

**AVERA HEALTH  
STUDENT AFFILIATION AGREEMENT**

This Agreement sets forth the understanding between Avera Health, a South Dakota nonprofit corporation located at 3900 West Avera Drive, Sioux Falls, South Dakota 57108, acting on behalf of its sponsored hospitals and other affiliated companies (including but not limited to Avera McKennan, Avera St. Luke's, Avera Queen of Peace, Sacred Heart Health Services, d/b/a Avera Sacred Heart Hospital, Avera St. Mary's, Avera Marshall, Avera St. Benedict Health Center, Avera St. Anthony's, Avera Holy Family, Avera@Home, and Avera Health Plans, Inc.) (hereafter collectively "Avera"), and the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of [Insert College/University name] located at [insert full address including city], Minnesota [Insert zip code] (hereafter "EDUCATIONAL INSTITUTION").

**WITNESSETH:**

**WHEREAS**, EDUCATIONAL INSTITUTION has established programs for clinical training (including student shadowing experiences) (the "Programs") and desires to provide education, instruction and clinical experience for its students, including undergraduate and graduate students and residents and fellows, and also provide them opportunities to participate in health care delivery in rural, small community and urban sites; and

**WHEREAS**, Avera has entities that can provide the setting and equipment in which students enrolled at EDUCATIONAL INSTITUTION may participate in such clinical practice experience and/or other clinical educational activities required in their curriculum; and

**WHEREAS**, EDUCATIONAL INSTITUTION and Avera desire to enter into this Agreement for the educational benefit of the students, residents and fellows.

**NOW, THEREFORE**, in consideration of these premises and of the following mutual promises, covenants and conditions, the parties agree as follows:

**ARTICLE I**

**EDUCATIONAL INSTITUTION Responsibilities**

- A. The EDUCATIONAL INSTITUTION shall coordinate student performance/participation in clinical/internship opportunities (including student shadowing experiences) for health-related programs at the EDUCATIONAL INSTITUTION, with individuals designated by Avera entities for such coordination. If initiated pursuant to a structured program and coordinated by an EDUCATIONAL INSTITUTION faculty member, such EDUCATIONAL INSTITUTION faculty member assumes responsibility for planning, directing, and evaluating the student's learning experience, i.e., providing classroom instruction to assume practicum responsibility, and evaluation for the student throughout the Programs.

- B. EDUCATIONAL INSTITUTION warrants that no faculty or staff of EDUCATIONAL INSTITUTION will be present onsite at Avera on a regular basis to supervise students although faculty or staff of EDUCATIONAL INSTITUTION may make occasional site visits to observe student clinical activities with prior permission from Avera.
- C. The EDUCATIONAL INSTITUTION warrants that each student participating in the Programs is in good academic standing and qualified to perform/participate in the Programs.
- D. The EDUCATIONAL INSTITUTION will designate a faculty member to coordinate the clinical educational activities in cooperation with personnel designated by Avera. The faculty member will be available at reasonable times during business hours by phone to the student and Avera liaison.
- E. The EDUCATIONAL INSTITUTION will require all students to abide by the rules, regulations, policies and procedures, standards of conduct and competency requirements of Avera and to conduct themselves in a professional manner. All students shall wear the appropriate uniform or attire and display proper identification at all times while on Avera premises. Notwithstanding the foregoing, this Agreement does not, and shall not be construed to, require the EDUCATIONAL INSTITUTION to comply with the *Ethical and Religious Directives for Catholic Health Care Services* as promulgated by the United States Conference of Catholic Bishops and the United States Catholic Conference from time to time, or any policies, procedures, regulations or directives of Avera that are based on the *Ethical and Religious Directives* or any religious principles.
- F. The EDUCATIONAL INSTITUTION warrants that each student and faculty member participating in the Programs have on record a physical examination. This should be completed within the last 12 months showing general good health and free from communicable diseases, consistent with current health exam requirements for Avera employees to be in effect for the duration of the Programs. For students participating only in a shadow experience, the student must abide by Avera's HIPAA/patient confidentiality policies, dress code, and other pertinent hospital policies that will be provided to the student in writing. Health service requirements for students participating in a clinical internship and faculty include, but may not be limited to and such documentation shall be maintained by and at the EDUCATIONAL INSTITUTION and made available upon Avera's request pursuant to the written consent of the subject:
  - a. Tuberculin screening
    - i. Baseline tuberculin screening test and an assessment for current symptoms of active TB disease are required on all students unless they have a history of a previous positive tuberculin screening test.
    - ii. Proof of two tuberculin skin tests (TST) or a Tb blood assay within the previous 12 months is required for new students.
    - iii. A two-step TST will be administered if necessary to those who have a lapse longer than 13 months between TSTs.

- iv. The first step of the TST must be read in 48-72 hours after the initial injection. Those who have a negative reaction to the first test will have a second TST planted at least one week after the initial test.
- v. A one-step TST will be administered if there is proof of one other test within the previous 12 months.
- vi. TST, Tb blood assay or assessments are required annually.
- vii. The TST is not done in the event any student has a known positive reaction. They must provide proof of a positive reaction and will need a chest X-ray within the last year and an assessment for current symptoms of active TB disease
- viii. All students with a newly positive Tuberculin screening test will be referred to their primary physician.
- ix. The following are State Specific Guidelines for Tuberculin screening

#### Minnesota and Iowa Guidelines

- 1. Baseline TST consists of two components
  - a. Assessing for current symptoms of active TB disease
  - b. Testing for the presence of infection with Mycobacterium tuberculosis by administering a two-step TST.
- 2. Students may begin after a negative TB symptom screen and a negative first-step TST. The second TST may be performed after the student starts working with patients

#### South Dakota Guidelines

- 1. The SD Department of Health requires that all students working in a health care facility have proof of two tuberculin skin tests or a Tb blood assay in the previous 12 months.

- b. Measles, Mumps, and Rubella Immunity
  - i. Proof of two Measles, Mumps, and Rubella immunizations or proof of immunity by positive lab titers is required at time of student placement.
- c. Varicella Immunity
  - i. A positive varicella titer or two varicella vaccinations are necessary on students who have no history or do not know if they have a history of chicken pox or shingles.
- d. Hepatitis B Immunity
  - i. Student will provide proof of Hepatitis B series, the Hepatitis B series will be administered, or a signature of declination will be obtained.
- e. T-dap (Tetanus/Diphtheria/ Pertussis)
  - i. All students must receive a one-time dose of T-dap (per manufacturer's recommendations).
- f. Influenza
  - i. An annual Influenza vaccine is required per Avera policy.
  - ii. Students will be required to comply with Avera's policy regarding influenza vaccination.

- iii. The EDUCATIONAL INSTITUTION will need to complete the Influenza Student tracking form which is a CMS reporting requirement. This needs to be completed and returned to each Avera regional location and is due each year by April 10<sup>th</sup>.
- G. The EDUCATIONAL INSTITUTION shall inform students that Avera recommends that students receive immunization against Hepatitis B. Students who elect not to receive the Hepatitis B vaccine must sign a Hepatitis B declination form which will remain on file at the EDUCATIONAL INSTITUTION. The EDUCATIONAL INSTITUTION shall warrant that each student has either elected to receive the vaccine or has signed a declination form.
- H. INSURANCE. Each party, at its sole expense and at all times during the term of this Agreement, shall secure and maintain the following insurances (or comparable coverage under a program of self-insurance) covering itself and its employees who perform any work, duties or obligations in connection with this Agreement.

**Commercial General Liability Insurance**

The EDUCATIONAL INSTITUTION will maintain Commercial General Liability insurance in conformance with the Tort Claims limits set forth in Minn. Stat. 3.736, subdv. 4, with limits not less than \$500,000.00 per person and \$1,500,000.00 per occurrence for bodily injury and property damage.

Avera will maintain Commercial General Liability insurance with limits not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate for bodily injury and property damage.

**Professional Liability Insurance**

The EDUCATIONAL INSTITUTION will maintain Professional Liability insurance for participating students (and faculty, if applicable) or cause any student participating in the program to maintain Professional Liability insurance, with limits not less than \$2,000,000 each claim and \$3,000,000 aggregate.

Avera will maintain Professional Liability insurance covering itself and its employees, agents or assigns with limits not less than \$2,000,000 each claim and \$3,000,000 aggregate.

If insurance covered by claims-made policies is discontinued, then extended reporting period coverage must be obtained and evidence of such coverage shall be provided to the other party.

**Additional Conditions:**

An Umbrella or Excess Liability insurance policy may be used to supplement Avera's policy limits to satisfy the full policy limits required by the Agreement.

Each party shall provide to the other party upon request certificates of insurance or self-insurance evidencing the required coverage.

If Avera receives a cancellation notice from an insurance carrier affording coverage herein, Avera agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Avera's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days' advance written notice to the EDUCATIONAL INSTITUTION.

Each party, at its sole expense, shall provide and maintain Workers' Compensation insurance as such party may be required to obtain by law. The EDUCATIONAL INSTITUTION is self-insured for Workers' Compensation purposes, and any such insurance extends only to employees of the EDUCATIONAL INSTITUTION, not to students.

- I. Avera shall not be responsible for the transportation of students enrolled in the Programs.
- J. If applicable, the EDUCATIONAL INSTITUTION shall maintain approval and licensure by the appropriate or required accrediting body and any other agency required by law.
- K. The EDUCATIONAL INSTITUTION shall submit to Avera, upon request:
  - 1. The Programs' philosophy, objectives and type of learning experience desired.
  - 2. Dates, time, number and academic level of students to be assigned to each unit within Avera.
  - 3. Name, license number, and credentials of faculty member providing the practicum instruction, if applicable.
  - 4. Prior notice of any proposed changes to any assigned student's schedule.
- L. Based on information provided by Avera in advance, the EDUCATIONAL INSTITUTION shall inform its students and faculty members of Avera's policies, rules, and regulations that relate to the Programs at Avera, including, but not limited to, confidentiality, infection control, and safety. EDUCATIONAL INSTITUTION shall inform students that each student participating in the Programs at Avera is required by Avera to pass a recently conducted national criminal background check, at each student's expense, covering a period of at least seven (7) years immediately prior to their arrival at Avera or the minimum period required by law, if applicable. Each student is responsible for submitting his/her information to a credentialing website mutually agreed upon by the EDUCATIONAL INSTITUTION and Avera, for providing the background check report to the EDUCATIONAL INSTITUTION and for providing written consent to the release of the background check report by the EDUCATIONAL INSTITUTION to Avera. EDUCATIONAL INSTITUTION agrees and represents that it will require all students to also have completed, at each student's expense, a background study conducted in accordance with Minnesota Statutes Chapter 245C, Human Services Background Studies,

as a pre-condition to participation in the clinical experience. EDUCATIONAL INSTITUTION will not assign a student to Avera if his/her background study documents ineligibility to have direct contact with Avera's patients or residents under applicable law or regulations. If requested, students shall provide Avera with documentation regarding the completion or results of the background study pursuant to the written consent of the subject.

- M. EDUCATIONAL INSTITUTION shall ensure that each student, prior to engaging in the Programs, complete HIPAA training. If Avera has specific requirements for such HIPAA training, it shall provide that information to EDUCATIONAL INSTITUTION a reasonable amount of time before the Programs begin. EDUCATIONAL INSTITUTION faculty shall complete the Faculty Verification of Student Orientation form, which is available from Avera. The Programs may not begin until this Agreement has been executed by EDUCATIONAL INSTITUTION and Avera and the verification form has been received by Avera.
- N. EDUCATIONAL INSTITUTION shall cooperate with Avera in complying with its obligations as a HIPAA covered entity, including, but not limited to, complying with its policies and procedures under the HIPAA Privacy Regulations, 45 CFR parts 160 and 164. EDUCATIONAL INSTITUTION shall inform students of the EDUCATIONAL INSTITUTION who will engage in the Programs and faculty members who make visits to Avera sites that Avera requires them to abide by all applicable policies and procedures of Avera and all applicable federal, state and local laws, rules and regulations, including all laws pertaining to confidentiality and security of individually identifiable health information (expressly including the HIPAA regulations set forth at 45 CFR Parts 160 and 164, and any policies and procedures related to Avera's electronic medical records system (including, without limitation, any required User Agreements)). Students of EDUCATIONAL INSTITUTION and faculty members, if applicable, shall be informed that they are required to use appropriate safeguards to prevent the use and/or disclosure of patient identifiable medical information. Any known misuse of patient identifiable medical information shall be immediately reported to Avera. Any violation of laws, rules or regulations or Avera's policies and procedures and/or willful misconduct or negligence by a student or faculty member, may result in termination of this Agreement.
- O. For purposes of this Agreement, the term "Avera Confidential Information" means all information, in oral, written, visual, and/or other tangible form which may include, but is not limited to, patient aggregate data, documents, information, techniques, technology, data, samples, substances and materials provided by or on behalf of Avera in connection with the Programs which Avera considers to be confidential. All Avera Confidential Information will be disclosed in confidence and trust, and EDUCATIONAL INSTITUTION will instruct its students and faculty members to not, directly or indirectly, use this information for any purpose other than participation in the Programs at Avera. EDUCATIONAL INSTITUTION will instruct its faculty, employees and students to employ all reasonable steps to protect Avera Confidential Information from unauthorized or inadvertent disclosure. To the extent it meets the definition of "trade

secret information” in Minnesota Statutes Section 13.37, subdivision 1(b), EDUCATIONAL INSTITUTION will treat business and operations information of Avera provided to it by Avera as nonpublic data. The provisions of this Agreement shall not pertain to (a) information or data that is publicly available other than as a result of any improper disclosure, including, without limitation, a disclosure in violation of any of the terms of this Agreement; or (b) information that is required to be produced or disclosed pursuant to subpoena or other legal process. The parties acknowledge that under the Minnesota Government Data Practices Act, with which the EDUCATIONAL INSTITUTION must comply, this Agreement, when fully executed is classified as public data.

- P. Data Privacy. Avera and the EDUCATIONAL INSTITUTION must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the EDUCATIONAL INSTITUTION in accordance with this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Avera in accordance with this Agreement. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this clause by either Avera or the EDUCATIONAL INSTITUTION. In the event Avera receives a request to release the data referred to in this clause, Avera must immediately notify the EDUCATIONAL INSTITUTION. The EDUCATIONAL INSTITUTION will give Avera instructions concerning the release of the data to the requesting party before the data is released. The parties additionally acknowledge that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and 34 C.F.R. 99, apply to the use and disclosure of education records that are created or maintained under this Agreement.
- Q. EDUCATIONAL INSTITUTION acknowledges that Avera Confidential Information may contain information which Avera considers to be valuable trade secrets of Avera. EDUCATIONAL INSTITUTION further acknowledges that the unauthorized disclosure, use, or disposition of Avera’s Confidential Information may cause irreparable harm and injury which may be difficult to ascertain. Accordingly, Avera shall have the right to seek immediate injunctive relief due to any existing or threatened breach of the confidentiality provisions in this Agreement, in addition to any other remedies that may be available at law or in equity. In the event of any legal action to enforce the provisions of this Agreement, if so ordered by a court, Avera shall be entitled, in addition to any other relief granted, to recover from EDUCATIONAL INSTITUTION the costs and expenses of such enforcement, including reasonable attorneys’ fees.
- R. EDUCATIONAL INSTITUTION shall be responsible for informing its faculty and students who will be participating in the Programs at Avera of EDUCATIONAL INSTITUTION’S obligations under this Agreement, and of the obligations of said faculty members and students with respect to Avera’s Confidential Information.
- S. EDUCATIONAL INSTITUTION shall have primacy over academic affairs and the education/evaluation of students.

**ARTICLE II**  
Avera Responsibilities

- A. Avera will provide clinical experience situations as described in the Programs' curriculum and to the extent possible, in accordance with the objectives to be provided by the EDUCATIONAL INSTITUTION.
- B. Avera shall inform EDUCATIONAL INSTITUTION students and the EDUCATIONAL INSTITUTION's designated faculty coordinator of Avera's policies, rules, and regulations that relate to the Programs at Avera, including, but not limited to, confidentiality, infection control, and safety. Avera will provide site-specific training in these areas to students of EDUCATIONAL INSTITUTION.
- C. Avera will designate appropriate personnel to coordinate the student's clinical learning experience in the Programs
- D. Avera shall have sole authority in establishing rules and regulations that govern the care of all patients observed by or assigned to EDUCATIONAL INSTITUTION students participating in the Programs.
- E. Avera shall provide emergency care for EDUCATIONAL INSTITUTION students in the event of emergencies including exposure to infectious or environmental hazards or other occupational injuries occurring while students are on duty. Charges rendered will be billed directly to the student. Exposures to infectious diseases will follow procedures established for Avera employees. Avera assumes no financial responsibility for the medical care and treatment of students.
- F. Avera shall furnish scrub suits and/or protective equipment for students when required by Avera.
- G. Avera will designate an Educational Supervisor who will be responsible for the on-site supervision and direct evaluation of the student while at the clinical affiliate site.
- H. Avera will have in place an Accidental Exposure to Blood or Bodily Fluids policy. If an accidental exposure to blood or bodily fluids occurs to a student, they will be referred to the closest Emergency Department. The student is responsible for the cost of any testing following an accidental exposure. The student is responsible for obtaining necessary follow-up care and is responsible for all expenses of such care.

**ARTICLE III**  
Joint Responsibilities

- A. Avera is ultimately responsible for patient care and treatment and as such is entitled to broad discretion regarding access to Avera facilities and patients. Accordingly, the EDUCATIONAL INSTITUTION shall provide Avera, in advance, the names and

relevant information regarding all students requesting the Programs' access to Avera facilities and patients. Avera reserves the right in its sole discretion, with or without cause, to decline such requests or discontinue the access of a student to Avera patients and facilities. In non-emergency instances, Avera shall consult with EDUCATIONAL INSTITUTION before taking any action to terminate the participation of a student.

- B. The maximum number of students assigned to Avera during any instructional period shall be established by mutual agreement of the parties.
- C. If applicable, a mutually planned orientation program will be provided for the faculty of EDUCATIONAL INSTITUTION to orient them to Avera's policies and procedures prior to the beginning of the academic year. Faculty shall receive no remuneration from Avera.
- D. Neither students nor faculty of the EDUCATIONAL INSTITUTION nor Avera personnel shall discriminate against the other on the basis of age, religion, race, color, creed, national origin, disability, sex, sexual orientation, marital status, status with regard to public assistance, or military or veteran status.
- E. No form of harassment of or by students, faculty, or others associated with the EDUCATIONAL INSTITUTION or of or by any personnel associated with Avera shall be permitted under any circumstances. All reported incidents will be investigated, and acts of prohibited behavior will result in corrective action.
- F. For the purposes of this Agreement, the EDUCATIONAL INSTITUTION and Avera agree that the parties to this Agreement are independent contractors. Accordingly, the students of EDUCATIONAL INSTITUTION are not employees of Avera or EDUCATIONAL INSTITUTION and are not eligible for workers' compensation coverage by Avera or EDUCATIONAL INSTITUTION while on the premises of Avera or while involved in any procedure or clinical experience at Avera.

#### **ARTICLE IV**

##### **Term and Termination**

The term of this Agreement shall begin on the date it is fully executed and shall remain in effect for a term of five (5) years unless either party provides the other party with written notice of termination at least sixty (60) days in advance. Any students enrolled in an ongoing program at the time of such termination shall be given the opportunity by Avera to complete the requirements of the program as offered at the time of entry and in compliance with the conditions contained in this Agreement, so long as patient care is not being jeopardized by the student's behavior that led to the termination.

#### **ARTICLE V**

##### **Liability**

Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The EDUCATIONAL INSTITUTION's liability shall be governed by the Minnesota Tort Claims Act, Minnesota Statutes § 3.736 and other applicable laws.

## **ARTICLE VI**

### Miscellaneous

- A. This Agreement sets forth the understanding and agreement between the parties. All prior negotiations, agreements and understandings are superseded and wholly unenforceable.
- B. This Agreement may not be amended or revised without the written consent of the parties. This Agreement may not be assigned by either party without the written consent of the other.
- C. If any term or provision of this Agreement or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of the terms or provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- D. If either party waives a breach of one of this Agreement's provisions by the other party, that waiver shall not operate or be construed as a waiver of any other of this Agreement's provisions or as a waiver of a subsequent similar breach.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Notwithstanding the foregoing, this Agreement shall not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Agreement or afforded by the State of Minnesota law.
- F. State Audit. The books, records, documents and accounting procedures and practices of Avera relevant to this Agreement shall be subject to examination by the EDUCATIONAL INSTITUTION and the Minnesota Legislative Auditor.
- G. Avera agrees that in fulfilling the duties of this Agreement, Avera is responsible for complying with the Americans with Disabilities Act, 42 U.S.C. Chapter 12101 et seq., and any regulations promulgated to the Act. The EDUCATIONAL INSTITUTION is not responsible for issues or challenges related to compliance with the ADA beyond its own routine use of facilities, services and other areas covered by the ADA.

**IN WITNESS WHEREOF**, the authorized representatives of the parties hereto have agreed to abide by the above terms and conditions by signing below:

<b>AVERA HEALTH</b>	<b>The State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of [Insert College/University name]</b>
By: _____ Bob Sutton	By: _____
Its: President and CEO	Its: _____
Date: _____	Date: _____
Acting on behalf of its sponsored and leased health care facilities and affiliated entities.	