



This agreement is dated **DATE** between
Nightingale College, LLC (“College”)
and
FACILITY

Background

- A. College is an accredited, private, for-profit educational institution that offers instructional programs and degrees in nursing. College employs evidence-based practices and emphasizes client-centered care.
- B. Through its Dedicated Distance Cohorts™ (“DDC”) model, College partners with healthcare service providers such as hospitals, clinics, and long-term care facilities and non-healthcare companies in specific geographic areas to organize consortia that assist in increasing access to nursing education through the delivery of College’s programs to students in local communities.
- C. Member is a local healthcare service provider and has applied for membership in the DDC Consortium for the [Insert Location] area (the “Consortium”). College has accepted Member’s application for membership in the Consortium.

College and Member therefore agree as follows:

1. Nursing Education Services; Minimum Size.

1.1 Throughout the Term (defined below), College will offer the following programs (each, a “Program” and collectively, the “Programs”) to qualified students employed or referred by the Consortium:

- a. Associate Degree in Nursing (“ADN”);
- b. Advanced Placement Licensed Practical Nurse (“LPN”)-to-ADN; and
- c. Registered Nurse (“RN”)-to-Bachelor Science in Nursing (“BSN”).

1.2 College will plan and execute the Programs, including, without limitation, curriculum content, faculty appointments, grading, faculty administration and the requirements for matriculation, progression and graduation.

1.3 College’s obligation to commence the above-listed Programs is subject to the following minimum student participation levels per semester:



- a. *ADN Level 0*: 8 students. Upon completion of Level 0, students may be subject to a waiting period for entry into Level I;
- b. *ADN Level I, II or III*: 8 students. At its discretion, College may commence new cohorts of less than 8 students;
- c. *Advancement Placement LPN-to-ADN*: No minimum, provided space is available (level placement is determined by testing); and
- d. *RN-to-BSN*: No minimum.

2. Delivery and Policies.

College will deliver the Programs to students using a blend of on-demand distance learning technology and equipment selected by College in its sole discretion and in-class/in-lab/clinical instruction. Each student will be subject to all policies and procedures contained in the then-current College Catalog and the Student Handbook for the specific academic program in which the student is enrolled.

3. Tuition.

3.1 College will charge students who enroll in Programs through the Consortium its then-current retail tuition and fees. Qualifying students who enroll in Programs through the Consortium will receive the following tuition waivers from College's then-current retail tuition rates:

- a. *Employee of Member who does not provide laboratory space and furnishings*: \$125 per semester credit, up to \$1,500 per semester;
- b. *Employee of Member who does provide laboratory space and furnishings*: \$125 per semester credit up to \$1,500 per semester;
- c. *Employee of Member and Member provides the employee up to \$1,750 in tuition assistance per semester, paid directly to College at the beginning of the semester*: 10% of the amount of tuition assistance;
- d. *Employee of Member and Member provides the employee more than \$1,750 in tuition assistance per semester, paid directly to College at the beginning of the semester*: 10% of the amount of tuition assistance up to \$1,750 per semester and 15% of the amount of tuition assistance exceeding \$1,750 per semester;
- e. *ADN students referred by Member who is not a healthcare provider*: \$62.50 per semester credit, up to \$750 per semester. If the student is subsequently hired by another member of the Consortium, the student will receive the waiver described in subsections (a) or (b) above, as applicable, effective the first full semester immediately following the student's hire date.
- f. *ADN students referred by Employee of Member*: \$41.67 per semester credit up to \$500 per semester; and
- g. *Employee of Member enrolled in RN-to-BSN Program*: waiver in the amount equal to the difference between then-current retail tuition rate and \$350 per credit hour.



4. No Guarantee of Success.

College will provide each Program in a professional manner and in a fashion that is generally consistent with the obligations imposed on College by the applicable accreditors and regulators. **College does not guarantee that any particular student will graduate or that any particular student will pass the NCLEX-RN® exam.**

5. Member Obligations.

5.1 Member hereby accepts membership in the Consortium. If not previously established, Member will participate in preparing the bylaws for the Consortium.

5.2 Member will assist College with identifying potential local clinical faculty.

5.3 Member will actively recommend potential students for participation in the Programs from among Member's employees and prospective hires. If an employee recommended by Member enrolls in a Program, Member will provide the employee scheduling priority to accommodate the employee's student laboratory and clinical rotation schedules.

5.4 Member agrees to collaborate with College to ensure all Member employees receive notification of partnership upon execution of this agreement and 8 weeks prior to each subsequent semester start throughout the Term. College will provide all materials for notifications and the Member will distribute the announcements. Possible distribution methods could include, but are not limited to: facility-generated emails; facility-generated postal mailings; payroll inserts; flyer handouts; etc. College will also provide any postage necessary. College will assume distribution responsibilities to those Member employees who voluntarily provide emails or physical addresses to College.

5.5 In consultation with College and other members of the Consortium, Member will designate laboratory space and furnishings, as agreed, and provided clinical placements to students. Member acknowledges that active participation by each member of the Consortium is necessary for students to be successful. Member will act in good faith to designate as much laboratory space and furnishings and clinical placements as is reasonably possible. Member will make such space, furnishings and placements available to all students associated with the Consortium throughout the Term. If College determines in the exercise of its reasonable discretion that Member's participation in the Consortium is consistently deleterious to the proper operation of the Consortium, College may impose such sanctions as College reasonably considers appropriate, including, without limitation, withdrawing any or all of the tuition waivers described in subsection 3.1 above.



5.6 Member will designate a representative to act as a point-of-contact for day-to-day operational issues arising under this agreement and for all Consortium-related purposes. Member will promptly advise College in writing of any change in its representative.

5.7 Member will at all times – both during and after the Term – comply with all pertinent federal, state and local statutes, rules and regulations, including, without limitation, the Family Education Rights and Privacy Act of 1974 with respect to student education records, the Gramm-Leach-Bliley Act with respect to student financial information and the Health Insurance Portability and Accountability Act of 1996 with respect to medical records. On request and at its discretion, College may provide Member general guidance on legal compliance.

5.8 Notwithstanding that many nursing settings include inherent risks, Member will promptly notify College of any known risks or changes that might jeopardize the safety of students or faculty, including, without limitation, changes to the physical facility, reported criminal activity/incidents or material changes in security measures.

6. Term; Termination.

6.1 The Term of this agreement begins on the date first written above and continues until the last day of the month that is 20 months from the first day of the month following the start date of the first student cohort. (For example, if the start date of the first student cohort is August 31, 2015, the last day of the Term will be May 31, 2017.)

6.2 This agreement will automatically renew on a rolling 20-month basis each time a new student employed or otherwise associated with Member enrolls in a Program. As used in this agreement, “Term” includes each rolling 20-month period.

6.3 Each party can terminate this agreement without cause by providing the other party at least 20 months’ prior written notice. (In the example under subsection 6.1 above, the earliest Member can terminate this agreement without cause would be May 31, 2017, provided (a) Member gives College written notice of termination on or before August 31, 2015, and (b) no student employed or otherwise associated with Member enrolls in a Program during the 20-month notice period.)

6.4 During the 20-month notice period described in subsection 6.3 above, Member will remain a member of the Consortium and continue to perform its obligations under this agreement, including, without limitation, facilitating the teach-out of all students associated with the Consortium.

7. Covenant Not to Compete. As an inducement for College to grant Member membership in the Consortium and to offer the Programs to students employed or otherwise associated with Member, during the Term and for the 24-month period immediately following the termination of this agreement for any reason, Member will not



participate in, either directly or indirectly, act as a consultant to, or in any way be connected with any group or entity that provides instruction in nursing education (other than College and the Consortium).

8. Character of Services/Injunction. Member hereby acknowledges that a material, uncured breach by Member of any of the material terms and conditions of this agreement will cause College irreparable injury or damage for which College has no adequate remedy at law. Member therefore agrees that College may seek *ex parte* injunctive and other equitable relief, both preliminary and permanent, immediately and permanently restraining Member from any material, uncured breach of any of the material terms and conditions of this agreement and without the necessity of proving actual damages. Member hereby expressly waives any and all right to prior notice in connection with any temporary injunctive relief and to security in connection with any temporary or permanent injunctive relief restraining Member from any material, uncured breach of any of the material terms and conditions of this agreement and waives all defenses thereto. Member also will remain liable for any damages sustained by reason of any material, uncured breach of any of the material terms and conditions of this agreement. The exercise of one or more of the rights or remedies provided by this Section 8 will not preclude the exercise of any other rights or remedies of College, at law or in equity, whether arising pursuant to this agreement or otherwise.

9. Indemnification.

9.1 Member will indemnify, defend and hold harmless College and its parent companies, subsidiaries, members, officers, employees, agents and representatives for, from and against any and all liability, claims, lawsuits, judgments and expenses arising out of any act or omission of Member or any shareholder, member, officer, director, employee, agent or representative of Member in connection with this agreement.

9.2 College will indemnify, defend and hold harmless Member and its shareholders, members, officers, directors, employees, agents and representatives for, from and against any and all liability, claims, lawsuits, judgments and expenses arising out of any willful act or omission of College or any member, officer, employee, agent or representative of College in connection with this agreement.

10. Choice of Law. This agreement will be construed in accordance with the internal laws of the State of Utah.

11. Dispute Resolution.

11.1 The parties hereby consent to resolve by final and binding arbitration all claims or controversies arising out of or relating in any respect to this agreement, the Consortium or the Programs. Nothing in this subsection 11.1 limits the right of either party to seek and obtain injunctive or equitable relief in a court of competent jurisdiction that is



necessary to protect the rights or property of a party pending the arbitrator's final determination of the merits of the dispute.

11.2 The arbitration hearing will be held in Ogden, Utah, or in such other place mutually agreeable to the parties. In accordance with the then-current American Arbitration Association National Rules, the arbitration will be conducted before one arbitrator who is licensed to practice law in the State of Utah and whom the parties mutually agree upon or selected in accordance with the American Arbitration Association National Rules. The arbitrator must have been actively engaged in the practice of law or the arbitration of disputes for at least the past 10 years prior to the arbitration hearing. Each party has the right to be represented by an attorney at its own expense and to present witnesses and other evidence at the arbitration hearing.

11.3 The parties may conduct discovery sufficient to enable them to adequately arbitrate their claims and defenses, including, without limitation, having access to essential facts, documents and witnesses, as determined by the arbitrator. At the request of a party, and after the other party has had an opportunity to submit any objections, the arbitrator will have the discretion to order the deposition of a witness if the arbitrator deems the deposition relevant and consistent with the expedited nature of arbitration. The arbitrator will also have the authority to enter appropriate protective orders to preserve the confidentiality of sensitive information.

11.4 Either party may, at least 45 days before the scheduled arbitration hearing, submit to the arbitrator a motion for summary judgment or summary adjudication of issues. Such motion will be submitted in conformity with applicable federal rules of civil procedure and court decisions. The non-moving party may then file opposition papers in response to that motion, and the moving party may then file reply papers, consistent with applicable federal rules of civil procedure and court decisions. The arbitrator will then, at least five days before the scheduled or continued arbitration hearing date, issue a written decision granting or denying the motion, in whole or in part, which sets forth the grounds for that decision based on applicable law. The arbitrator's decision will be final and binding, subject to limited judicial review of an arbitrator's decision under applicable law.

11.5 The arbitrator will apply applicable Utah law, regulations and case precedents to the interpretation of this agreement and the facts in dispute in determining the rights and obligations of the parties (including, without limitation, burdens of proof) and in awarding any relief. The arbitrator will have exclusive authority to resolve any dispute relating to this agreement or its interpretation, or arising out of or relating to the relationship of the parties. The arbitrator will provide the parties a written, reasoned decision setting forth the essential findings of fact and conclusions of law. The arbitrator may award the types and amounts of relief that would be available if the claim had been brought in court. The decision or award by the arbitrator will be final and binding, subject to limited judicial review where authorized by applicable law.



11.6 The party that prevails in the arbitration, or whose motion for summary judgment is granted in full, will be awarded its reasonable attorneys' fees and reasonable costs (including, without limitation, copy costs, online research fees and expert witness fees), to be paid by the other party. The arbitrator must designate a prevailing party. If the non-prevailing party opposes the prevailing party's efforts to confirm the arbitration award in a court of competent jurisdiction and the prevailing party is successful in confirming the award, the prevailing party will also be entitled to its reasonable attorneys' fees and costs incurred in seeking confirmation of the award.

11.7 Except as may be required by law, no party or witness to any arbitration under this agreement will disclose the existence, content or outcome of that arbitration without the prior written consent of all parties to the arbitration.

12. Enforceability. Subject to the provisions of this Section 12, the invalidity or unenforceability of any provision of this agreement will have no effect on the binding nature of the remainder of this agreement. If a court of competent jurisdiction determines that any of the provisions of this agreement are inequitably broad or are otherwise unenforceable, it is the intention and agreement of the parties that the court equitably adjust the obligation to make the provision enforceable, rather than entirely eliminate the obligation. The adjustment will be to enforce the obligation to the fullest extent permitted by law.

13. Waiver. Any waiver of, or consent to depart from, the requirements of any provision of this agreement will be effective only if it is in writing and signed by the party granting the waiver and only in the specific instance and for the specific purpose for which the waiver has been given. No failure or delay by a party to exercise any right under this agreement will operate as a waiver of the right. No single or partial exercise of any right will preclude any other or further exercise of the right or the exercise of any other right.

14. Successors and Assigns. This agreement is binding on, and will inure to the benefit of, the parties and their respective heirs, executors, administrators, representatives, successors and permitted assigns. Neither party may assign this agreement without the prior written consent of the other party given at its discretion.

15. Notice.

15.1 Any notice, demand or other communication (collectively, a "Notice") required or permitted to be given or made under this agreement must be in writing and will be sufficiently given or made if:

- a. Delivered in person to the recipient or to a receptionist or other responsible employee of the recipient during normal business hours on a business day;



- b. Sent by prepaid registered mail to the party at their last known address; or
- c. Sent by any electronic means of sending messages, including, without limitation, electronic mail, which produces a paper record.

15.2 Notice will be considered received:

- a. On the day it was delivered if in person;
- b. On the third business day after it was mailed (excluding each business day during which there existed any general interruption of postal services due to strike, lockout or other cause); or
- c. On the same day that it was sent by electronic means if received before 5:00 p.m., Ogden time, on a business day or on the first business day thereafter.

15.3 Either party may change its address for notice by giving Notice to the other party.

16. No Joint Venture or Principal-Agent Relationship. The relationship of the parties in the performance of this agreement is and will remain that of independent contractors. Nothing in this agreement may be construed to alter or amend such relationship. Nothing in this agreement creates any express or implied joint venture or principal-agent relationship between the parties.

17. Headings. Section headings are not part of this agreement and are included solely for convenience of reference and are not intended to be full or accurate descriptions of the contents of this agreement.

18. Entire Agreement. This agreement contains the entire integrated understanding of the parties with respect to the subject matter of this agreement. This agreement may not be modified other than by an instrument in writing executed by each respective party.

19. Counterparts. This agreement may be signed in counterparts and each counterpart will constitute an original document. All counterparts, taken together, will constitute one and the same instrument. To evidence its execution of an original counterpart of this agreement, a party may send a copy of its original signature on the execution page of this agreement to the other party by electronic means and the transmission will constitute delivery of an executed copy of this agreement to the receiving party.

College

Member

By: _____

By: _____

Title: _____

Title: _____