

STATE OF TEXAS

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COUNTY OF FORT BEND

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**AFFILIATION AND PROGRAM AGREEMENT FOR COURSE EXPERIENCE BETWEEN FORT BEND
COUNTY AND KAPLAN UNIVERSITY**

This Affiliation and Program Agreement is entered into by Fort Bend County, a body corporate and politic under the laws of the State of Texas, (hereinafter "COUNTY") and Iowa College Acquisition LLC, doing business as Kaplan University (hereinafter "SCHOOL").

RECITALS

THAT WHEREAS, COUNTY operates facilities located at 4520 Reading Road, in the city of Rosenberg, State of Texas, (hereinafter "FACILITY" or "FACILITIES") and therein provides healthcare services; and

WHEREAS, SCHOOL provides academic courses in the fields of Public Health and Health Education and desires to provide its students with a practical learning experience at FACILITY (hereinafter "PROGRAM"); and

WHEREAS, this Agreement serves the general health and well-being of the community and therefore serves a public purpose; and

WHEREAS, COUNTY is willing to make FACILITIES available to qualified students (hereinafter "Student" or "Students") who will be supervised by Fort Bend County Staff; and

WHEREAS, both parties hereto recognize that, in the performance of this Agreement, the greatest benefits will be derived by promoting the interests of both parties, and each party does, therefore enter into this Agreement with the intention of loyally cooperating with each other in carrying out the terms of this Agreement; and

WHEREAS, the governing bodies of COUNTY and SCHOOL have duly authorized this Agreement; and

NOW THEREFORE, for and in consideration of the mutual promises, obligations, and benefits hereinafter set forth, the COUNTY and SCHOOL hereby agree as follows:

I. BASIC TERMS

1. Both parties will share in the education process.
2. Both parties agree that this Agreement confers no financial obligation on either party.
3. Both parties agree that participation in the PROGRAM is gratuitous and voluntary.
4. Both parties agree that they will not discriminate against any person because of race, religion, color, gender, sexual orientation, national origin, age, disability, special

- disabled veteran's status, Vietnam-era veteran's status, or any other protected status.
5. Both parties mutually agree that the number of Students participating in the PROGRAM will be arranged jointly, with due consideration given to the clinical material available.
 6. The COUNTY representatives for the PROGRAM are:

Kaye Reynolds, DrPH
Deputy Director
Fort Bend County Health & Human Services
4520 Reading Road, Ste. A-100
Rosenberg, TX 77471

Ngombe Bitendelo
4520 Reading Rd, Suite A-200
Rosenberg, Texas 77471

II. OBLIGATIONS OF COUNTY

1. COUNTY will, under proper supervision, permit "hands on" experience at levels COUNTY determines to be appropriate based on the knowledge and training of the Student.
2. COUNTY retains responsibility and decision-making authority for all aspects of COUNTY services and functions, including patient care.
3. COUNTY reserves the right to refuse participation of any Student designated by the SCHOOL and to terminate participation by any Student when, in the sole opinion of the COUNTY: (i) the Student is deemed to be a risk to the COUNTY'S employees, or to himself or herself, (ii) the Student fails to meet or abide by the rules, regulations, policies and procedures of the COUNTY, (iii) the Student's conduct is detrimental to the business or reputation of the COUNTY, (iv) the Student fails to accept or comply with the direction of COUNTY staff, or (v) further participation by the Student would be inappropriate. SCHOOL shall comply with COUNTY's request to remove a Student(s) in the event that COUNTY determines that there is cause to do so.

III. OBLIGATIONS OF SCHOOL

1. SCHOOL will establish guidelines for Student eligibility, including the provision of classroom theory and practical instruction, and ensure that all Students meet eligibility requirements prior to PROGRAM participation.
2. When requested by COUNTY, SCHOOL shall require Students to attend clinical orientation.
3. SCHOOL will assure COUNTY of Student's reasonable proficiency of infectious disease control issues.
4. SCHOOL will provide a faculty advisor who is available for consultation and direction.

The SCHOOL representative or faculty advisor for the PROGRAM is:

Kaplan University
6301 Kaplan University Ave.
Fort Lauderdale, FL 33309
Attn: Tricia Berry, Director, Clinical and Practicum Programs
c/o Angela Sutherland

5. SCHOOL will require faculty and Students to comply with all COUNTY policies.
6. SCHOOL will require Students to provide to COUNTY a completed:
 - a. Student Confidentiality Agreement,
 - b. Student Assumption of Risk, Release, and Waiver of Liability, and
 - c. Student Participation Form.

All of which are attached to this Agreement.

7. SCHOOL will adhere to COUNTY communicable disease reporting requirements.
8. SCHOOL will require Student to provide to the COUNTY such results for drug testing, health care, and criminal background checks prior to Student participation in the PROGRAM including proof of a:
 - a. PPD test (commonly referred to as a TB test);
 - b. HBV vaccine or signed refusal; and
 - c. Any other immunizations as required by laws.
9. SCHOOL understands and agrees that Student will be responsible for their own transportation, meals, and health care needs in the performance of this Agreement.
10. SCHOOL will be responsible for equipment that is broken or damaged due to Student's negligence.
11. SCHOOL will be responsible for the final grading of Student.
12. SCHOOL shall inform COUNTY in a timely manner of any change in Student(s) status, or curriculum, or faculty advisor during participation in PROGRAM.
13. Visits by SCHOOL and SCHOOL'S faculty are welcome for purposes of planning and observation of Student with prior notification to COUNTY.

IV. INDEPENDENT CONTRACTORS/NO AGENCY

In the performance of duties and obligations as described in this Agreement, NO SCHOOL FACULTY, STUDENTS, EMPLOYEES, OR AGENTS SHALL, FOR ANY PURPOSE, BE DEEMED TO BE AN AGENT, SERVANT OR EMPLOYEE OF THE COUNTY OR AUTHORIZED TO ACT FOR OR ON BEHALF OF THE COUNTY. NO EMPLOYEE OR AGENT OF THE COUNTY SHALL, FOR ANY PURPOSE, BE DEEMED TO BE AN AGENT, SERVANT OR EMPLOYEE OF THE SCHOOL OR AUTHORIZED TO ACT FOR OR ON BEHALF OF THE SCHOOL.

Neither party shall withhold on behalf of the employees of the other, any sums for income tax, unemployment insurance, social security or any other withholding or benefit pursuant to any law or requirement of any governmental body. Nothing in this Agreement is intended nor shall be construed to create any employer/employee relationship, a joint venture relationship, or to allow the parties to exercise control over one another or the manner in which their employees or agents perform any of the activities which are the subject of this Agreement. Both parties agree that no payment shall be made by either party to the other party or to either party's employees or agents.

V. INDEMNITY

TO THE EXTENT ALLOWED BY LAW, SCHOOL SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF SCHOOL OR ANY OF SCHOOL'S AGENTS, SERVANTS OR EMPLOYEES.

VI. INSURANCE

Prior to commencement of PROGRAM, SCHOOL shall furnish COUNTY with properly executed certificates of insurance which shall evidence all insurance required and provide a provision for 30 days' notice to COUNTY of cancellation. SCHOOL shall provide certified copies of insurance endorsements, if requested by COUNTY. SCHOOL shall maintain such insurance coverage throughout the term of this Agreement, and provide replacement certificates for any such insurance expiring prior to the termination of this Agreement. SCHOOL shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas.

During the term of this Agreement, SCHOOL shall keep in full force professional liability insurance in the amount of \$1,000,000 per claim and \$3,000,000 in the aggregate, which shall extend to the activities contemplated under this Agreement and undertaken on COUNTY premises, covering faculty and Students, and shall provide COUNTY proof of said coverage upon return of this Agreement. SCHOOL shall also keep in full force general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with an umbrella liability coverage in amounts not less than \$1,000,000.

VII. TERM

1. This Agreement shall become effective as of the date of full execution by the parties and will continue in full force until December 31, 2017.
2. Thereafter, this Agreement shall automatically renew, for a period not to exceed five years, unless otherwise terminated as provided herein.

VIII. TERMINATION

1. Either party may terminate this Agreement without cause upon the giving of thirty (30) days written notice to the other party in the manner and form provided for herein.
2. In the event that the Agreement is terminated, COUNTY may at, its own discretion, permit any participating Student to complete the PROGRAM.

IX. NOTICE

Any and all notices or communications required or permitted under this Agreement shall be delivered in person or mailed, certified mail, return receipt requested as follows:

If to COUNTY: Fort Bend County
401 Jackson
Richmond, Texas 77469
Attn: County Judge

With copy to: Kaye Reynolds, DrPH
Deputy Director, Health and Human Services
4520 Reading Road, Suite 200
Rosenberg, Texas 77471

If to SCHOOL: Kaplan University
6301 Kaplan University Ave.
Fort Lauderdale, FL 33309
Attn: Tricia Berry, Director, Clinical and Practicum
Programs
c/o Angela Sutherland

With a copy to (which copy shall not constitute effective notice):
Kaplan Higher Education
6301 Kaplan University Avenue
Fort Lauderdale, FL 33309
Attn: Legal Department

Either Party may change the address for notification by submitting written notice of same to the other.

X. CONFIDENTIAL AND PROPRIETARY INFORMATION

A. GENERAL TERMS. SCHOOL acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to COUNTY. Any and all information of any form

obtained by SCHOOL or its employees or agents from COUNTY in the performance of this Agreement, including any reports or other documents or items (including software) that result from the use of Confidential Information, shall be deemed to be confidential information of COUNTY ("Confidential Information"). Confidential Information shall be deemed NOT to include information that (a) is or becomes (other than by disclosure by SCHOOL) publicly known or is contained in a publicly available document; (b) is rightfully in SCHOOL's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of SCHOOL who can be shown to have had no access to the Confidential Information.

SCHOOL agrees to hold Confidential Information in strict confidence, using at least the same degree of care that SCHOOL uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever, except as directed by COUNTY. SCHOOL shall use its best efforts to assist COUNTY in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, SCHOOL shall advise COUNTY immediately in the event SCHOOL learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and SCHOOL shall at its expense cooperate with COUNTY in seeking injunctive or other equitable relief in the name of COUNTY or SCHOOL against any such person.

SCHOOL agrees to obtain prior written consent of COUNTY for publication of any articles relating to the clinical experiences occurring at COUNTY. Upon termination of this Agreement or at COUNTY's request, SCHOOL shall promptly turn over to COUNTY any documents, papers, and other matter in SCHOOL's possession which embody Confidential Information. SCHOOL agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

B. TEXAS PUBLIC INFORMATION ACT. SCHOOL expressly acknowledges that COUNTY is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and not withstanding any provision in the Agreement to the contrary, COUNTY shall make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to COUNTY by SCHOOL shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

C. HIPAA. To the extent applicable to this Agreement, each party agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d ("HIPAA") and any current and future regulations promulgated hereunder,

including without limitation, the federal privacy regulations contained in 45 C.F.R, Parts 160-164 ("Federal Privacy Regulations", "Federal Security Regulations", and "Federal Electronic Transaction Regulations"), all as may be amended from time to time, and all collectively referred to herein as "HIPAA Requirements"). SCHOOL agrees not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or Individually Identifiable Health Information (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of this Agreement. SCHOOL agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the HIPAA Requirements.

Solely for the purpose of defining their role in relation to the use and disclosure of protected health information, such Students are defined as members of COUNTY'S workforce, as that term is defined by 45 CFR 160.105, when engaged in activities pursuant to this Agreement. However, neither Students nor faculty are or shall be considered to be employees of COUNTY for any other purpose.

D. FERPA. For purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA), the SCHOOL hereby designates the COUNTY as a SCHOOL official with a legitimate educational interest in the educational records of the Student participating in the PROGRAM to the extent that access to the records are required by the COUNTY to carry out the PROGRAM. COUNTY agrees to maintain the confidentiality of the educational records in accordance with the provisions of FERPA.

E. BREACH OF CONFIDENTIALITY. SCHOOL acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, shall give rise to irreparable injury to COUNTY that is inadequately compensable in damages. Accordingly, COUNTY may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. SCHOOL acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of COUNTY and are reasonable in scope and content.

XI. ADDITIONAL TERMS

- 1. Compliance with Applicable Laws.** Both SCHOOL and COUNTY shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement.
- 2. Right to Inspect.** SCHOOL shall permit COUNTY, or any duly authorized agent of COUNTY, to inspect and examine the books and records of SCHOOL for the purpose of verifying the amount of work performed under this Agreement. COUNTY's right to inspect survives the termination of this Agreement for a period of four years.
- 3. Venue and Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is


proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the COUNTY's sovereign immunity.

4. **Assignment and Delegation.** Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner. Neither party may delegate any performance under this Agreement. Any purported delegation of performance in violation of this Section is void.
5. **Waiver.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
6. **Rights and Remedies.** The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
7. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
8. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of COUNTY. Under no circumstances whatsoever, shall SCHOOL release any material or information developed or received in the performance of this Agreement without the express written permission of COUNTY or where required by law.
9. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
10. **Entire Agreement.** It is understood and agreed to by the parties that the entire Agreement of the parties is contained herein and in any exhibit or attachment identified in Agreement. It is further understood and agreed that this Agreement supersedes all prior communications and negotiations between the parties, oral or written, relating to the subject matter hereof as well as any previous Agreements presently in effect between the parties relating to the subject matter hereof.
11. **Conflict.** In the event there is a conflict between this Agreement and the attached exhibit(s) or attachments, this Agreement controls.

*{Execution Page Follows}
{Remainder Intentionally Left Blank}*

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below.

FORT BEND COUNTY

By: 
Robert E. Hebert, County Judge

Date: 5/23/2017

ATTEST:


Laura Richard, County Clerk

**IOWA COLLEGE ACQUISITION LLC D/B/A
KAPLAN UNIVERSITY**

By: Tricia Berry by Tiffany Wagstaff
Name: Tricia Berry
Director, Clinical and Practicum Programs
Tiffany Wagstaff
Clinical Student
Manager

Date: 5/10/17



**ATTACHMENTS
FORMS:**

STUDENT CONFIDENTIALITY AGREEMENT

STUDENT ASSUMPTION OF RISK, RELEASE, AND WAIVER OF LIABILITY

STUDENT PARTICIPATION FORM

CERTIFICATE OF INTERESTED PARTIES**FORM 1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Iowa College Acquisition LLC d/b/a Kaplan University
Fort Lauderdale, FL United States

Certificate Number:
2017-194101

Date Filed:
04/18/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

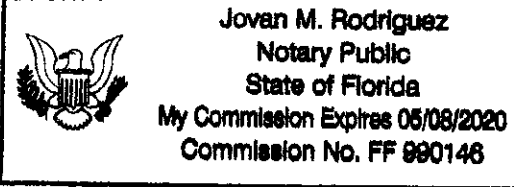
FORT BEND COUNTY

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

2017-1-KAPLAN
Clinical Affiliation Agreement between Fort Bend County and Kaplan University

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

**6 AFFIDAVIT**

swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Tiffany Wagstaff for Tricia Berry
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Tiffany Wagstaff, this the 10 day of May, 2017, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Iowa College Acquisition LLC d/b/a Kaplan University
Fort Lauderdale, FL United States

Certificate Number:
2017-194101

Date Filed:
04/18/2017

Date Acknowledged:
05/23/2017

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

FORT BEND COUNTY

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

2017-1-KAPLAN
Clinical Affiliation Agreement between Fort Bend County and Kaplan University

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____,
20_____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath