

## ADVANCED PHARMACY PRACTICE EXPERIENCE (“APPE”)

### AFFILIATION AGREEMENT

This Affiliation Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between Kerr Drug, Inc., a Delaware corporation (“Kerr Drug”), Kerr Health, LLC, a North Carolina limited liability company (“Kerr Health”), and the \_\_\_\_\_ School of Pharmacy (“University”).

#### RECITALS:

A. University educates and provides clinical training to Doctor of Pharmacy (“PharmD”) candidates and desires to partner with Kerr Health to provide advanced pharmacy practice experience (the “APPE Program”) to a select group of PharmD candidates (collectively, “clerkship students”).

B. Kerr Drug is an affiliate of Kerr Health and operates a chain of retail pharmacies and related health care facilities in North Carolina and South Carolina and is willing to partner with Kerr Health and University to provide the APPE Program to the clerkship students.

C. Kerr Health, Kerr Drug, and University wish to enter into this Agreement to provide the APPE Program to clerkship students, as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

1. **TERM.** The initial term of this Agreement shall be for one (1) year, commencing on \_\_\_\_\_, 20\_\_, and expiring on \_\_\_\_\_, 20\_\_, unless earlier terminated in accordance with the terms of this Agreement (the “Initial Term”). After the Initial Term, this Agreement shall automatically renew for successive one (1) year terms (each, a “Renewal Term”), unless earlier terminated in accordance with the terms of this Agreement. (The Initial Term and the Renewal Terms, if any, are referred to as the “Term”).

#### 2. **ASSIGNMENT OF CLERKSHIP STUDENTS AND APPE PROGRAM OBJECTIVES.**

2.1. Prior to the commencement of each academic term of University (each academic term is referred to herein as “Semester”), Kerr Health and University shall work together and mutually agree on:

(a) The PharmD candidates that will participate in the APPE Program as clerkship students for that Semester; and

(b) The dates and hours that clerkship students will participate in the APPE Program at Kerr Health.

2.2. Kerr Health and University shall not discriminate against any PharmD candidate applying to enroll as a clerkship student on the basis of race, color, religion, sex, age, national origin, disability or veteran status.

2.3. Kerr Health Preceptors (as defined below) and designated representatives of University shall mutually develop the APPE Program objectives and shall meet as often as necessary to evaluate the performance of clerkship students.

3. **KERR HEALTH'S DUTIES AND RESPONSIBILITIES.**

3.1. Kerr Health shall provide information and/or orientation for clerkship students and University faculty with respect to the physical facilities and the policies and procedures of Kerr Health and Kerr Drug.

3.2. Kerr Health shall provide opportunities for observation and practical experience, conducive to the learning process of each clerkship student, which meet the APPE Program objectives.

3.3. Kerr Health shall appoint a clinical coordinator for each clerkship student, who shall serve as such clerkship student's primary preceptor (collectively, "Kerr Health Preceptors"). Kerr Health Preceptors shall be directly responsible for the supervision of clerkship students and for the implementation of the APPE Program.

3.4. Kerr Health shall recommend to University the withdrawal of a clerkship student from the APPE Program if the achievement, progress, or adjustment of a clerkship student does not warrant continuation of that clerkship student in the APPE Program.

3.5. Kerr Health shall have the right to terminate a clerkship student's privileges and participation in the APPE Program upon a determination, in its sole reasonable discretion, that such clerkship student is a danger to employees or patients of Kerr Health or Kerr Drug, or is disruptive to the operation of Kerr Health or Kerr Drug. Such termination shall be exercisable at Kerr Health's sole discretion after consultation with University.

4. **UNIVERSITY'S DUTIES AND RESPONSIBILITIES.**

4.1. University shall be responsible for all educational programs and academic aspects of the learning experience of each clerkship student during the Term of this Agreement.

4.2. University shall provide University faculty to serve as liaisons for University and such faculty members shall be available as reasonably requested by Kerr Health Preceptors to discuss the progress of the clerkship students.

4.3. University agrees that each clerkship student shall comply with all policies, procedures, resolutions, directives, rules, and regulations as may be established and

modified by Kerr Health and Kerr Drug from time to time.

**4.5.** University represents that, throughout the Term of this Agreement, University will provide professional liability insurance for clerkship students and University faculty in amounts consistent with applicable state law and health insurance in accordance with University's prevailing policies.

**5. KERR DRUG'S DUTIES AND RESPONSIBILITIES.** Kerr Drug shall furnish office space, equipment, and apparatus as is necessary, in the reasonable judgment of Kerr Drug, for the purpose of operating the retail pharmacies and related health care facilities in a manner that will facilitate the clerkship students' services hereunder and shall keep the same in good repair.

**6. INDEMNIFICATION.**

**6.1.** In the performance of the work, duties, and obligations under this Agreement, it is understood and agreed that the parties are at all times acting and performing under this Agreement as independent contractors. University shall, during the Term of this Agreement and at all times thereafter, to the extent permitted by North Carolina law, indemnify, defend and hold harmless Kerr Health, Kerr Health's members, managers, officers, employees, and agents, Kerr Drug, and Kerr Drug's directors, officers, employees, and agents from and against any and all claims, demands, damages, losses and other expenses (including attorneys' fees, to the extent such are awarded by a court of competent jurisdiction), to the extent arising in whole or in part out of the wrongful or negligent acts, omissions, or breach of this Agreement by University.

**6.2.** Kerr Health and Kerr Drug shall, during the Term of this Agreement and at all times thereafter, indemnify, defend and hold harmless University, and University's trustees, directors, officers, employees, and agents, from and against any and all claims, demands, damages, losses and other expenses (including attorneys' fees) arising in whole or in part out of the wrongful or negligent acts, omissions, or breach of this Agreement by Kerr Health in the performance of this Agreement.

**7. TERMINATION.**

**7.1.** This Agreement may be terminated upon the following events:

(a) Fifteen (15) business days following notice by the non-breaching party of a material breach of this Agreement, which breach is not remedied within such fifteen (15) day period;

(b) Immediately by Kerr Drug upon merger, sale or liquidation of Kerr Drug or substantially all of its assets;

- (c) By either party upon at least ninety (90) days' written notice to the other party prior to the beginning of the next academic term of University;
- (d) Immediately by any party upon the insolvency or filing for bankruptcy of another party;
- (e) Upon mutual agreement of the parties; or
- (f) Immediately by either party upon termination of the Business Associate Agreement, as provided for in Section 9.2 of this Agreement.

**7.2.** Upon the termination or expiration of this Agreement for any reason, the parties agree that termination shall not affect any liability of University, Kerr Health, or Kerr Drug that may have accrued prior to such termination and shall not affect any provisions of this Agreement that assume survival after termination.

## **8. INDEPENDENT RELATIONSHIP.**

**8.1.** It is expressly understood and agreed that in the performance of the obligations under this Agreement, each party shall be deemed to be and shall be an independent contractor and, as such, shall not be entitled to any benefits applicable to employees of the other party.

**8.2.** Each party shall be responsible solely for, and shall comply with, all state and federal laws pertaining to employment taxes, income withholding, unemployment compensation contributions and other employment-related statutes applicable to that party.

**8.3.** No party is authorized or empowered to act as agent for the other party for any purpose and shall not on behalf of the other party enter into any contract, warranty, or representation as to any matter. No party shall be bound by the acts or conduct of another party.

## **9. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.**

**9.1.** It is the parties' intent that this Agreement comply with all provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (hereinafter referred to as "HIPAA"), now codified at Title XI, Part C of the Social Security Act, and all regulations promulgated thereunder.

**9.2.** Kerr Drug and University hereby agree and acknowledge that the services of the clerkship students result in University being considered Kerr Drug's business associate as that term is defined in HIPAA, and the parties agree to execute a Business Associate Agreement, in compliance with HIPAA.

## **10. CONFIDENTIAL INFORMATION.**

**10.1.** For purposes of this Agreement, “Confidential Information” means any non-public and/or non-published information of a party, whether of a technical, business or other nature, identified in writing as confidential at the time of disclosure and provided to the other party during the Term of this Agreement, or if not identified as confidential at the time of disclosure, of a nature that would reasonably be considered confidential under the circumstances considered as a whole, including, but not limited to, any information that relates to trade secrets, products, developments, proprietary rights, or business affairs. Confidential Information does not include any information that:

- (a) is already independently known to the non-disclosing party at the time of disclosure as shown by its prior written records, provided that the non-disclosing party so advises the disclosing party promptly upon the non-disclosing party’s discovery that the Confidential Information is already independently known to the non-disclosing party;
- (b) is or becomes part of the public domain through no act or violation of the non-disclosing party;
- (c) is lawfully obtained from a third party without any obligation of confidentiality; or
- (d) is required by law, or regulatory audit to be disclosed.

**10.2.** Each of the parties hereto agrees not to divulge, directly or indirectly, any Confidential Information of another party in any manner contrary to the interests of such party, use or cause or suffer to be used any Confidential Information in competition with such party, or use Confidential Information in violation of the patients’ confidentiality rights under any applicable law; however, nothing herein shall restrict or prohibit the disclosure of information to another health care provider to the extent necessary to provide patient care. Each of the parties acknowledges that the breach or threatened breach of the provisions of this Section would cause irreparable injury to the other party that could not be adequately compensated by money damages. Accordingly, a party may obtain a restraining order and/or injunction prohibiting a breach or threatened breach of the provisions of this Section, in addition to any other legal or equitable remedies that may be available

**10.3.** The obligations under this Section 10 shall survive and continue for five (5) years after the termination of this Agreement.

## **11. MISCELLANEOUS PROVISIONS.**

**11.1.** Any notices, requests and other communications hereunder shall be in writing and shall be deemed duly given if hand delivered, delivered via recognized overnight carrier,

or mailed first class, postage prepaid, certified mail, return receipt requested, addressed as set forth hereinafter, or to such other address as any person or entity may designate in writing, and delivered as herein provided:

To Kerr Drug:           Kerr Drug, Inc.  
                                  3220 Spring Forest Road  
                                  Raleigh, NC 27616  
                                  Attention: Mark Gregory

To Kerr Health:         Kerr Health, LLC  
                                  3220 Spring Forest Road  
                                  Raleigh, NC 27616  
                                  Attention: Rebecca W. Chater, RPh, MPH, FAPhA

To University:         \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

**11.2.** The provisions of this Agreement are deemed by the parties to be severable, and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision.

**11.3.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of North Carolina.

**11.4.** This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof and cannot be amended except by a writing signed by both parties. No waiver of any term or provision of this Agreement shall be deemed to be a waiver of any subsequent breach of such term or provision of this Agreement. This Agreement supersedes and replaces in their entirety any and all other agreements with regard to the subject matter hereof, whether oral or written, if any, between the parties hereto.

**11.5.** No party may assign, transfer, or subcontract its interest or obligations in this Agreement without the prior written consent of the other parties. Notwithstanding the foregoing, a party may assign this Agreement to any entity owned by or under common control with such party.

**11.6.** The failure by any party to promptly exercise a right hereunder, or to seek a remedy available hereunder because of a breach of this Agreement, will not be construed as a waiver of that right or a waiver of any remedy for that breach or any future breach of this Agreement.

**11.7.** Nothing in this Agreement will be construed as creating or giving rise to any rights in any third parties or any persons other than the parties hereto.

**11.8.** Whenever used herein, the masculine pronoun will include the feminine and neuter pronouns, and the singular will include the plural, and the plural the singular.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers, and their corporate seal to be affixed hereto as of the day and year first above written.

**KERR DRUG, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Mark Gregory,  
Vice-President of Pharmacy

**KERR HEALTH, LLC**  
a North Carolina limited liability company

By: \_\_\_\_\_  
Rebecca W. Chater, RPh, MPH,  
FAPhA  
Executive Vice-President

**UNIVERSITY**

By: \_\_\_\_\_