

**SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES OF AMERICA AND  
RIDER UNIVERSITY**

**DJ 202-48-32**

**Background**

A. In July 2016, the United States Department of Justice (“United States”) received a complaint alleging that Rider University (“Rider” or the “University”) violated Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181-12189 (“ADA”) by failing to make reasonable modifications in policies, practices, and procedures to permit students with disabilities as a result of food allergies to fully and equally enjoy the goods, services, facilities, privileges, advantages, and accommodations of its food service and meal plan system. Specifically, the complaint alleged that Rider failed to modify its policies and practices related to its dining options and meal plans for students with food allergy disabilities in its on-campus dining halls. The United States initiated an investigation of these claims. Although Rider University disputes the allegations and disputes that it has violated the ADA, it has fully cooperated with the United States’ investigation.

B. Rider University is a private nonprofit university with approximately 5,100 students, with campuses located in Lawrenceville and Princeton, New Jersey and is a public accommodation within the meaning of 42 U.S.C. § 12181(7)(J) and 28 C.F.R. § 36.104. As a public accommodation, Rider is subject to the nondiscrimination requirements of Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation. Title III prohibits a private university from discriminating against any individual on the basis of disability in the full and equal enjoyment of the university’s goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182 and 28 C.F.R. §§ 36.201, 36.202. As a public accommodation, Rider acknowledges that it must also make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302.

C. The ADA defines “disability” to include any physical or mental impairment that substantially limits one or more major life activities, such as eating, or a major bodily function, including the digestive system. *See* 28 C.F.R. § 36.105(a)(1)(i) & (c)(1)(i)-(ii). An individual’s allergic reaction to food constitutes a disability under the ADA where the allergy substantially limits an individual in one or more major life activity. *See* 42 U.S.C. § 12102.

D. Following its investigation, the United States determined that the

University's policies and practices concerning students with disabilities on the basis of food allergies did not comply with Title III of the ADA. Further, the United States has not seen sufficient evidence to demonstrate that it would be a fundamental alteration to the nature of the University's operations to modify its policies and practices to allow students with food-allergy disabilities to fully and equally enjoy the goods, services, facilities, privileges, advantages, and accommodations of Rider's food service and meal plan system. Specifically, the United States has determined that Rider violated the ADA because, among other reasons, Rider did not provide adequate information on its website for students seeking to obtain a reasonable modification of food services for food allergies or food-related disabilities; in certain instances Rider has improperly delegated responsibility for accommodating students with disabilities on the basis of food allergies to a food service provider; and in certain instances Rider does not readily offer exemptions from its meal plans for students seeking exemption due to a food allergy or food-related disability.

E. The University disputes that it is responsible for violating the ADA, but nevertheless believes it is in its best interests to amicably resolve the investigation without the necessity of litigation and without an admission of liability, and the United States believes that it is in the public interest, to resolve this dispute amicably and without litigation. In consideration of the terms set out in this document, the University and the United States (the "Parties") agree to enter voluntarily into this Settlement Agreement (the "Agreement"), agreeing as follows:

### **Resolution Terms**

#### **1. Compliance with the ADA**

The University agrees to comply with Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181-12189, and 42 U.S.C. § 12203, and the implementing regulation, 28 C.F.R. pt. 36, including, but not limited to, the following:

- (a) The University acknowledges that it has a continuing obligation, and it is the University's policy, to make reasonable modifications in policies, practices, and procedures, including modifications to its dining and meal plan policies, practices, and procedures, when the modifications are necessary to afford the University's goods or services to students and prospective students (collectively "Rider students") with disabilities, 42 U.S.C. § 12182(b)(2)(A)(ii) and 28 C.F.R. § 36.302; and
- (b) The University acknowledges that it has a continuing obligation, and it is the University's policy, to refrain from engaging in retaliation,

coercion, interference, intimidation, or any other action prohibited by 42 U.S.C. § 12203 and 28 C.F.R. § 36.206.

- (c) The University acknowledges that shall not subject any individual, or class of individuals, directly or through contractual, licensing, or other arrangements to any of the prohibited activities contained in 28 C.F.R. 36.202.

## **2. Reasonable Modification to Food Service Practices For Students with Disabilities on the Basis of Food Allergies**

Within twenty (20) business days of the effective date of this Agreement, the University agrees to adopt the following changes to its policies and practices for accommodating students with disabilities on the basis of food allergies:

- (a) The University agrees to make reasonable modifications to its meal and dining plan policies, practices, or procedures, including modifications to allow qualified students with disabilities to be exempt from mandatory participation in a meal plan. For purposes of this Agreement, this sub-section 2(a) only applies to students with a qualified disability.
- (b) The University will update its website in the following ways:
  - (i) Rider will provide a link to its “Housing/Dining Request for Students with Disabilities or Severe Medical Problems” form on the “Dining & Meal Plans” webpage under “Student Life” at <https://www.rider.edu/student-life/housing-dining/dining-meal-plans>;
  - (ii) Within the Student Life/Housing & Dining section of its website, Rider will post the policy statement contained in Exhibit A.
- (c) Within ten (10) business days of the effective date of this agreement, Rider will designate a Rider employee to be the responsible person for all requests for accommodation for disabilities on the basis of food allergies (“Requests”). The responsible person will have responsibility for:
  - (i) Ensuring that all Requests are responded to in a reasonably timely manner, which shall be defined as no later than seven (7) business days;
  - (ii) Documenting all Requests;

- (iii) Working collaboratively with Rider's contracted food service provider ("Food Service Provider") to ensure that the Request is handled appropriately and promptly;
  - (iv) Ensuring that communication with the Requesting student or other person are clear and timely;
  - (v) Ensuring that a reasonable accommodation is provided to qualified students with disabilities ; and
  - (vi) Ensuring that any appeal from the denial of a Request is promptly reviewed and resolved, within seven (7) days of the submission of the appeal.
  - (vii) For purposes of this Agreement, this sub-section 2(c) only applies to students with a qualified disability.
- (d) The University also agrees to separately distribute copies of the Disability Policy to employees and contractors in the Admissions, Residence Life, and SSD Offices who have contact with Rider students and their families. Thereafter, the University agrees to provide a copy of the Disability Policy to all newly hired employees in the Admissions, Residence Life, and SSD Offices within seven (7) business days of their hire date.
- (e) Within thirty (30) business days of the effective date of this Agreement, the University will physically post the Disability Policy on a bulletin board in the SSD office, on a bulletin board in all dining facilities, and distribute the Disability Policy to all undergraduate and graduate Rider students via e-mail. The University also will insert a summary of the Disability Policy, with a web address link to the full Disability Policy, in the University's electronic undergraduate and graduate Student Handbooks.

**3. Disability Services for Students Who Request an Accommodation for Disabilities on the Basis of Food Allergies**

- (a) The University will advise those individuals that request reasonable modifications on the basis of disability due to a food allergy to contact the responsible person referenced in Paragraph 2(c) above. Upon receiving a request or inquiry concerning reasonable modifications, the responsible person or a designee of the responsible person from SSD will meet with the student individually and work with the student cooperatively to fashion an individualized plan for the student. This is intended to be an interactive process in which the student and the University work

together to formulate the best modification plan available for the student. Depending upon the individual circumstances, the University must allow students with disabilities on the basis of food allergies to be exempt from the mandatory meal plan as a possible form of a reasonable modification. The University will ensure that any modification plan is provided in the most integrated setting appropriate to the needs of the individual with the disability. 42 U.S.C. § 12182(b)(1)(B) and 28 C.F.R. § 36.203. After engaging in this interactive process, the University will provide the requesting student with written disability modification letters detailing the specific modification plan tailored to that student. The Parties recognize that the modification process may be an ongoing one that requires additional changes throughout the student's enrollment at the University and will work with students to update their food allergy modification plans, as necessary.

- (b) After the student with a disability on the basis of a food allergy and the University engage in the interactive process, the University agrees to provide modifications if the modification is reasonable and does not fundamentally alter the nature of the University's goods, services, facilities, privileges, advantages, or accommodations.

#### **4. Dining Services**

- (a) Within ten (10) business days of the effective date of this Agreement, the University agrees to post prominent notices concerning food allergies at each of its student dining halls or food eatery facilities; the notices will be printed in a bold font no smaller than 40 points and will state the following, or something substantially similar to the following: "Food-Allergic Individuals: Be aware that we handle and prepare egg, milk, wheat, shellfish, fish, soy, peanut, tree nut products, and other potential allergens in our cafes and kitchens. Before placing your order, please inform [Food Service Provider] staff if you or a person in your party has a food allergy. Please direct questions to [Responsible Person]." The University will designate a "responsible person" at each dining facility to whom food-allergy questions may be directed.
- (b) The University agrees that its Food Service Provider will continue to provide meals made without specific allergens to students with food allergies who have food allergy modification plans under the process described in Paragraph 3. The Food Service Provider will take reasonable steps to prevent the food from being cross-contaminated with the specific allergens at issue. The food will also be nutritionally comparable to the food choices offered to other students, to the extent

reasonably possible. The University's dining hall food lines will continue to offer and identify a variety of food options made without certain allergens (e.g., wheat, dairy, nuts), and the Food Service Staff will take reasonable steps to avoid cross-contamination.

- (c) To further minimize the risk of cross-contamination from meals obtained in the general dining hall food lines, the University may also offer students with disabilities on the basis of food allergies the option to pre-order their meals, consistent with the procedures outlined in Paragraph 4(d). All students with disabilities on the basis of food allergies who have registered with SSD and have a modification plan will have the choice to pre-order their meals or obtain their meals from the food lines.
- (d) **Pre-Order Option**: The University agrees to offer a Pre-Order Option for students with disabilities on the basis of food allergies to pre-order their daily lunch and dinner menu options in accordance with the process defined in this paragraph.
  - (i) Within ten (10) business days of the effective date of this Agreement, the Pre-Order Option will allow students with disabilities on the basis of food allergies to review the online daily dining hall and food eatery menus and to e-mail their requested meal choices to the University's Food Service Manager, the Food Service Executive Chef, or the Dining Hall Manager.
  - (ii) The Pre-Order Option will allow students with disabilities on the basis of food allergies to pre-order their meals from daily menu options if they give at least twenty-four (24) hours advanced notice before the meal, to ensure that the Food Service Provider has or can obtain the necessary ingredients to prepare the specific meal request without the allergen(s) at issue.
  - (iii) If the Food Service Provider is unable to fulfill a student's particular meal request, the Food Service Provider will make reasonable efforts to provide alternative meal options made without specific allergens for the student with disabilities on the basis of food allergies.
  - (iv) The Food Service Provider will prepare all such pre-ordered meals in a designated area within the University's cooking and food preparation areas in order to avoid cross- contamination.
  - (v) The Food Service Provider will provide these meals in a dedicated space at Daly Dining Hall, Cranberry's, Westminster Commons or Sweigert Hall.

- (e) When a student with a disability on the basis of a food allergy orders a meal via the Pre-Order Option described in Paragraph 4(d), the student may request that the University deliver their meals to the University's other dining halls (i.e., Daly Dining Hall, Cranberry's, Westminster Commons, or Sweigert Hall) A student with disabilities on the basis of food allergies electing the Pre-Order Option should provide the Food Service Provider with twenty-four (24) hours advanced notice to allow the Food Service Provider to prepare and deliver the meal to the designated dining hall. The University will make reasonable efforts to deliver the meals to the designated location after receiving 24 hours advanced notice, but in certain circumstances may be unable to deliver meals in a timely manner due to inclement weather or other transportation impediments.
- (f) Within thirty (30) business days of the effective date of this Agreement, the University agrees to establish a dedicated Allergen Awareness Food Preparation Area for students with disabilities on the basis of food allergies in the Daly Dining Hall, which will be staffed by a dedicated chef and consist of a separate kitchen and food preparation area with glass walls, a counter, refrigerator and freezer space for perishable items and separate cooking pots, pans and utensils utilized exclusively to prepare allergen free items. These allergen free items shall be items that fall in the eight major categories for food allergens which are: milk, eggs, tree nuts, peanuts, shellfish, wheat, soy, fish. The Allergen Awareness Food Preparation Area also shall have a food warmer for pre-order meals.
- (g) The University will take reasonable steps to avoid cross-contamination in the Allergen Awareness Food Preparation Area.
- (h) The University shall establish in Daly Dining Hall a teaching kitchen area for students with disabilities on the basis of food allergies, which will provide education, programing and cooking demonstrations that will include information on food allergies and allergen free food preparation.
- (i) The University (though its food service provider) shall employ a full-time dietician who shall be resident in Daly's Hall and, under the University's oversight, among other responsibilities, will assist students with disabilities on the basis of food allergies to develop diets or meal plans.
- (j) The University shall continue to provide in Daly's Hall, Cranberry's and Westminster Commons a separate area with the following:
  - (i) A refrigerator and freezer to store perishable items;

- (ii) Cabinet space to store non-perishable items; and
  - (iii) A separate microwave and toaster dedicated to gluten free items.
- (k) Students with disabilities on the basis of food allergies shall be permitted to submit to the Food Service Provider reasonable written requests for allergen free items that may be associated with the preparation of pre-ordered meals and or daily meals to be prepared in the Allergen Awareness Food Preparation Area. The University shall use reasonable efforts to purchase allergen free items or reasonable substitutes and monitor and replenish such items during the academic year.
- (l) The University recognizes that students with disabilities on the basis of food allergies may wish to purchase food using "Bronc Bucks." The University agrees to continue to offer food made without allergens at all locations that it controls that accept Bronc Bucks.
- (m) Within thirty (30) business days of the effective date of this Agreement, the University will provide a separate link on the first page of its Rider University Dining website <https://www.rider.edu/student-life/housing-dining/dining-meal-plans> regarding food allergies (the "Dining Webpage"). The Dining Webpage will advise students that the University will provide food options for students with disabilities on the basis of food allergies in all dining halls and food eateries controlled by the University. The Dining Webpage will also provide a link to the Food Service Providers' online menus for the University's dining halls and food eateries controlled by the University and include weekly meal options that are allergen friendly for students with disabilities on the basis of food allergies. The Dining Webpage will also provide a link to "Information Regarding Food Allergies" (or its equivalent). The link regarding food allergies will provide:
  - (i) Contact information for the dining services staff person(s) designated as the contact person(s) pursuant to Paragraph 4(d) above;
  - (ii) A description of and link to the Disability Policy; and
  - (iii) A description of and link to the Complaint Resolution Procedure described in Paragraph 6 below.
- (n) For purposes of this Agreement, this Section 4 only applies to students with a qualified disability.

## **5. Modification Appeal Process**

The University recognizes that students may ultimately disagree with the University's proposed modifications. If a student with a disability on the basis of food allergies disagrees with the determinations made by SSD after the student has engaged in the interactive process, the student may request a review consistent with the Disability Policy referenced in Paragraph 2 above.

## **6. Complaint Resolution Procedure**

In general, students may also file complaints of discrimination pursuant to the University's Anti-Harassment and Non-Discrimination Policy, referenced in the Disability Policy.

## **7. Training**

### **(a) Food Service Managers**

(i) Within thirty (30) business days of the effective date of this Agreement, the University will require that the Food Service Provider train its managers and employees on how to comply with the terms of this Agreement.

(ii) Within sixty (60) business days of the effective date of this Agreement, the Food Service Managers will attend a "ServSafe" food handling and food service management class offered by the National Restaurant Association Educational Foundation. The University will provide the United States with proof of completion of the course within ten (10) business days of training.

### **(b) Food Service Staff**

(i) Within thirty (30) business days of the effective date of this Agreement, the University will require that the Food Service staff is trained regarding the terms of this Agreement.

(ii) For the duration of this Agreement, to ensure that the Food Service Provider's staff complies with the terms of this Agreement, the University will require the Food Service Provider to continue to provide educational training to all food service staff a minimum of twice per year, including at least once before the fall and spring semesters begin. This mandatory training will include the following:

- (1) Instruction on celiac disease and food allergies, including food products that contain allergens, cross-contamination, and proper food storage and preparation;
  - (2) Instruction on how to handle inquiries regarding food allergies, including questions regarding ingredients and sub-ingredients in the meals;
  - (3) Instruction that the on-site Food Service Manager should promptly notify SSD when a student seeks modifications to, or an exemption from, the University's mandatory meal plan; and
  - (4) A question and answer session to review each of the foregoing areas.
- (iii) In addition to the Food Service Provider's formal, twice yearly mandatory allergy awareness training, the University will require the Food Service Managers to conduct monthly staff meetings that address allergy awareness and food safety practices.
- (c) **Rider University Employees and Contractors**
- (i) Within ninety (90) business days after the effective date of this Agreement and thereafter at least once per year, the University agrees to provide an educational training program regarding its obligations under Title III of the ADA to all employees and contractors in Residence Life and SSD who have contact with students and their families. This training can be conducted by the University via a commercially available program or through a program presented by University's outside counsel.
  - (ii) Within seven (7) business days of the completion of the training referenced in Paragraph 6(c), the University will provide the United States with proof that this training has occurred, including a dated copy of the agenda and a dated sign-in sheet with the names and titles of the employees and contract employees who received the training.

## **8. Reporting and Document Retention**

- (a) For the duration of this Agreement, the University agrees to preserve

all records related to this Agreement. The University also agrees that upon twenty (20) business days' written notice, representatives of the United States are permitted to inspect and copy any of the University's records related to this matter or inspect any premises under the University's control bearing on compliance with this Agreement at any and all reasonable times, provided, however, that the United States will endeavor to minimize any inconvenience to the University from such inspections.

- (b) Within sixty (60) business days after the effective date of this Agreement and thereafter forty-five (45) days prior to each anniversary of the effective date of this Agreement, the University agrees to submit a written report to the United States describing all actions taken relating to its compliance with this Agreement. The University's report will include appropriate documentation, including any relating to the Policies referenced in this Agreement and summaries of all complaints and investigations under the Anti-Harassment and Non-Discrimination Policy relating to disabilities on the basis of food allergies.

## **9. Miscellaneous Provisions**

- (a) Failure by the United States to enforce this Agreement with respect to any of its provisions or deadlines shall not be construed as a waiver of the right of the United States to enforce other deadlines and provisions of this Agreement.
- (b) All materials sent to the United States pursuant to this Agreement shall be sent either by .pdf attachment or by overnight, prepaid delivery, to Michael Campion and/or Daniel Meyler, Assistant United States Attorneys, Civil Division, U.S. Attorney's Office for the District of New Jersey, Newark, New Jersey 07102, Attn: DJ #202-48-32.
- (c) The effective date of this Agreement is the date of the last signature to this Agreement.
- (d) This Agreement, including Exhibit A, constitutes the entire Agreement between the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement will be enforceable under its provisions.
- (e) This Agreement is limited to resolving claims under the ADA related to the University's obligations to make reasonable

modifications to its meal plan and services for students with disabilities on the basis of food allergies, and does not purport to remedy any other existing or potential violations of the ADA or any other federal, state, or local law. The University acknowledges that this Agreement does not limit the University's continuing responsibility to comply with all aspects of the ADA and all other federal laws.

- (f) A copy of this Agreement and any information contained in it, including the Disability Policy, will be made available to any person by the University or the United States, upon request.
- (g) This Agreement shall be binding on the University and its successors in interest, assigns, agents, employees, and contractors. The University has a duty to notify any and all successors in interest of this Agreement and the duties and responsibilities it imposes on the University. In the event the University seeks to transfer or assign all or part of its obligations under its meal program, and the successor or assignee intends to carry on some or all of the University's responsibilities, the University shall, as a condition of the transfer or assignment, obtain the written accession of the successor or assignee to any obligations remaining under this Agreement for the remaining term of this Agreement.
- (h) The University and the United States recognize that the process and procedures necessary to reasonably modify the University's meal plan and services for students with disabilities on the basis of food allergies are not static, and that these issues in particular are constantly evolving. Accordingly, the University agrees to continue to evaluate the policies and procedures set forth herein, and to modify and revise such policies as necessary to remain in compliance with Title III of the ADA. Pursuant to Paragraph 7 above, the University will notify the United States of any substantive changes to the policies and procedures set forth in this Agreement.

#### **10. Duration of Agreement**

- (a) This Agreement will remain in effect for three (3) years from its effective date.
- (b) The United States may review compliance with this Agreement at any time. If the United States believes that the University has failed to comply in a timely manner with any requirement of this Agreement, the United States will so notify the University in

writing and attempt to resolve the issue in good faith. If the United States is unable to reach a satisfactory resolution of the issue within sixty (60) days, after providing notice to the University and allowing the University an opportunity to cure, the United States may institute a civil action in federal district court to enforce the terms of this Agreement, or take other action to enforce Title III of the ADA.

#### 11. Modification of a Provision

- (a) In the event the University believes continued compliance with a provision in this Agreement results in a fundamental alteration to the nature of its operations, the University may make a written request to the United States Attorney's Office, seeking to terminate or modify such provision. In any such request, it shall be the University's burden to demonstrate how continued compliance with a provision of this Agreement would create a fundamental alteration to its operations. Such request shall include a certification under oath that the University has not violated any material term of the Agreement and outline the rationale for why a provision should be terminated or modified.
- (b) Following submission of the request, the Parties shall confer within ten (10) business days to discuss the request and, thereafter, attempt to resolve the University's request.

#### 12. Time of Performance

Any time limits imposed by this Agreement may be extended by the mutual written consent of the United States and the University.

Executed this \_\_\_ day of \_\_\_\_\_, 2019.

**UNITED STATES OF AMERICA:**

**RIDER UNIVERSITY**

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

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

*James P. Hartman*  
VP for Finance  
CFO / Treasurer

terms of this Agreement, or take other action to enforce Title III of the ADA.

### 11. Modification of a Provision

- (a) In the event the University believes continued compliance with a provision in this Agreement results in a fundamental alteration to the nature of its operations, the University may make a written request to the United States Attorney's Office, seeking to terminate or modify such provision. In any such request, it shall be the University's burden to demonstrate how continued compliance with a provision of this Agreement would create a fundamental alteration to its operations. Such request shall include a certification under oath that the University has not violated any material term of the Agreement and outline the rationale for why a provision should be terminated or modified.
- (b) Following submission of the request, the Parties shall confer within ten (10) business days to discuss the request and, thereafter, attempt to resolve the University's request.

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Executed this 21 day of February, ~~2018~~<sup>2019</sup>.

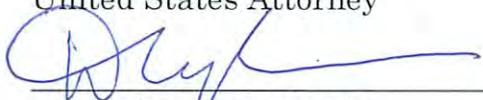
UNITED STATES OF AMERICA:

RIDER UNIVERSITY

CRAIG CARPENITO  
United States Attorney

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

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