

Alternative Affiliation Agreement Clauses

Each clause is provided as an alternative to a provision in an affiliation agreement that a Site party has drafted but does not meet ISU standards. If the Site's proposed clause:

- contains subject matter that extends beyond the scope of a corresponding alternative clause below, then **consider retaining the remainder of that subject matter that the alternative clause does not address;**
- fails to address subject matter that a corresponding alternative clause addresses, then **consider adding any portion of the alternative clause that more appropriately fulfills the University's objectives;** or
- is in conflict with an alternative clause, then **obtain the Site's explanation for that conflict and contact this office immediately for further input.**

Replace the "Site" or "University" party names with any equivalent expressions that appear on the other party's draft.

Payment

Compensation. Neither party has any payment or reimbursement duty under this Agreement. Each party must bear its own Agreement costs and expenses.

Contract Term

Basic Term. "Term" means a period beginning with the Effective Date and continuing ___ [number] months, unless earlier terminated. But this Agreement's confidentiality provisions remain in effect after any termination. The Parties upon written amendment are entitled to extend this Agreement from time to time.

Termination

Termination.

- A. **By Default.** If a party defaults any material Agreement obligation and fails to remedy the default within thirty days after receiving written default notice, the other party retains an option to terminate this Agreement by giving written termination notice.
- B. **For Convenience.** Each party has a right to terminate this Agreement in whole or in part in writing for its convenience, but must give the other party not less than sixty days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon effecting any termination for convenience, Site equitably must adjust any price or cost for which Site has chosen to compensate University in this Agreement.

Confidentiality

FERPA. “*FERPA*” means the Family Educational Rights and Privacy Act. The Parties recognize that they are bound to comply with FERPA in their handling of education records of any Student that may be enrolled in any University related to this Agreement.

- A. Access Need. The Parties understand and recognize that each Party’s employees and agents need access to educational records that the other Party maintains in properly administering any duties and obligations to Student.
- B. Duty to Orient. Each Party thoroughly must orient its employees and agents of its obligations under FERPA and strictly maintain its practices according to that act’s requirements.
- C. Disclosure. “*Outsider*” means any person or entity not a Party to this Agreement.
 - 1. *To Third Party.* Before authorizing any further disclosure of Student’s educational records to any Outsider, a Party must:
 - a. receive the other Party’s permission; and
 - b. obtain assurances that the Outsider fully has complied with FERPA.
 - 2. *Redisclosure.* A Party has authority to redisclose Student’s educational records to the Outsider only if the Outsider does no further disclosure.
- D. Indemnity. To the extent of the law, each Party will save, indemnify, and hold harmless the other Party and their officers, employees, and agents from any liability, damages, claims, actions, causes of actions, demands, judgments, or awards of whatsoever kind or nature, arising out of any failure by the indemnifying Party or its officers, employees, or agents to abide by the Family Education Rights and Privacy Act or its implementing regulations.

HIPAA. “*HIPAA*” means CFR parts 160 and 164.

- A. **University Duties.** University must:
 - 1. direct each Student to comply with Site’s policies and procedures governing any use or disclosure of individually identifiable health information under federal law, specifically including HIPAA; and
 - 2. ensure at Site’s request that each Student signs and delivers to Site before the Experience begins a copy of a Confidentiality Understanding (attached and incorporated into this Agreement as **ATTACHMENT A**)

- B. Site Duties. The Site must inform and train the Student regarding Site's HIPAA-related policies and practices.
- C. Student Status. Site's rules and regulations apply to each Student who University assigns to an Experience. The Student specifically is not and must not be considered to be Site's employee. But the Student is considered to be a member of the Site's workforce, when engaged in any Agreement activity:
 - 1. solely for the purpose under HIPAA to define the Student's role in relation to using and disclosing Site's protected health information; and
 - 2. as that word is defined under 45 CFR 160.103.

University Duties

University Responsibilities. "ACCE" means University's academic coordinator of clinical education. University must:

- A. provide a statement to the Site that describes the philosophy, goals, objectives, and schedule of:
 - 1. the University's curriculum generally; and
 - 2. each Experience in particular;
- B. ensure that each Student appropriately is assigned to the Experience, including:
 - 1. evaluating the Student's competence and knowledge before the Experience begins;
 - 2. assessing Student's health before Experience begins; and
 - 3. requiring the Student to carry appropriate professional liability insurance;
- C. ensure that the Student is knowledgeable concerning and has prepared for:
 - 1. transportation needed to fulfill responsibilities at the Site;
 - 2. room and board concurrently with the Experience; and
 - 3. scheduling arrival at and departure from the Site;
- D. ensure that the Student has been made aware of each relevant Site rule, regulation, policy, procedure and schedule that Site has made known to the University;
- E. ensure that the Student has been made aware of each University requirement and regulation for clinical education, including professional practice standards;

- F. facilitate communication between the Parties, including:
 - 1. appointing a member of University's faculty to serve as ACCE;
 - 2. notifying the Site in writing of the identity of the ACCE and any University-designated University director;
 - 3. notifying the Site annually of each then-current academic year's clinical education schedule;
 - 4. notifying the Site of each specific Student assignment no later than ten working days before the Student's arrival, subject to the arrangement set forth below in Sections IV.B and IV.C; and
 - 5. describing to the Site specific Student outcome objectives for the each assigned Student's Experience;
- G. direct each Student to comply with Site's policies and procedures governing any use or disclosure of individually identifiable health information under federal law, specifically including HIPAA; and
- H. ensure at Site's request that each Student signs and delivers to Site before the Experience begins a copy of a Confidentiality Understanding (attached and incorporated into this Agreement as **ATTACHMENT A**).
[note: may only applicable to health-related affiliation]

Site Duties

Site Responsibilities. The Site must:

- A. accept each Student whom Program has selected for an Experience period;
- B. provide any applicable annually updated information that is necessary to complete Program's Clinical Education Center Information form;
- C. notify the Program - no later than fifteen working days before a clinical assignment - of any change in Program's ability to accept the Student;
- D. provide the Student a clinical schedule averaging forty hours per week;
- E. complete and return each Student evaluation according to the Program's guidelines and schedule;
- F. not subject the Student to any sexual harassment act; and
- G. inform and train the Student regarding Site's HIPAA-related policies and practices.

Withdrawal

Withdrawal. Each Party is entitled at any time to withdraw the Student from the Site after assignment for any of the following documented reasons that the Party

must document:

- A. the Student's unprofessional or unethical behavior;
- B. the Site's staff's unprofessional or unethical behavior that directly affects the Student's Experience;
- C. the Student's failure to meet University's prerequisite academic requirements; or
- D. any good cause, including but not limited to, any medical emergency.

Indemnification; Hold Harmless

University Indemnity.

- A. Scope. To the extent of the Idaho Tort Claims Act (I.C. § 6-901 et seq.) or any applicable insurance coverage, each party will defend, indemnify, and hold harmless the other party, its officers, governing board, employees, agents, and representatives from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses, and reasonable attorney's fees, arising from any negligence or wrongful act or omission of the indemnifying party, its officers, employees, and agents.
- B. Exclusion. The indemnifying party is liable under the provisions of this Section for the preceding paragraph's obligations, costs, and expenses only to the extent that the above act or omission is caused:
 - 1. by the indemnifying party or any of its officers, employees, or agents; and
 - 2. not by the other party or any of its officers, employees, agents, representatives, or volunteers.

Insurance

Insurance.

- A. Covering the Parties. Each party will provide a certificate evidencing any insurance that this Agreement requires upon the other party's written request. Each party represents and warrants that it maintains comprehensive general liability insurance and all coverages required by law sufficient for the purpose of carrying out each duty or obligation arising under this Agreement. Each party must, at its own expense, obtain and maintain appropriate Workers' Compensation coverage for University's employed personnel.
- B. Student Insurance.
 - 1. *Site Requirement*. Site requires each Student to have Student's own health insurance and have malpractice insurance with professional and personal limits of liability of \$1,000,000 per

occurrence and \$3,000,000 in general aggregate.

2. *University Duty.* University must ensure that any professional liability insurance coverage for any Student assigned to the Site has been obtained before University has assigned the Student. At Site's request, University must deliver a copy of the insurance certificate to the Site.

General Clauses

Assignment. Because this Agreement is based upon the parties' skill and expertise, a party must obtain the other party's written consent – unless expressly set forth in this Agreement otherwise – before assigning or delegating the Agreement or its obligations.

Authority. Each person signing below represents that he or she has the authority to sign this Agreement on behalf of either University or Site.

Binding On Successors. Each covenant, obligation, term, provision or condition in the Agreement applies to - and binds to the benefit of - each party's heirs, administrators, executors, legal representatives, trustees and successors.

Captions. This Agreement's captions or headings are for convenience only and are not considered to be a part – or to affect any construction or interpretation – of any Agreement provision.

Counterparts. This Agreement may be executed in any number of counterparts, of which each is considered to be an original, and all together constituting one instrument.

Extent Of Agreement. Site has no authority at any time to act as an agent for University for any purpose unless expressly set forth in this Agreement.

Independent Contractor. Site has no right to direct or control any University activity in performing any Agreement service. University performs each Agreement services only as an independent contractor. Nothing in the Agreement is to be construed to be inconsistent with an independent contracting relationship or status. Under no circumstance is University or any University employee considered to be Site's employee or agent. This Agreement does not constitute or create any joint venture, partnership or formal business organization.

Legal Construction/Severability. If any court or other competent tribunal for any reason holds any Agreement provision to be invalid, illegal or unenforceable in any respect, then:

- A. that holding does not affect any other provision;

- B. that tribunal must construe this Agreement as if it had never contained the invalid, illegal or unenforceable provision; and
- C. each Agreement provision is severable.

Non-Discrimination. Neither Site nor University has any right to discriminate against any person on the basis of sex, race, creed, national origin, color, religious belief, age, disability, or status as a disabled veteran or veteran of the Vietnam era in the performance of this Agreement.

Non-Waiver. No covenant or condition of this Agreement is waived except by a waiving party's written consent. One party's forbearance or indulgence in any regard does not constitute a waiver of a covenant or condition that the other party must perform to which the same may apply. Until the other party completes performance of that covenant or condition, an aggrieved party - despite any forbearance or indulgence - is entitled to invoke any remedy available to it, whether under this Agreement, by law or in equity.

Notices. For any notice to another party under this Agreement, a party must provide delivery in writing either by hand or by mail, registered or certified postage prepaid with return receipt requested. The party must address any mailed notice to the other party's address as it appears in the Agreement. Any notice delivered personally is considered communicated at the time of actual receipt. Mailed notice is considered communicated three days after mailing. Any notice, statement, payment or report that this Agreement requires must be addressed as follows:

A. If to University:

Idaho State University
921 S. 8th Avenue, Box 8410
Pocatello, ID 83209
Attn: General Counsel

B. If to Site:

Publicity.

- A. Site Release. Site must not release any item identifying University or any University employee without University's prior authorized written approval. If University rejects any news release, the Parties must discuss any reason for University's rejection, and endeavor diligently to develop an appropriate informational news release according to accepted academic practices and the Parties' respective policies.
- B. University Release. University must obtain Site's prior authorized written approval if University chooses to distribute any news release pertaining to the clinical experience.
- C. Exception. Site has a right to use University's name when and as required by any applicable law, rule or regulation, or upon University's consent, which University must not unreasonably withhold or delay. This Section's requirements do not prohibit either party from reporting the clinical experience to any U.S. governmental agency or prohibit Site from identifying University or any University employee when indicating factually that Site is affiliating with University under this Agreement. Site's right to disclose under this paragraph further applies only to any communication that is:
1. associated with Site's financing activities; and
 2. (other than any promotion or advertisement) directed to describing or responding to any inquiry concerning Site's business, products, services and associated activities.

Responsibility. Each party assumes individual responsibility for any action or omission of its employees, agents and assigns in conjunction with this Agreement. Neither party assumes any responsibility for any action or omission of any Student in conjunction with this Agreement.

Use of Names. Site must not include University's name in any advertising, sales promotion, or other publicity matter without prior written approval of the University's Provost.

Entire Agreement. This Agreement, including any attachments, constitutes the entire understanding between Site and University and supersedes each prior or contemporaneous agreement - whether written or oral - between parties. Any oral representation not contained in the Agreement is binding on the parties only if the parties have acknowledged it in writing. The Parties have not entered any warranty, representation, or other agreement in connection with the Agreement's subject matter unless specifically set forth in the Agreement. Any supplement, amendment, alteration, modification, waiver or termination of this Agreement is binding only if the Parties have entered it in writing.

