

The following guidelines will enable the respective departments to ensure that their contractual arrangements fulfill the University's legal requirements.

Mandatory Contract Review Criteria For Affiliation Agreements

- 1. Term.** The Agreement must specifically set forth a start date and expiration date.
 - a. Effective Date.** “Effective Date” means a date when the Agreement takes effect. A well-drafted agreement normally defines an Effective Date as the date of last signature. Establishing contractual liability for the University at a date that precedes the University’s final approval could expose the University to unpredictable levels of liability. For that reason, IF YOU ENCOUNTER A PROVISION THAT SETS FORTH A START DATE THAT HAS OCCURRED BEFORE THE LAST SIGNATURE DATE, THEN CONTACT THIS OFFICE IMMEDIATELY FOR FURTHER INPUT.
 - b. Expiration Date.** The Agreement must either clearly set forth a specific expiration date, or instead describe a specific length for the Agreement’s initial term in relation to the Effective Date. IF THE AGREEMENT INSTEAD EITHER FAILS TO SPECIFY AN EXPIRATION DATE, OR STATES THAT THE TERM EXPIRES UPON AFFILIATION COMPLETION, THEN **PROPOSE AN ALTERNATIVE PROVISION THAT SETS FORTH A NOT-TO-EXCEED DEADLINE.**
 - c. Duplicity.** Some agreements erroneously include a date in the preamble that is different from a starting date that appears elsewhere within an agreement. IF THE AGREEMENT LISTS A BEGINNING DATE THAT IS DIFFERENT FROM ANY OTHER AFFILIATION STARTING DATE DESCRIBED IN THE AGREEMENT, THEN **PROPOSE THAT THE PARTIES SHOULD DELETE THE INITIAL AGREEMENT DATE.**
- 2. Termination.**
 - a. One-Sided Arrangement.** Some site-drafted agreements allow the site to terminate, but do not include any provision that permits the University to terminate. Under appropriate circumstances (particularly when the site is a nongovernmental entity), the agreement should provide the University a means to terminate for cause. IF APPROPRIATE, **PROPOSE AN ADDITIONAL PROVISION THAT ALLOWS THE UNIVERSITY UPON JUST CAUSE TO TERMINATE UPON REASONABLE (30-90 DAYS) NOTICE TO THE SITE. JUST CAUSE INCLUDES THE SITE’S FAILURE AFTER A REASONABLE PERIOD (30-60 DAYS) TO CURE A MATERIAL DEFAULT.**
 - b. Notice Period.** Occasionally, parties fail to clarify whether a party must provide advance termination notice within a specified time interval, or whether termination is immediate upon receipt.
 - i. *For Convenience.*** A reasonable notice period to terminate an agreement for convenience is 30-90 days. IF THE AGREEMENT FAILS

- b. **Standard of Care.** Please confirm whether the task description includes any words setting forth a standard of care (e.g., “best efforts,” “according to standard professional practices,” “reasonable care,” *etc.*). IF ANY SUCH WORDING APPEARS THAT IS EITHER UNFAMILIAR OR INAPPROPRIATE, THEN EITHER PROPOSE TO DELETE THAT WORDING OR CONTACT THIS OFFICE FOR FURTHER INPUT.

4. Site Duties.

- a. **Clarity.** Please confirm whether the agreement describe each duty in a manner that clarifies whether the University or the site has responsibility to perform the duty. Please also confirm that the agreement clearly describes any duty that the site is bound to perform, at minimum according to the satisfaction of the affiliation coordinator. If appropriate, confirm also that the Agreement enumerates each site task according to any applicable affiliation deadlines. IF THE AGREEMENT FAILS EXPLICITLY TO SPECIFY ANY SITE DUTY, THEN PROPOSE AN ADDITIONAL PROVISION THAT MEETS THE AFFILIATION COORDINATOR’S EXPECTATIONS.
- b. **Academic Coordination.** Please confirm whether the site’s task description includes any commitment to support the University’s academic administration objectives. Relevant tasks include providing evaluations for each student, cooperating with any accreditation activities, providing information pertinent to the University’s Clinical Education Center Information form. IF THE AGREEMENT FAILS TO ADDRESS THESE CONCERNS, THEN PROPOSE TO ADD WORDING THAT CLARIFIES THESE DUTIES.
- c. **Harassment.** Affiliation agreements typically prohibit a site from sexually harassing any student. IF THE AGREEMENT FAILS EXPLICITLY TO SPECIFY THAT PROHIBITION, THEN PROPOSE AN ADDITION PROVISION THAT EXPLICITLY STATES THAT THE SITE MUST NOT SUBJECT ANY STUDENT TO SEXUAL HARASSMENT.

- 5. **Withdrawal.** Please confirm whether any the agreement provides a means for the University to participate in any decision to withdraw a student from the program. Please also confirm whether the agreement sets forth sufficiently objective criteria to determine whether the site has justification to reject or dismiss a student. If the agreement fails to set forth acceptable criteria in either regard, then PROPOSE AN ADDITIONAL CLAUSE THAT SPECIFIES EACH APPLICABLE CRITERION, ACCORDING TO THE AFFILIATION COORDINATOR’S EXPECTATIONS.

6. Confidentiality.

- a. **As To Site Business.** Site-drafted agreements occasionally include provisions that prohibit the University from disclosing to any third party any information regarding the site’s operations. However, some agreement either fail to specify an expiration date for the confidentiality duties, or instead specify a date that far exceeds the University’s likely ability to ensure compliance. Please confirm whether either circumstance applies in the present instance. For any governmentally-classified subject matter, an

extraordinary confidentiality restriction is usually appropriate. BUT ESPECIALLY IF A NONGOVERNMENTAL SITE HAS IMPOSED AN UNUSUAL CONFIDENTIALITY PERIOD, THEN PROPOSE AN ALTERNATIVE PROVISION THAT LIMITS THE UNIVERSITY'S NONDISCLOSURE DUTIES TO THREE YEARS AFTER THE SITE HAS DISCLOSED A PARTICULAR ITEM.

b. HIPAA.

i. *Business Associate Duties.* Some site-drafted agreement may impose detailed HIPAA duties onto the University, under a mistaken presumption that the University is considered to be a business associate as defined under HIPAA. IF AN AGREEMENT IMPOSES ANY DUTIES BEYOND MERELY INSTRUCTING THE STUDENTS REGARDING HIPAA REQUIREMENTS, THEN PROPOSE AN ALTERNATIVE PROVISION THAT:

- LIMITS THE UNIVERSITY'S DUTIES TO EXPLAINING HIPAA TO EACH STUDENT AND ENSURING THAT EACH STUDENT SIGNS AN APPLICABLE CONFIDENTIALITY STATEMENT; AND
- DECLARES THAT FOR HIPAA PURPOSES ONLY, EACH STUDENT IS CONSIDERED PART OF THE SITE'S WORKFORCE.

ii. *Site Duties.* Each site – depending generally upon the nature of the site's activity – has likely developed its own unique set of guidelines that may not be familiar to the University. If an agreement fails to do so, then PROPOSE AN ADDITIONAL PROVISION THAT REQUIRES THE SITE TO INSTRUCT EACH STUDENT REGARDING THAT SITE'S INTERNAL HIPAA GUIDELINES.

c. FERPA. Some sites occasionally may express reservations toward accepting any duties under FERPA. In those instances, it is necessary to explain that FERPA pertains to affiliation-related records, and that a failure to comply with FERPA places into jeopardy the University's right to receive federal funding. Health-based sites should be able to grasp the significance of this problem, based on their vulnerability to comparable sanctions related to federal Medicare/Medicaid funding. If an agreement fails to address FERPA, then PROPOSE an additional provision that:

- i.** acknowledges FERPA's applicability;
- ii.** requires each party to brief its personnel regarding FERPA;
- iii.** restricts any redisclosure of any affiliation-related records to any third party; and
- iv.** requires each party to indemnify the other related to any FERPA violation.

7. Indemnification.

a. Students. Occasionally, parties contracting with the University propose to include students within the scope of indemnification or hold-harmless

clauses. IF YOU ENCOUNTER ANY PROVISION THAT REFERS TO ANY STUDENT, THEN CONTACT THIS OFFICE IMMEDIATELY FOR FURTHER INPUT.

- b. Occurrences.** Indemnity duties commonly appear in agreements not only with respect to general liability matters, but also with respect to specialized matters such as infringement of third party intellectual property rights, export control compliance, etc. Frequently these provisions appear in several locations within an agreement, including attachments. Because the University's indemnity authority is limited by Idaho statute, please confirm whether any indemnity duty appears within the agreement. UNDER APPROPRIATE CIRCUMSTANCES (ESPECIALLY IF A NONGOVERNMENTAL SITE), PROPOSE AN ADDITIONAL CLAUSE THAT APPROPRIATELY REFERS TO STATE OF IDAHO LIMITATIONS. Please contact this office if you have any questions regarding appropriate wording for the Idaho arrangement.

8. Insurance.

a. Students.

- i. *Policy Limits.*** Typically, an agreement requires each student to obtain professional liability (malpractice) coverage within a \$1M/\$3M range. IF THE AGREEMENT REQUIRES ANY COVERAGE ARRANGEMENT THAT IS DIFFERENT FROM THE ABOVE RANGE, THEN PROPOSE AN ALTERNATIVE COVERAGE LIMIT WITHIN THIS RANGE.

ii. *University Duties.*

- **University Coverage.** Occasionally, parties contracting with the University propose to include students within the scope of the University's insurance or worker's compensation coverage. IF YOU ENCOUNTER ANY PROVISION THAT REFERS TO ANY STUDENT, THEN CONTACT THIS OFFICE IMMEDIATELY FOR FURTHER INPUT.
 - **Student Policy.** Occasionally, parties contracting with the University propose to require the University to obtain professional liability insurance, general liability insurance or worker's compensation coverage on a student's behalf. If you encounter any provision that requires the university obtain coverage for any student, then PROPOSE AN ALTERNATIVE PROVISION THAT MERELY REQUIRES THE UNIVERSITY TO ENSURE THAT THIS COVERAGE IS IN PLACE BEFORE ANY STUDENT IS ASSIGNED TO THE SITE.
- b. University Employees.** Occasionally, a site may propose a provision that requires the University to provide liability insurance, or set forth insurance requirements for both parties. In some instances, a site may propose to limit its indemnify duty to the University relative to the site's insurance coverage. IF YOU ENCOUNTER ANY PROVISION THAT REFERS TO ANY

INSURANCE REQUIREMENT, THEN CONTACT THE UNIVERSITY'S RISK MANAGEMENT OFFICE FOR FURTHER INPUT

- 9. Publications.** Sites commonly require advance notice before any University publication submission, and may even retain a veto right relative to any submission that contains information that the Agreement designates as confidential. Please confirm whether any publication restriction meets the affiliation coordinator's expectations. IF NOT, THEN UNDER APPROPRIATE CIRCUMSTANCES (ESPECIALLY IF A NONGOVERNMENTAL SITE), PROPOSE AN ALTERNATIVE PROVISION THAT IS MUTUALLY ACCEPTABLE TO THE PARTIES.
- 10. Certifications.** Many sites (especially US government sites) require the University to certify its compliance with various legal or regulatory requirements regarding debarment, lobbying and cost accounting provisions. Typically, even the signatory faces possible criminal or civil sanctions for noncompliance. FOR THAT REASON, PLEASE CONTACT THIS OFFICE IMMEDIATELY FOR FURTHER INSTRUCTIONS IF YOU ENCOUNTER ANY UNFAMILIAR CERTIFICATION.
- 11. Payment.**
 - a. Fee.** Although affiliations typically do not involve any fee payment, any agreement that does require the University to pay must clearly and unequivocally set forth any payment arrangement that the parties establish.
 - b. Other Expenditures.** Even if an affiliation arrangement does not set forth any fee, some agreements impose duties upon either the students or the agreement parties to bear certain expenses (i.e., payments from the site to certain College of Technology students).
- 12. Attachments; Appendices; Exhibits.**
 - a. Inclusion.** Please confirm that any external document (e.g., student confidentiality statement) that is referenced in the main body of the agreement is attached within the agreement. IF THE AGREEMENT FAILS TO INCLUDE ANY INTERNALLY-REFERENCED DOCUMENT, THEN:
 - i. OBTAIN THE OTHER PARTY'S VERIFICATION THAT THE EXTERNAL DOCUMENT SHOULD BE PART OF THE AGREEMENT; AND**
 - ii. ATTACH THE EXTERNAL DOCUMENT TO EACH VERSION OF THE ORIGINAL AGREEMENT.**
 - b. Reference.** Please also confirm that any external document that is attached within the agreement is specifically referenced within the agreement. IF THE AGREEMENT FAILS TO SPECIFICALLY REFERENCE ANY EXTERNALLY ATTACHED DOCUMENT, THEN
 - i. OBTAIN THE OTHER PARTY'S VERIFICATION THAT THE EXTERNAL DOCUMENT SHOULD BE PART OF THE AGREEMENT; AND**
 - ii. PROPOSE AN ADDITIONAL CLAUSE THAT SPECIFICALLY REFERS TO THE EXTERNAL DOCUMENT AND CLARIFIES THAT THE DOCUMENT IS "ATTACHED AND INCORPORATED INTO THE AGREEMENT."**

13. Language.

a. Definitions.

- i. *Single-Occurrences.* Please confirm whether the Agreement defines each capitalized word (other than a surname, geographical designation, etc., or merely the beginning of a sentence), including any abbreviation or acronym. UNDER APPROPRIATE CIRCUMSTANCES (ESPECIALLY IF A NONGOVERNMENTAL SITE), PROPOSE TO REDRAFT:
 - TO LOWER CASE ANY WORD THAT IS USED ONLY ONCE IN THE AGREEMENT; AND
 - TO THE FULL EXPRESSION ANY ABBREVIATION OR ACRONYM THAT IS USED ONLY ONCE IN THE AGREEMENT.
- ii. *Changing Definitions.* Some agreements use alternative expressions for the same word or phrase, with no explanation. Please confirm that each capitalized word or expression is used consistently throughout the agreement. IF NOT, THEN PROPOSE TO REDRAFT EACH NONCONFORMING OCCURRENCE IN A MANNER THAT RESULTS IN CONSISTENT WORDING FOR THAT WORD OR EXPRESSION.
- iii. *Embedded Definitions.* Some agreements include quoted and capitalized expressions within (or at the end of) clauses that are so wordy or complex that one is unable to determine the intended meaning for a defined expression. UNDER APPROPRIATE CIRCUMSTANCES (ESPECIALLY IF A NONGOVERNMENTAL SITE), PROPOSE TO REDRAFT EACH DEFINITION IN THE FOLLOWING MANNER:

“Defined Word” means

- b. Coherency. Many agreements, including some standard-form documents, contain language uses that are counter to the conventions of standard English. Please confirm that within the “four corners” of the agreement, each clause is fully comprehensible for a non-expert, and does not require explanation from any external document or resource. IF NOT, THEN PROPOSE TO REDRAFT EACH INCOMPREHENSIBLE CLAUSE IN A MANNER THAT ADEQUATELY COMMUNICATES EACH PARTY’S BINDING DUTIES UNDER THE AGREEMENT.