

AGREEMENT

EASTERN NEW MEXICO UNIVERSITY-Roswell ("University") and Gadsden Independent School District("Agency") agree:

Recital. The University offers a Occupational Therapy Assistant Program ("Program") as part of its curriculum. In addition to classroom instruction, the Program consists of clinical/internship instruction, which is conducted, in actual patient care or patient service facilities("Facilities"). The Agency operates a Facility in which experience in respiratory care may be obtained. The Agency will provide access to the Facilities to students enrolled in the Program and their instructors in order to enable such students to meet the clinical/internship requirements of the Program ("Clinical Phase").

1. University Duties. The Program will:

- a. Plan, develop, implement and evaluate for the Clinical/Internship Phase of the Occupational Therapy Assistant curriculum.
- b. In cooperation with the Agency, familiarize students and instructors with the Facilities, and with the procedures, personnel policies, standards and code of ethics of the Agency.
- c. Furnish the Agency with relevant health records, sufficient to satisfy the Agency's standards of health, and furnish such other standards relating to the students' and instructors' decorum and the Agency may reasonably impose.
- d. Furnish the Agency, prior to the beginning of each academic year, a proposed schedule of Clinical Phase instruction and practice, setting forth information such as the units to be involved, applicable dates and hours, and the Agency may reasonably request such other information as needed.
- e. Furnish the Agency with a list of the units to be used for Clinical Phase instruction and practice, a proposed rotation plan of students, the number and names of all

participating students, and the dates and hours that the students will be participating.

The Program will furnish such plans prior to the date of commencement thereof, and they will immediately bring any changes in the plan to the attention of the Agency.

- f. Furnish the Agency with a current student manual. The Agency may reasonably request a statement setting forth the philosophy and objectives of the Program and such other information relating to the conduct and operation of the Program.

2. Agency Duties. The Agency will, in connection with the Clinical Phase:

- a. Permit students and instructors affiliated with the Program to use the Facilities, and to have access to any charts, medical records, reference books, or any other material which may aid in the conduct and operation of the Clinical Phase and in the education of the students enrolled in the Program; however, such use will be subject to any reasonable conditions or restrictions imposed by the Agency.
- b. Provide space in the Facilities, as available, where instructors and students may chart and work on clinical paperwork without interruption.
- c. Make every reasonable effort to maintain those standards which are, or may be, required of the Agency in order for it to receive approval as a clinical facility for the instruction of students enrolled in the Program.
- d. Assist in familiarizing students and instructors with the Facilities, and with the Agency's procedures, personnel policies, standards, code of ethics and other matters as the University and the Agency, or designate deem necessary or appropriate.
- e. Allow use of the cafeteria by students and instructors as available. Students and instructors will pay a cash fee for food or beverages provided by the cafeteria.
- f. Provide that a designated preceptor is in charge of each clinical area whenever students are assigned to such areas.

3. Clinical Phase Instruction and Practice.

During the Clinical Phase:

- a. All Clinical Phase instruction and practice by students will be under the supervision and control of a designated preceptor. All assignments of students for care of selected patients will be made by preceptors in accordance with Agency Standards.
 - b. Students will have classroom training in appropriate patient care skills before being permitted to care for actual patients.
 - c. All students will perform duty hours as the University and the Agency schedule such hours.
 - d. The assigned course instructor or program director is to be immediately notified by the Agency concerning any student whose performance is unsatisfactory or whose personal characteristics or disregard of regulations interferes with his or her performance.
4. Liability. The Agency will not be liable to any student, instructor, or any other persons affiliated with the Program or employed by the University or its agencies or branches in connection therewith, nor to any person making claim on behalf of or against such students, instructors, or other persons, for any injury, death or damage to the persons or property of such students, instructor, or other persons arising from any cause whatsoever during the scheduled Clinical Phase training with the Agency.
5. Indemnity. Each Party's liability shall be determined pursuant to the New Mexico Tort Claims Act.
6. Liability Insurance. The University will maintain in force general and professional liability insurance, in such limits as may reasonably be requested by the Agency from time to time, covering against claims for injury, death or damage to persons or property occurring during the Clinical Phase, by reasons of the act or omission of any student, instructor or any other persons

using the Facilities in connection with the conduct and operation of the Program.

7. Emergency Care. The Agency will provide emergency care or transport to an appropriate medical facility, for students and instructors in the case of accident or illness occurring in the Facilities during the course of the Clinical Phase. Fees for such care will be the responsibility of the individual student or instructor.
8. Meetings. The Director and instructors of the Program and the Agency's designated administrative representatives will meet at least annually at a time to be mutually agreed upon by the parties.
9. Bloodborne Pathogens and Universal Precautions. The Program will be responsible for instructing students in bloodborne pathogens issues in accordance with OSHA's Bloodborne Pathogens Standards. The students and instructors are expected to adhere to all bloodborne pathogen precautions while in the clinical area. The Agency's responsibility shall include availability of protective gear, providing the University with the Agency's policy regarding exposure, and exposure evaluation and follow up as appropriate per the Agency's policy.
10. JCAHO Requirements
 - a. The University shall perform all services under this Agreement in accordance with any and all regulatory and accreditation standards applicable to the Agency and the service, including, without limitation, those requirements imposed by the Joint Commission on Accreditation of Healthcare Organizations.
 - b. Compliance
 - i. If required by the applicable provisions of the Social Security Act related to reasonable cost determination of hospitals, until the expiration of four (4) years after the termination of the Agreement. The University shall make available, upon written request from the Secretary of the United States Department of Health and Human Services, or upon request from the Comptroller General of

the United States, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by the University under this Agreement. The University further agrees that if it carries out any of its duties under this agreement through a subcontract, with a value or cost of ten thousand dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract, shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available upon written request from the Secretary of the United States Department of Health and Human Services, or upon request from the Comptroller General of the United States, or any of their duly authorized representative, a copy of such Agreement and such books, documents and records as are necessary to verify the nature and extent of such costs.

- ii. Both as a material condition to this Agreement and as a continuing representation and warranty for the duration of this Agreement, the University represents and warrants that neither it nor any of its owners, officers, directors, employees, agents, subcontractors, etc, nor any person who will perform services pursuant to this Agreement has been suspended, excluded, or debarred from any government payer program.
- iii. The University shall not perform and is not being compensated for marketing services with respect to the services to be performed at the Agency. The University represents and warrants that no part of the compensation paid hereunder is in exchange for the referral or arrangement for referral or arrangement for referral of any patient to the Agency. The University represents

and warrants that, in connection with the services to be performed pursuant to this Agreement, each employee, independent contractor, or other entity or person performing services pursuant to this Agreement shall be compensated in a manner that complies fully with a “safe harbor” to the Federal Anti-Kickback Statue, an exception to the Stark Laws, and an appropriate exception to any state statutes similar to either or both of the foregoing federal statutes, as applicable.

- iv. The University and each employee, independent contractor, and other entity or person performing services pursuant to this Agreement shall participate in the Compliance Programs and adhere to all policies and procedures of the Agency.

11. Business Associate Agreement

- a. **Purpose.** The Health Insurance Portability and Accountability Act of 1996 (“HIPPA”) and the Standards for Privacy of Individually Identifiable Health Information, 45 CFT §§ 160 and 164, and rules promulgated hereunder, impose a number of obligations on health plans, facilities and providers regarding the use and disclosure of protected health information, including that such health plans, facilities and providers enter into business associate agreements with individuals or entities who, acting on behalf of the health plan, facility or provider, assist in the performance of a function or activity involving the use or disclosure of Protected Health Information.

- b. **Definitions**

- i. “Business Associate” means the University in this section VII.
 - ii. “Covered Entity” means Agency in this Section VII.
 - iii. “Protected Health Information” or “PHI” means Individually Identifiable Health Information that is (i) transmitted by electronic media; or (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium. “PHI” will not include (i) education records covered by

the Family Education Right and Privacy Act, as amended, 20 U.S.C. § 1232 g, and (ii) records described in 20 U.S.C. 1232 g (a) (4) (B) (iv).

iv. Other terms used in this Section VII will be defined as they are defined in HIPAA, 45 CFR §§ 160 and 164.

- c. **Use of Protected Health Information.** Business Associate will not use and will ensure that its directors, officer, employees, contractors and agents do not use PHI received from Covered Entity in any manner that would constitute a violation of the HIPAA privacy regulation or security regulation if used by the Covered Entity. Covered Entity and the Business Associate agree that the Business Associate may use PHI (a) in the performance of its obligations under this Agreement, (b) for the Business Associate's proper management and administrative services; or (c) to carry out the legal responsibilities of the Business Associate. Except for such use, the Business Associate will hold all PHI strictly confidential.
- d. **Disclosure of PHI.** The Business Associate will not and will ensure that its directors, officers, employees, contractors, and agents do not disclose PHI received from the Covered Entity in any manner that would constitute a violation of HIPAA if disclosed by the Covered Entity, except that the Business Associate may disclose PHI in a manner permitted pursuant to this Agreement or as required by law. To the extent the Business Associate disclose PHI to a third party, the Business Associate must obtain, prior to making any such disclosure: (a) written approval from the Covered Entity for such disclosure; (b) reasonable assurances from the third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (c) an agreement from such third party to immediately notify the Business Associate of any breaches of the

confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

- e. **Safeguards Against Misuse of Information.** The Business Associate agrees that it will implement all appropriate safeguards to prevent the unauthorized use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement.
- f. **Reporting of Disclosure of PHI.** The Business Associate will, within five days of becoming aware of a disclosure of PHI in violation of this Agreement by the Business Associate, its officers, directors, employees, contractors or agent or by a third party to which the Business Associate disclosed PHI pursuant to Section B, report any such disclosure to the Covered Entity.
- g. **Agreements by Third Parties.** The Business Associate will enter into an agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by the Business Associate on behalf of the Covered Entity pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Business Associate pursuant to this Agreement with respect to such PHI.
- h. **Access to Information.** Within five days of a request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, the Business Associate will make available to the Covered Entity such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from the Businesses Associate, the Business Associate will within two days forward such request to the Covered Entity. Any denials of access to the PHI requested will be the responsibility of the Covered Entity.
- i. **Availability of Protected Health Information for Amendment.** Within ten days of receipt of a request from the Covered Entity for the amendment of an individual's PHI or

a record regarding an individual contained in a Designated Record Set for so long as the PHI is maintained in the Designated Record Set, the Business Associate will provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 CFR §164.526.

- j. **Accounting for Disclosures.** Within ten days of notice by the Covered Entity to the Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual during the six years prior to the date on which the accounting was requested, the Business Associate will make available to the Covered Entity such information as is in the Business Associate's possession and is required for the Covered Entity to make the accounting required by 45 CFR § 164.528. At a minimum, the Business Associate will provide the Covered Entity with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Covered Entity will, within two days, forward such request to the Covered Entity will, within two days, forward such request to the Covered Entity will, within two days, forward such request to the Covered Entity. It will be the Covered Entity's responsibility to prepare and deliver any such accounting requested. The Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.
- k. **Availability of Books and Records.** The Business hereby agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from Or created or received by the Business Associate on behalf of, the Covered Entity available

to the Covered Entity and to the Secretary for purposes of determining the Covered Entity's and the Business Associate's compliance with HIPAA.

1. **Amendment.** Upon enactment of any law or regulation affecting the use and/or disclosure of PHI, or the publication of any court decision relating to any such law, or the publication of any interpretive policy, opinion or guidance of any governmental agency charged with the enforcement of any such law or regulation, the Covered Entity may, by written notice to the Business Associate, amend this Agreement to comply with such law or regulation by providing 30 days' written notice to the Business Associate. Such amendment will be binding upon the Covered Entity and the Business Associate at the end of the 30-day period and will not require the consent of the Business Associate unless (i) unless the Business Associate provides the Covered Entity with notice of objection within the 30-day period, (ii) the change has a material adverse economic effect upon the Business Associate as reasonably determined by the Business Associate, and (iii) the Business Associate delivers written notice to the Covered Entity during such 30-day period terminating this Agreement at the earliest time permitted by the other provisions of this Agreement. If the other provisions of this Agreement do not permit termination without cause, the Business Associate may terminate this Agreement within 30 days following delivery to the Covered Entity of notice that is permitted by the preceding sentence.

- m. **Breach** Without limiting the rights of the parties pursuant to other provisions of this Agreement, if the Business Associate breaches its obligations under this Section VII, the Covered Entity may, at its option: (a) exercise any of its rights of access and inspection under this Section; (b) require the Business Associate to submit to a plan of monitoring and reporting, as the Covered Entity may determine necessary to maintain compliance with this Section and such plan will be made part of this Agreement; or (c) terminate this Agreement, with or without opportunity to cure the breach. The Covered Entity's

remedies under this Section and as specified elsewhere in this Agreement will be cumulative, and the exercise of any remedy will not preclude the exercise of any other.

- n. **Procedure Upon Termination.** Upon termination of this Agreement, the Business Associate will return or destroy all PHI that it maintains in any form and will retain no copies of such information, or, if the parties agree that return or destruction is not feasible, the Business Associate will continue to extend the protections of this Section VII to such information and limit further use of the information to those purposes that make the return or destruction of the information not feasible. The provisions of this Section will survive termination of the Agreement.

12. Term. This Agreement will begin on the date indicated and continue until terminated by either party giving sixty days notice in writing to the other party. The termination shall not be effective until the assigned students have completed their rotation.

13. Termination.

- a. Either party may terminate this agreement upon sixty days written notice to the other party.
- b. This Agreement may be amended or supplemented from time to time with the written consent of the parties hereto.

14. Notice. All notices provided herein will be given by registered or certified mail, addressed as follows to the University:

Eastern New Mexico University
Roswell Campus
P.O. Box 6000
Roswell, New Mexico 88202-6000
Attention: Occupational Therapy Assistant Director of Clinical Education

Gadsden Independent School District
4950 McNutt Rd.
Santa Teresa, NM 88008
Attention: Director of Special Education

15. Binding Effect. This Agreement constitutes the entire understanding of the parties, may be modified only in writing, is governed by and construed in accordance with the law of New Mexico, and will be binding upon and inure to the benefit of the parties.

EASTERN NEW MEXICO UNIVERSITY-ROSWELL

By: Mavis G. Williams
Mavis Williams, ENMU-Roswell Interim Assistant Vice President of Health Education

Date: 7/19/2022

GADSDEN INDEPENDENT SCHOOL DISTRICT

By: _____
Travis Dempsey, Superintendent

Title: _____

Date: _____