

## **AFFILIATION AGREEMENT BETWEEN PHARMACY CORPORATION OF AMERICA AND THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

This AFFILIATION AGREEMENT (“the Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Pharmacy Corporation of America (“Pharmacy”) and The School Board of Broward County, Florida (“SBBC”).

### **RECITALS**

SBBC provides training for students in various aspects of nursing/pharmacy, studies/health occupations, and desires that its students obtain clinical experience.

Pharmacy operates facilities in Fort Lauderdale, Florida, which are available for education and experience training in nursing/pharmacy, studies/health occupations.

It is to the mutual advantage of both parties to provide educational facilities, education and training in nursing/pharmacy, studies/health occupations (the “Program”).

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, terms and conditions hereinafter set forth, the parties understand and agree as follows:

1. Term. This Agreement shall commence with its signing and continue in force for a period of three (3) years, and may be renewed annually by mutual consent of the parties. Either party may cancel this Agreement, with or without cause, after giving thirty (30) days prior written notice.

2. Relationship. The relationship contemplated by this Agreement is that by and between independent contractors, those being Pharmacy and SBBC. It is expressly understood and agreed that this Agreement is not intended and shall not be construed to create the relationship of agent, employee, partnership, joint venture, or association by and among Pharmacy and SBBC. It is further expressly agreed and understood by SBBC and Pharmacy that the students in the Program are in attendance at Pharmacy’s facilities for educational purposes only, and are not employees, agents or servants of Pharmacy for any purpose, and will not receive any pay or remuneration from Pharmacy while participating in the Program.

3. Obligations and Rights of Pharmacy.

A. Pharmacy will provide reasonable use of its facilities to SBBC for the education and training of students provided by SBBC in the various aspects of [nursing/pharmacy studies/health occupations]. Pharmacy will provide the cooperation of the staff for instruction to the students of SBBC.

B. Pharmacy will designate an employee, agent or servant to coordinate with a qualified faculty member designated by SBBC in planning, implementing and coordinating the Program.

C. Pharmacy shall provide SBBC with current copies of procedure guidelines and written policies.

D. Pharmacy may from time to time issue non-discriminatory rules and regulations, which shall be discussed with SBBC before implementation, and which shall be enforced by SBBC and Pharmacy upon the students, employees and faculty of SBBC.

E. Pharmacy has ultimate responsibility for the quality of care given to patients. Pharmacy may refuse access to any student or faculty member of the SBBC who does not meet Pharmacy's employee standards for safety, health or ethical behavior. Pharmacy will resolve any dispute or problem situation in favor of its patients or staff, or Pharmacy's welfare and restrict access of any student or faculty member of SBBC until such time as such dispute or problem can be resolved by good faith negotiation between Pharmacy and SBBC.

F. Pharmacy may request SBBC to withdraw from the Program any student who, in Pharmacy's judgment, is not performing satisfactorily, or who refuses to follow Pharmacy's administrative and patient care policies, procedures, rules and regulations.

4. Obligations and Rights of SBBC.

A. SBBC assumes primary responsibility for supervision, accreditation, grading, record keeping and instruction and discipline of all students of SBBC. SBBC will provide all instructional materials and supplies at no cost to Pharmacy. SBBC shall produce to Pharmacy the vita and qualifications for each faculty member in the Program. SBBC will designate a qualified faculty member to coordinate with a designee of Pharmacy in planning the Program, and to be responsible for supervision of the students.

B. SBBC shall provide to Pharmacy, prior to the beginning date of the Program, written assurance that each student, employee and faculty member who participates on-site at Pharmacy's facilities meets Pharmacy's health status requirements, including, but not limited to: (a) an annual TB skin test and, if positive, a chest x-ray, (b) immunization (if over 18 years of age) including hepatitis B or waiver of same, diphtheria, and tetanus, and (c) proof of immunity to rubella, rubeola and varicella. Students, employees and faculty of SBBC shall be responsible for their own medical expenses. Students, employees and faculty have an ongoing obligation to notify Pharmacy of any relevant updates or changes to their medical records.

C. Liability. Each party shall at all times during the term of this Agreement and any renewals maintain, at its sole cost and expense, professional liability insurance (including contractual liability for this Agreement) with minimum separate limits of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, to cover claims arising from the acts or omissions of such party and its officers, employees, volunteers, students, faculty, and agents in connection with this Agreement. Such coverages should be on an occurrence basis, but if a party maintains any coverage on a claims-made basis, it shall purchase tail coverage to insure claims occurring during the term of this Agreement and any renewals.

Each party shall furnish evidence of such coverage to the other party, upon its request, in the form of a certificate of insurance ("Certificate") which shall provide for 30 days advance written notice to the other party of the cancellation of, or any material change to, the insurance policies required to be maintained hereunder. Within 30 days of the expiration of any policy listed in the Certificate, a party shall provide to the other party a renewal Certificate so that such other party has evidence of all required insurance being in effect at all times. Each party shall also maintain workers' compensation insurance as required by law and employers' liability insurance. This section shall survive termination or suspension of this Agreement. The SBBC shall provide Pharmacy Corporation of America proof of professional liability coverage with minimum limits of \$1,000,000 / \$3,000,000 for students and faculty members. Students shall be required to be covered by their own health or accident insurance.

D. Within five (5) days of receipt thereof, SBBC shall comply with the written request of Pharmacy to withdraw from the Program any student who, in Pharmacy's judgment, is not performing satisfactorily, or who refuses to follow Pharmacy's administrative and patient care policies, procedures, rules and regulations.

E. SBBC acknowledges that in connection with the Program, SBBC and its students and faculty members participating thereto may be given access to confidential patient and other information of Pharmacy and agrees that SBBC and all such students and faculty members shall at all times comply with all applicable provisions of the privacy and security regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Pharmacy's policies and procedures related to the confidentiality and security of patient health and other confidential information. SBBC agrees, and shall cause each student and faculty member participating in the Program, to keep strictly confidential all patient health information and all information related to the business of Pharmacy and to not disclose or reveal any such confidential information obtained by SBBC and such students or faculty members in the Program to any third party without the prior written consent of Pharmacy. SBBC shall provide training to each student and faculty member participating in the Program regarding HIPAA and the confidentiality of patient health information. SBBC shall ensure that each such student and faculty member complies with any additional HIPAA privacy and security training requirements of Pharmacy; Pharmacy shall provide these privacy and security requirements to students prior to students beginning the clinical experience. The provisions of this Section shall survive termination or expiration of this Agreement.

F. SBBC shall comply with all applicable policies of Pharmacy, and all state and federal statutes, rules and regulations, including, but not limited to, compliance with the anti-kickback statute, 42 U.S.C. 1320a-7b(b) and the Stark law, 42 U.S.C. 1395nn, and all other governing healthcare programs.

**G. SBBC Disclosure of Education Records**

(a) SBBC will provide Pharmacy the following education records: student educational plan, results of an annual physical, all immunizations, drug screen and criminal background check, for the purpose of meeting facilities' requirements.

(b) SBBC will obtain written consent from each student's parent/guardian or student age 18 or older whose education records are to be shared prior to disclosing to the education records listed above.

**H. Pharmacy Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, Pharmacy shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or re-disclose same except as required by this Agreement or as required or permitted by law unless the parent of a student or a student age 18 or older provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly be its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and provide same list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the student's records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

- 7) fully cooperate with appropriate SBBC Staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;
- 8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to Section 501.171, Florida Statutes;
- 9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;
- 10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC as a contact in resolving obligations associated with a security breach of confidentiality of education records; and
- 11) securely erase education records from any media once that media is no longer in use by termination of this Agreement or by disuse and/or disposal of the equipment; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of the SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) Pharmacy shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or obligations existing under this Agreement.

**I. Background Screening.** Pharmacy agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of Pharmacy or its personnel providing any services under the

conditions described in the previous sentence. Pharmacy shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to Pharmacy and its personnel. The parties agree that the failure of Pharmacy to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, Pharmacy agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Pharmacy's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by SBBC or Pharmacy of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

J. **Criminal Background Check and Drug Screening.** All health science education students at SBBC who participate in a clinical experience at a hospital, nursing home or other clinical facility, must take and successfully pass a criminal background check and a ten-panel drug screening test. In accordance with the reemployment regulations and guidelines of the hospital, nursing home or clinical facility, students may be denied program entrance. The results of the criminal background check and drug screening tests will be discussed with the student and his/her parent or guardian, if required. SBBC shall obtain written consent from the parent or student age 18 or over before disclosing any student information pertaining to criminal background checks and/or drug screening (including results).

5. **Students.** Pharmacy and SBBC will mutually agree to the maximum number of students who may participate in the Program, and to the schedule of the times that students are expected to be in the facilities. SBBC will only refer those students to the Program who have successfully completed the required curriculum, and who are otherwise qualified. Student uniforms will be supplied at no cost to Pharmacy. Student must wear his/her school student badge along with the visitor badge provided by Pharmacy. Students shall arrange for their own health insurance if not provided by SBBC.

6. **Governing law.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Florida, and the rules and regulations issued pursuant thereto. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

7. **Indemnification.** Within the limits of Section 768.28, Florida statutes, SBBC will assume all liability, and indemnify, defend and hold harmless Pharmacy and Pharmacy's parent company and affiliates, and all directors, officers, employees and agents, for any and all claims,

liabilities, obligations, losses, demands, deficiencies, suits, actions, causes of action, judgments, settlements, costs, damages, penalties, interest and other expenses (specifically including, without limitation, attorneys' fees and expenses related to any of the foregoing) arising out of or resulting from any negligent acts or omissions, or non-compliance with HIPAA, by any individual participating in the Program as a student, faculty member or employee of SBBC. Pharmacy shall indemnify, hold harmless, and defend SBBC, and its board members, board, officers, employees, volunteers, agents, students faculty, staff, successors, and assigns (collectively, the "Indemnified Party") from and against any and all claims, suits, damages, fines, penalties, liabilities, and expenses (including reasonable attorneys' fees) resulting from or arising out of the acts or omissions of, and the breach of this Agreement. This provision will survive the termination of this Agreement.

8. Affirmative Action and Discrimination. The parties agree that all students participating in the Program pursuant to this Agreement shall be selected without discrimination on account of race, color, religion, sex, national origin or ancestry, age, physical or mental disability or veteran status. In the event of noncompliance by SBBC with the provisions of this section, this Agreement may be suspended or terminated by Pharmacy.

9. Notice. All notices, consents or other communications in which either party is required or may desire to give to the other under this Agreement shall be in writing and shall be given by personal delivery; by deposit, postage prepaid, in the United States mail, certified or registered mail, return receipt requested; by overnight delivery; or by facsimile, addressed to the parties at their respective addresses set forth below, which may from time-to-time be changed by the parties:

To Pharmacy:  
Pharmacy Corporation of America  
3690 NW 53<sup>rd</sup> Street, Suite 104  
Fort Lauderdale, FL 33309  
Attn: Pharmacy Director, PharMerica

With Copy to:  
PharMerica Corporation  
1901 Campus Place  
Louisville, KY 40299  
Attn: Legal Department, PharMerica

To SBBC:  
Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to:  
Principal  
Atlantic Technical College  
The School Board of Broward County, Florida

4700 Coconut Creek Parkway  
Coconut Creek, Florida 33063

10. No Financial Arrangement. This Agreement does not provide for any payment or exchange of money or financial obligations.

11. Integration of Understandings. This Agreement is intended as the complete integration of all understandings between SBBC and Pharmacy and supersedes all prior negotiations, representations or Agreements, if any.

12. Enforceability. If any provision of this Agreement is adjudged to be void or unenforceable, in whole or in part, such determination shall not affect the validity of the remainder of the provisions that shall remain in full force and effect and be enforceable according to their terms. Each provision of this Agreement is declared to be severable from every other provision and constitutes a separate and distinct covenant.

13. Assignment and Amendments. Neither party may assign or amend this Agreement without the prior written consent of the other party. Any amendment to or deletion from this Agreement shall become effective at the time specified in the amendment or deletion.

14. No Waiver. If in one or more instances a party fails to insist that the other party perform any of the terms of this Agreement, such failure shall not be construed as a waiver by such party of any past, present or future right granted under this Agreement; the obligations of both parties under this Agreement shall continue in full force and effect.

15. Non-Exclusive Agreement. This Agreement between SBBC and Pharmacy is non-exclusive, and Pharmacy reserves the right to contract with other schools to arrange the same or similar programs as covered by this Agreement.

16. Headings. Paragraph headings are for reference only and do not constitute part of this Agreement.

17. No Waiver of Sovereign Immunity. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

18. No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.



19. Independent Contractor. The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

20. Default. The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

21. Termination. This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

22. Compliance with Laws. Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

23. Place of Performance. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

24. Preparation of Agreement. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

25. Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual

expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

26. Survival. All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

27. Agreement Administration. SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

28. Public Records. The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Pharmacy shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, Pharmacy shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Pharmacy shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Pharmacy does not transfer the public records to SBBC. Upon completion of the Agreement, Pharmacy shall transfer, at no cost, to SBBC all public records in possession of Pharmacy or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Pharmacy transfers all public records to SBBC upon completion of the Agreement, Pharmacy shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Pharmacy keeps and maintains public records upon completion of the Agreement, Pharmacy shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

**IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, [RECORDREQUESTS@BROWARDSCHOOLS.COM](mailto:RECORDREQUESTS@BROWARDSCHOOLS.COM), RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.**

29. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

30. Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be signed by its duly authorized representative on the dates indicated below.

Date: October 24, 2018

For Pharmacy:

By: Curt Newcom

Name: Curt Newcom

Title: VPO

Address: Campus Plaza  
Louisville, KY

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Heather P. Brinkworth , Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

*Kathelyn Jacques-Adams*

Digitally signed by Kathelyn Jacques-Adams, Esq. - kathelyn.jacques-adams@gbrowardschools.com  
Reason: Pharmacy Corporation of America  
Date: 2018.10.26 10:59:51 -04'00'

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**Office of the General Counsel**