.

D. The SCHOOL shall also maintain and provide evidence of workers' compensation for all of its employees (including instructors), and shall provide evidence of student accident insurance or health insurance for each student with benefits that are no less than \$10,000.

E. SCHOOL shall provide FACILITY, upon FACILITY's request, with proof of insurance evidencing the insurance coverage required under this section. SCHOOL shall also notify FACILITY within ten (10) days of any cancellation, reduction, or other material change in the amount or scope of any coverage required under this section.

7. TERM AND TERMINATION

A. Term/Renewal. This Agreement shall be effective as of the date first written above, and shall remain in effect for one (1) year. This Agreement may be renewed upon mutual written agreement of the parties.

B. Termination.

1) Mutual Agreement. This Agreement may be terminated at any time upon the written concurrence of the parties.

2) Without Cause. This Agreement may be terminated without cause with thirty (30) days' advance written notice by either party to the other party. Such termination shall not take effect, however, with regard to student(s) already enrolled until the student(s) has/have completed training for the SCHOOL semester during which such termination notice is given, unless such completion would cause an undue financial hardship on the FACILITY or the unit in which student is assigned ceases to operate.

C. Withdrawal of Student(s)/Instructor(s). FACILITY may request SCHOOL to withdraw from the Program any student or instructor whom FACILITY determines is not performing satisfactorily, or who refuses to follow FACILITY's policies, procedures, rules and/or regulations, or violates federal or State laws. FACILITY may also deny participation in the Program to any student in accordance with the provisions of California Labor Code sections 432.7 and 432.8. FACILITY reserves the right to suspend from participation immediately any student or instructor who poses an imminent danger of harm to patients or others. SCHOOL shall comply with any such request by FACILITY within twenty-four (24) hours, unless FACILITY agrees to a longer period of time.

8. CONFIDENTIALITY

A. General Confidentiality. This Section 8 is in addition to Section 2.F.5 of this Agreement. All parties shall protect the confidentiality of each other's records and information, and shall not disclose confidential information without the prior written consent of the other party. All patient records, reports and information obtained, generated or encountered relating to the training shall at all times be and remain the property of FACILITY.

B. Confidentiality Training. SCHOOL shall warrant to FACILITY that each student and instructor has received appropriate training in the student's/instructor's duty to maintain the confidentiality of patient and FACILITY proprietary information at all times, and to comply with all federal and California laws relating to the privacy of individually identifiable health information. Such laws and regulations include, without limitation, the Health Insurance Portability and Accountability Act of 1996, and its attendant regulations, as amended from time to time ("HIPAA"), the California Confidentiality of Medical Information Act, and the Federal Trade Commission's Red Flag Rules on Identity Theft Prevention. FACILITY reserves the right to provide appropriate confidentiality training to the student(s)/instructor(s), and to designate the student(s)/instructor(s) as members of FACILITY's workforce, as defined by HIPAA. Any student(s)/instructor(s) participating in the Program under this Agreement must execute a Confidentiality Agreement (a copy of the template is attached hereto as Exhibit C).

C. Patient Authorization. No FACILITY patient information may be disclosed to or shared with SCHOOL (or SCHOOL's employees or agents not participating as on-site instructors) during the course of the Program unless FACILITY has received express written

patient authorization. FACILITY shall reasonably assist SCHOOL in obtaining such authorization in appropriate circumstances. In the absence of such authorization, Students shall only use de-identified information (as defined by HIPAA) in any discussion with SCHOOL (or SCHOOL's employees or agents not participating as on-site instructors).

9. GENERAL PROVISIONS

A. Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties regarding SCHOOL's Program and use of FACILITY. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties.

B. Assignment/Binding on Successors. Neither party may assign its rights or delegate its duties without the express written approval of the other party, which shall not be unreasonably withheld. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns, except as otherwise provided in this Agreement.

C. Dispute Resolution. If the parties cannot resolve a dispute between them relating to this Agreement after using good faith efforts to resolve the dispute informally, the parties shall submit the dispute to binding arbitration in accordance with the then prevailing Rules of JAMS or such other organization as the parties mutually agree. The parties shall bear the arbitrator's fees and expenses equally. The arbitration shall take place in the county where FACILITY is located. Judgment upon the award may be entered and enforced in the appropriate state or federal court sitting in that same county.

D. Attorney's Fees. In the event that any action, including arbitration, is brought by either party to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to its costs and reasonable attorney's fees in accordance with California Civil Code §1717, in addition to such other relief as the court or arbitrator may deem appropriate.

E. Headings. The headings of sections in this Agreement are for reference only and are not to be construed in any way as part of this Agreement.

F. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument. A photocopy of the executed Agreement may be used as if it were the original Agreement.

G. Force Majeure. 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 or employment deemed resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes or other work

interruptions beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances.

H. Governing Law. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. Notices. All written notices to be given in connection with this Agreement shall be sufficient if sent by (a) facsimile (together with proof of transmission and provided a hard copy is mailed within one business day), (b) certified or registered mail, postage prepaid, or (c) national overnight delivery service addressed to the party entitled to receive such notice at the address specified by such party below:

ALTA BATES SUMMIT MEDICAL CENTER

Starla Dianda, RN
Director of Education
2450 Ashby Ave
Berkeley, CA 94705

CHABOT COLLEGE

Lorenzo Legaspi
Vice Chancellor, Business Services
Chabot-Las Positas Community College
5020 Franklin Drive
Pleasanton, CA 94588

J. Severability. In the event any portion of this Agreement is declared invalid or void by a court or arbitrator, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to alter substantially the agreement or the obligations of the parties, in which case this Agreement may be immediately terminated.

K. Waiver of Provisions. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking or condition. To be effective, a waiver must be in writing, signed and dated by the parties to this Agreement. A waiver of any term or condition hereof shall not be construed as a future waiver of the same or any other term or condition hereof.

L. Recitals and Exhibits. Any recital and/or exhibit attached hereto is hereby incorporated into this Agreement by this reference.

M. Compliance with Law and Regulatory Agencies. FACILITY and SCHOOL shall comply with all applicable provisions of law and other valid rules and regulations of all governmental agencies having jurisdiction over: (i) the operation of the FACILITY; (ii) the licensing of health care practitioners; and (iii) the delivery of services to patients of governmentally regulated third party payors whose members/beneficiaries receive care from FACILITY. This shall specifically include compliance with applicable provisions of Title 22 of the California Code of Regulations. SCHOOL shall also comply, and shall ensure its student(s) and instructor(s) comply, with all applicable standards and recommendations of The Joint Commission; the bylaws, policies and procedures of FACILITY; and the laws and regulations regarding services provided to patients covered by Medicare and/or Medi-Cal.

N. No Referrals. Nothing in this Agreement is intended to obligate and shall not obligate any party to this Agreement to refer patients to any other party.

O. No Third Party Beneficiaries. Unless otherwise set forth herein, nothing contained herein is intended nor shall be construed to create rights running to the benefit of third parties.

11. EXECUTION

By their signatures below, each of the following represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

FACILITY
Alta Bates Summit Medical Center

SCHOOL
Chabot College

By: _____
Starla Dianda, RN
Title: Director of Education
Date: _____

By: _____
Title: _____
Date: _____

EXHIBIT A

FACILITY EMPLOYEE HEALTH POLICY

Documentation for Infectious Disease Baseline Surveillance.

Please provide documentation of the following;

Immunity to:

Measles

Born before 1957 consider immune; or
Documentation of (2) Measles vaccine (MMR)
(+) titer

Mumps

Born before 1957 consider immune; or
Documentation of (2) Mumps vaccine (MMR)
(+) titer

Rubella

Born before 1957 consider immune or
(1) MMR vaccine or Rubella vaccine

Chickenpox (Varicella)

(+) titer or
Documentation of (2) Varivax vaccines

*TB surveillance - (2-step)
baseline*

PPD (-) within the last year and
PPD (-) within the last three (3) months

*If history of a (+) PPD, please provide documentation
of chest x-ray report within last 12 months and a
negative *symptom review*.*

TB surveillance – annual

TST (PPD) within the last twelve(12) months

*If history of a (+) PPD, please provide documentation
of a negative *symptom review*.*

If there is job risk for Blood Borne Pathogen exposure:

Provide documentation of Hepatitis B vaccine and immunity (+) titer// Hepatitis C (within the last 3 months) baseline.

If there is risk of Airborne or Droplet exposure (ATD- OSAHA 5199)- must enter AII room to care for patients- Baseline Med Eval/Clearance/Fit for ABSMC approved Respirator (N95) - 3M 1870 or Kimberly Clark - small/regular

Annual (within 12 months) eval/fit test

EXHIBIT B

BACKGROUND CHECK

Background Screening Requirements

SCHOOL is required to provide proof of a lawful background check for each student and instructor **at least fifteen (15) days** prior to the start of the training. FACILITY is not financially responsible for the background check. The background check shall include at a minimum:

- a drug and alcohol screening in accordance with FACILITY policy
- a social security number trace (used to identify additional names and or locations of residence)
- a county criminal background search in each county where the student has resided in the seven (7) years prior to the clinical experience
- a national registry search of violent sexual offenders and predators
- a sanction search of the Department of Health and Human Services, Office of Inspector General and General Services Administration, for listing as debarred, excluded or otherwise ineligible for federal program participation.

Proof of the health screen and an attestation of the satisfactory completion of the background checks shall be provided to the FACILITY Primary Contact, electronically or via facsimile, no less than **fifteen (15) days** prior to student/instructor participation in the Program.

Drug Screening will search for, at a minimum:

- Cocaine
- Barbiturates
- Amphetamines
- Cannabinoids
- Opiates
- Benzodiazepines
- Phencyclidine

Preferred Background Check Vendor:

- **Corporate Screening: www.CorporateScreening.com / www.VerifyStudents.com**

EXHIBIT C

CONFIDENTIALITY AGREEMENT

As part of my participation in an educational program ("Program") at a facility affiliated with Sutter Health ("Facility"), I may have access to protected health information ("PHI"), personnel information, and proprietary business information (collectively referred to as "Confidential Information") that may not be disclosed except as permitted or required by law and by Facility policies and procedures. I understand that I am committed to protect and safeguard from disclosure all Confidential Information regardless of the type of media on which it is stored (e.g. paper, micro-fiche, voice tape, computer system). I agree that I will not disclose any Confidential Information from any record or information system to any unauthorized person.

I understand that:

- I am obligated to hold Confidential Information in the strictest confidence and not to disclose such information to any person or in any manner which is inconsistent with applicable law or the policies and procedures of Facility.
- I acknowledge that I may not review any Confidential Information of a friend, relative, staff member, volunteer or any other person unless I am required to do so as part of my official duties. I will not discuss or allow to be displayed Confidential Information of any type in the proximity of any individual who does not have the right to know. This includes conversations in public places, allowing computer screens to be inappropriately visible, and leaving printed material where it may be openly viewed.
- All Confidential Information obtained from Facility systems remains the property of Facility regardless of physical location or method of storage unless otherwise specified by Facility in writing.
- If I believe that information confidentiality or security may be compromised in any way, either intentional or accidental, I shall contact my direct supervisor and/or the Facility Privacy Officer or Compliance Officer.
- My confidentiality obligation continues indefinitely, including after my participation in the Program at Facility has ended.

Access, attempted access, or release of Confidential Information without the right and need to know for successful completion of Program duties will be considered a breach of confidentiality. I understand that if I breach the confidentiality of information to which I have access, I may be committing an illegal and/or unprofessional act. This may be grounds for immediate disciplinary action up to and including termination of my participation in the Program at Facility, and/or legal action.

My signature below acknowledges that I agree to abide by the terms of this agreement.

Printed Name: _____ Date: _____

Signature: _____

Agreement between Alta Bates Summitt Medical Center
and
Chabot College

ADDENDUM TO
1G: Non-Discrimination

Add: "The Contractor also agrees to comply with all applicable federal and state laws and regulations, and policies of its Governing Board relating to non-discrimination."

BUSINESS ASSOCIATE AGREEMENT

Alta Bates Summit Medical Center, a California nonprofit public benefit corporation ("Covered Entity"), and Chabot College ("Business Associate"), hereby enter into this Business Associate Agreement, effective July 1, 2010.

Recitals

- A. The parties desire to comply with federal and California laws regarding the use and disclosure of individually identifiable health information, in particular with the provisions of the federal Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH), and regulations promulgated under these laws.
- B. The parties have accordingly agreed to enter into the following terms and conditions.

Agreement

Now therefore, in consideration of the promises set forth herein, the parties agree as follows:

1. Definitions. The parties agree that any capitalized terms shall have the same definition as given to them under HIPAA and HITECH and regulations promulgated under these laws.
2. Protected Health Information. Business Associate agrees that it shall keep confidential all Individually Identifiable Health Information protected under California and federal law, including, but not limited to, Protected Health Information that Business Associate receives from Covered Entity, or creates or receives on behalf of Covered Entity (hereafter "PHI"). Such PHI shall be and remain the property of Covered Entity.
3. Obligations of Business Associate. Business Associate shall limit its use and disclosure of PHI only as necessary and appropriate to fulfill its specific obligations to Covered Entity, and agrees to the following, without limiting the foregoing:
 - 3.1. Use of PHI: Business Associate agrees that it, and its agents, employees and subcontractors, shall:
 - (a) Not use or disclose PHI in a manner that would violate applicable law regarding the confidentiality of PHI; and
 - (b) To the extent feasible, minimize any Access, Use or Disclosure of PHI while performing obligations under this Agreement.
 - 3.2. Safeguards: Business Associate shall implement and use Administrative Safeguards as required by 45 C.F.R. Section 164.308, Physical Safeguards as required by 45 C.F.R. Section 164.310, and Technical Safeguards as required by 45 C.F.R. Section 164.312 that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI, including Electronic PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall also comply with the policies and

procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316.

- 3.3. Reporting: Business Associate shall report to the Privacy Officer of Covered Entity any Breach of PHI by Business Associate, its agents or subcontractors within 5 calendar days of Discovery. Reports shall include, to the extent possible: A description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known; A description of the types of Unsecured PHI that were involved in the Breach; Any steps individuals should take to protect themselves from potential harm resulting from the Breach; and a description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches. Business Associate shall also promptly report in electronic form to the Security Officer of Covered Entity any Security Incident relating to Electronic PHI of which Business Associate becomes aware.

- 3.4. Workforce and Agents: Business Associate represents and warrants that it shall not disclose PHI to any member of its workforce, or to any of its agents or subcontractors, unless such person has a need to know the PHI. Business Associate shall also ensure that the requirements of this Agreement are incorporated into each agreement with any agent or subcontractor to whom Business Associate discloses PHI, and that each such agent and/or subcontractor shall agree in writing to be bound to the same terms and conditions that apply to Business Associate with respect to PHI. In addition, Business Associate shall ensure that any agent or subcontractor to whom Business Associate discloses PHI shall implement reasonable and appropriate safeguards to protect the PHI. Business Associate shall not disclose any PHI to any agent or subcontractor that is located outside of the United States of America without the express written consent of Covered Entity.

- 3.5. Access to PHI: Upon the request by Covered Entity, Business Associate shall promptly provide PHI to Covered Entity to permit any individual whose PHI is maintained by Business Associate to have access to and to copy his/her PHI in accordance with 45 C.F.R. §164.524 and applicable California law. Such PHI shall be produced in the format requested by Covered Entity, unless it is not readily producible in such format, in which case it shall be produced in hard copy format. If an individual contacts Business Associate directly for such access, Business Associate shall direct the individual to contact the Covered Entity. This requirement to provide access to the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

- 3.6. Amendment of PHI: Upon the request of Covered Entity, Business Associate shall amend PHI and/or make PHI available to Covered Entity for amendment, in such manner as Covered Entity may from time to time request, in accordance with 45 C.F.R. §164.526 and applicable California law. If an individual contacts Business Associate directly to amend PHI, Business

Associate shall direct the individual to contact the Covered Entity. This requirement to amend the PHI shall only apply if the PHI in Business Associate's possession is part of the Covered Entity's Designated Record Set.

- 3.7. Accounting of Disclosures of PHI: Upon the request of Covered Entity, Business Associate shall provide to Covered Entity an accounting of all disclosures of PHI in order for Covered Entity to comply with 45 C.F.R. §164.528, the HITECH Act and regulations promulgated thereunder. Business Associate shall provide the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure. If an individual contacts Business Associate directly for such an accounting, Business Associate shall direct the individual to contact the Covered Entity.
- 3.8. Restrictions on Disclosures of PHI: Business Associate shall not disclose PHI to a Health Plan for Payment or Health Care Operations if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.
- 3.9. Limited Data Set and Minimum Necessary: Business Associate and its agents or subcontractors shall request from Covered Entity and so use and disclose only the Limited Data Set or, if needed by Business Associate, the Minimum Necessary PHI necessary to accomplish the purpose of the request, use, or disclosure. In all cases, Business Associate agrees to comply with guidance issued from time to time by the Secretary of Health and Human Services regarding Minimum Necessary.
- 3.10. Prohibition on Sale of PHI and use of PHI for Marketing: Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI, except with prior written consent of Covered Entity and in accordance with patient authorization requirements at 45 C.F.R. 164.508. Business Associate may only use or disclose PHI for Fundraising or Marketing purposes in compliance with HIPAA, HITECH Act and California Law.
- 3.11. Audits and Inspections: Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as defined under this Agreement, available to the Secretary of the United States Department of Health and Human Services ("Secretary"), or the Secretary's designee, for purposes of determining the Covered Entity's and Business Associate's compliance with the applicable laws and regulations. Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of PHI available to Covered Entity for purposes of determining Business Associate's compliance with this Agreement.
- 3.12. Identity Theft Red Flags: To the extent Business Associate performs a service or activity on behalf of Covered Entity in connection with a covered account (as defined by 16 C.F.R. Part 681.1(b)(3)), Business Associate will perform

the service or activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft (as defined in 16 CFR 603.2(a)).

3.13 Mitigation Procedures: Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI in violation of this Agreement.

3.14 Indemnification: Each party agrees to indemnify and defend, and hold harmless the other party, and any of its officers, directors, attorneys, agents or employees, from all claims, costs (including costs of settlement and attorneys' fees), losses, damages, liabilities and penalties arising from or connected with the breach by the indemnifying party or any of its officers, directors, agents, subcontractors or employees, of its obligations under this Agreement with respect to PHI. This provision shall survive the termination or expiration of this Agreement.

3.15 Insurance: Business Associate shall obtain and maintain all proper and necessary insurance to protect the PHI pursuant to this Agreement in the minimum amounts of \$1,000,000 per occurrence and \$3,000,000 aggregate. Business Associate shall notify Covered Entity promptly of any changes or termination of coverage that affects such insurance coverage during the term of this Agreement.

3.16 Legal Process: In the event that Business Associate is served with legal process (e.g. a subpoena) or request from a government agency (e.g. the Secretary) that potentially could require the disclosure of PHI, Business Associate shall provide prompt notice of such legal process to the Privacy Officer of Covered Entity. In addition, Business Associate shall not disclose the PHI without the express written consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a request by a governmental regulatory agency under its statutory or regulatory authority.

4. Management and Administration. Business Associate and its respective agents, employees and subcontractors are authorized to use or disclose PHI for Business Associate's own proper management and administration, and to fulfill any of Business Associate's legal responsibilities; provided, however, that the disclosures are required by law or Business Associate has received from any third party recipient of PHI written assurances that (i) the PHI will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party, and (ii) the third party will notify Business Associate of any instances of which the third party becomes aware that the confidentiality of the PHI has been breached.

5. Obligations of Covered Entity.

5.1. Authorizations: Covered Entity shall obtain from individuals any applicable consents, authorizations and other permissions necessary or required by law for Covered Entity and Business Associate to fulfill their obligations under this

Agreement. Covered Entity shall not require Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA.

5.2. Restrictions: Covered Entity shall promptly notify Business Associate in writing of any restrictions in the use or disclosure of PHI about individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under this Agreement.

5.3. Revocations: Covered Entity shall promptly notify Business Associate in writing of any changes in, or revocation of, permission by an individual relating to the use or disclosure of PHI, if such changes or revocation may affect Business Associate's ability to perform its obligations under this Agreement.

6. Termination.

6.1. Breach: Without limiting the rights of the parties under this Agreement, if Business Associate breaches its obligations under this Agreement, Covered Entity may, at Covered Entity's option, provide Business Associate an opportunity to cure the breach within thirty (30) days. If such cure is not possible within thirty (30) days, Covered Entity may terminate this Agreement immediately thereafter. If such termination is not feasible, Covered Entity shall report this breach to the Secretary.

6.2. Automatic Termination: This Agreement shall automatically terminate upon the mutual agreement of the parties.

6.3. Procedure upon Termination: Upon termination of this Agreement, Business Associate shall return or destroy, at Covered Entity's option, all PHI that it maintains in any form, and shall retain no copies of PHI, if feasible. Business Associate shall certify to Covered Entity that Business Associate has destroyed and/or returned all PHI, in accordance with Covered Entity's request. If the parties agree that the return or destruction of PHI is not feasible, Business Associate shall continue to extend the protections of this Agreement to the PHI, and limit further use of the PHI to those purposes that make the return or destruction of the PHI infeasible. Business Associate shall notify Covered Entity what PHI Business Associate shall retain. This obligation on Business Associate shall survive any termination of this Agreement.

7. Amendment. The parties agree to take such action as is necessary to amend this Agreement for Covered Entity to comply with HIPAA or other applicable law. The parties agree that this Agreement may only be modified by mutual written amendment, signed by both parties, effective on the date set forth in the amendment.

8. No Third Party Beneficiaries. Unless otherwise set forth herein, nothing contained herein is intended nor shall be construed to create rights running to the benefit of third parties.

9. Entire Agreement. This Agreement (together with any recitals and exhibits, which are hereby incorporated by this reference) constitutes the entire understanding and agreement between the parties relating to PHI, and it supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties.

10. Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking or condition. To be effective, a waiver must be in writing, signed and dated by the parties to this Agreement.

11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Any photocopy of this executed Agreement may be used as if it were the original.

12. Governing Law. Notwithstanding any other provision to the contrary, this Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed by their authorized representatives on these respective dates:

Dated: _____

ALTA BATES SUMMIT MEDICAL CENTER

By: _____

**Starla Dianda, RN
Director of Education**

Dated: _____

CHABOT COLLEGE

By: _____

Name: _____

Title: _____