

BUSINESS AFFAIRS AND HUMAN RESOURCES
FEBRUARY 25, 2016

IDAHO STATE UNIVERSITY

SUBJECT

Collaborative Affiliation Agreement with a Private, For-Profit Osteopathic Medical School

APPLICABLE STATUTES, RULE OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Sections I.J. and V.I.5.

BACKGROUND / DISCUSSION

Earlier this year the Idaho Osteopathic Physicians Association was made aware that an investor group headed up the Burrell Group LLC out of New Mexico might be looking to locate a private, for-profit osteopathic medical school in the Intermountain West. The Idaho Department of Commerce in turn contacted the Burrell Group to explore the feasibility and potential capacity for locating such a school in Idaho. The Burrell Group's model is to "affiliate" such a school with a public university, and has identified Idaho State University's Meridian campus as their preference. There is precedent for this approach in another state. The same investor group started the Burrell College of Osteopathic Medicine at New Mexico State University (NMSU), which is a free-standing, privately-funded, separately licensed and independently operated entity and not part of NMSU. This nascent college in New Mexico will accept its first class of students in fall 2016.

Several weeks ago the Governor met with Idaho State University (ISU) President Art Vailas and asked him to have exploratory conversations with the Burrell Group. The Governor's Office subsequently met with Board members Soltman and Westerberg and briefed them on this developing matter. On February 4, 2016, the Governor convened a meeting of selected stakeholders to be briefed on the Burrell proposal. Participants at the meeting included: Governor Otter, Dr. Linda Clark (representing the Board), President Vailas, Sen. Marv Hagedorn (R-Meridian), Megan Ronk (Director, Dept. of Commerce), Marilyn Whitney (Governor's Senior Special Assistant for Education & Government Services), Dr. David Pate (President/CEO, St. Luke's Regional Medical Center), Doug Crabtree (CEO, Eastern Idaho Medical Center), Brian Whitlock (President/CEO, Idaho Hospital Association), Suzanne Frederick (Executive Director, Idaho Osteopathic Physicians Association), and a representative from West Valley Medical Center. At the conclusion of this meeting the Governor asked President Vailas to negotiate a draft affiliation agreement with the Burrell Group.

The Governor's Office, Dept. of Commerce, ISU and the Burrell Group are now at a point at which they request the Board to authorize ISU to enter into a collaborative affiliation agreement. The affiliation agreement memorializes the public-private partnership between ISU and a new private, for-profit college of osteopathic medicine (COM). Salient provisions of the agreement are as follows:

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- i. COM would immediately seek pre-accreditation status with the appropriate accrediting body.
- ii. The Burrell Group intends to lease a parcel of land on, and/or space within the existing facility of, ISU's Meridian campus as the location for the proposed COM.
- iii. Acknowledgement that Idaho law prohibits ISU from using public funds to support a private entity.
- iv. The term of the agreement is 40 years, with the option to renew for two additional 10 year terms.
- v. ISU would receive payment from COM to provide COM students specified services and use of facilities.
- vi. Two positions on the COM board of trustees would be individuals who are employees of, or otherwise affiliated with, ISU. The ISU president would make non-binding recommendations to COM for these two trustee positions.
- vii. Potential academic collaborations between the two entities might include: clinical and hospital affiliation agreements, faculty teaching and research, joint degree programs, and joint research initiatives.
- viii. Neither entity is liable for any contract or tort claims, damages, losses, costs and expenses due to the acts or omissions of the other entity's directors, trustees, officers, employees or staff.
- ix. Provisions regarding termination of the agreement and remedies upon default are included.

IMPACT

Under the proposed affiliation agreement, ISU's involvement would be the provision of limited student services and shared use of some facilities (e.g. the anatomy lab). The agreement does not contemplate ISU delivering any academic programming at the COM.

The potential impact of an osteopathic medical school on the current capacity for clinical rotation opportunities in the Treasure Valley (or other areas of the state) for other medical and health education programs offered through Idaho's public institutions (e.g. WWAMI students, BSU nursing students, ISU physician assistant and nursing students, etc.) is unknown to the Board at this time.

One of the stated primary objectives of starting this school is to help address the state's physician shortage. A corresponding increase in high quality medical residency opportunities in Idaho will be needed in order to presumably accommodate an influx of in-state trained osteopaths. It is well documented that there is a high probability that a physician will practice where trained (56% of family medicine residency graduates practice within 100 miles of where they completed their residency training). The Burrell Group has indicated it would make an investment to at least partially fund expansion of medical residency opportunities in Idaho.

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ATTACHMENTS

Attachment 1 – Collaborative Affiliation Agreement

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STAFF COMMENTS AND RECOMMENDATIONS

The Governor and the Department of Commerce bring this proposed affiliation agreement, on behalf of ISU, to the Board for its consideration.

In the Governor’s 2016 State of the State message he charged the Board “to work with our medical community and higher education institutions to develop a new plan for addressing future demand for healthcare providers.” To that end, the Board intends to appoint a medical education committee in the near future. In the meantime, however, the Governor led the effort at hand which would offer a public-private partnership model for the delivery of medical education in Idaho.

The Governor’s Office and the Department of Commerce took the lead in vetting and negotiating the full proposal and affiliation agreement; so the only matter before the Board at this time is consideration of allowing ISU to enter into the presented affiliation agreement.

BOARD ACTION

I move to authorize the President of Idaho State University to execute the Collaborative Affiliation Agreement between ISU and Idaho College of Osteopathic Medicine, LLC, as presented in Attachment 1.

Moved by_____ Seconded by_____ Carried Yes_____ No_____

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Collaborative Affiliation Agreement
between
Idaho College of Osteopathic Medicine, LLC
and
Idaho State University

THIS COLLABORATIVE AFFILIATION AGREEMENT (“Agreement”) is made and entered into by and between the Idaho College of Osteopathic Medicine, LLC hereinafter referred to as “ICOM”, and Idaho State University (“University”), a state institution of higher education governed by the Idaho State Board of Education (“Board”).

REPRESENTATIONS

1. University was established in Idaho Code, Title 33, Chapter 30.
2. ICOM is an Idaho limited liability company in good standing, created by its organizers for the purpose of creating and operating a private accredited college of osteopathic medicine (“COM”). *Note: The incorporation will be completed immediately if the decision is made to place a new medical school in Idaho. Also, the official public DBA name has yet to be selected. It will not be The Burrell College of Osteopathic Medicine at Idaho State University; rather a name will be selected, with local stakeholder input, that complements the local culture and geography and with “at Idaho State University” as the ending part of the name.*
3. ICOM is presently in the process of seeking pre-accreditation status, then provisional accreditation, from the Commission on Osteopathic College Accreditation (COCA) of the American Osteopathic Association (AOA) which the U.S. Department of Education recognizes as the accrediting body for osteopathic medical colleges, with the intention of obtaining full accreditation status as expeditiously as the rules of COCA permit.
4. ICOM intends to locate the COM on a parcel of land located within the University’s Meridian Campus, which is the University’s Health Sciences Campus (“Meridian Campus”), in accordance with the Master Declaration Agreement and Joint Operations and Maintenance Agreement between the University and Joint School District No. 2, Ada and Canyon Counties, Idaho (now known as West Ada School District), and for this purpose has or will enter into an agreement (“Lease”) to lease/sublease a parcel of land on the Meridian Campus and/or space within an existing building or multiple buildings. The effectiveness of this Agreement and the Lease are each contingent upon execution of the other.
5. This Agreement is entered into for the purpose of defining and establishing the relationship between the parties, and to provide for the purchase and sale of University services to ICOM.

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6. The parties understand and agree that pursuit and achievement of the aforementioned accreditation of the COM is of material importance and that University would be unwilling to enter this Agreement without assurance from ICOM that the accreditation process is underway, and once full accreditation is received, that the COCA accreditation (or some equivalent national accreditation, should COCA cease to exist or be replaced with a similar accrediting body), will be maintained for the duration of this Agreement. ICOM commits to using diligent good faith efforts toward that end.
7. The parties understand and agree that the purpose of this Agreement is to establish a public/private collaboration which is intended to both facilitate and enhance University's ability to accomplish its health science mission, core themes and strategic plan, and to assist ICOM in accomplishing its mission to establish a private College of Osteopathic Medicine on the University's Meridian Campus.
8. The parties stipulate that ICOM and University are independent legal entities whose legal relationship is defined exclusively by this Agreement and the Lease. Neither party has the authority to represent or hold itself out as being part of the other, nor to assume or create any obligation expressed or implied on behalf of the other party. ICOM agrees to place appropriate disclaimers on all printed and digital materials and websites. An example of an approved COCA disclaimer is as follows: *"The (To be Named) College of Osteopathic Medicine at Idaho State University is a free-standing, privately funded, separately licensed and accredited and independently operated entity and is not part of Idaho State University."* The final disclaimer is subject to mutual approval by both COCA and the University's accrediting body, as well as by the University and ICOM.
9. The individual signing this agreement on behalf of ICOM personally represents that he or she has appropriate legal authority to act on behalf of ICOM to enter into this Agreement, and will provide to University documentary evidence of that authority prior to or at the time of signing.
10. The parties acknowledge that the Meridian Campus was selected for the COM, in part, because of its designation as a Health Science Campus and its proximity to major medical centers, and the opportunity to enhance the educational experience of ICOM's students by purchasing services for those students and access to University's facilities for those students from the University.
11. The parties acknowledge that the proximity of the COM on the Meridian Campus is expected to create opportunities for University faculty and students to collaborate with ICOM faculty and students with respect to possible joint degree programs and joint research initiatives and that these educational opportunities are a valuable incentive for the establishment of this Agreement and for allowing ICOM to lease/sublease a location for the COM within the University's Meridian Campus.

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12. ICOM acknowledges that Idaho law prohibits University from using public funds to support a private college, and that this Agreement shall be interpreted in such a manner as to ensure that ICOM and its faculty, employees and students shall at all times be required to pay the full cost of any service or benefit received under this Agreement.

NOW, THEREFORE, in consideration of the mutual conditions and covenants contained herein, University and ICOM agree as follows:

A. Term of the Agreement:

This Agreement shall become effective upon the latter date of either the execution of this Agreement or the execution of the Lease , and shall remain in effect until the earlier of: (i) expiration forty years after the effective date of this agreement; (ii) termination of the Lease between University and ICOM ; (iii) the cessation of operation of a College of Osteopathic Medicine on the premises leased/subleased to ICOM; (iv) the denial, withdrawal, loss or suspension of the COM's COCA accreditation and exhaustion of the appeals processes provided by COCA standards; or (v) written agreement of the parties hereto, and subject to the renewal rights set forth in the next paragraph.

The parties understand and agree that this Agreement, if still in effect at its expiration date and so long as a COM is operated on the premises at the Meridian Campus, may be renewed by either party, provided the party seeking to renew is not at that time in breach of the Agreement, for two (2) additional ten (10) year terms. The right to renew the Agreement shall be exercised by written notice of extension to the other party, no later than sixty (60) days prior to the expiration of the then-existing term.

B. Student Services and Facility Usage:

University agrees to provide those individuals enrolled and physically located at the Meridian Campus as regular full time active students at the COM ("ICOM Students") with the specific services and use of facilities which are listed in Schedule A to this Agreement ("Student Services"), subject to the terms, restrictions and conditions of this Agreement. Schedule A is appended hereto and incorporated by reference herein. The parties understand that the services listed in Schedule A will be subject to periodic review and modification by University, but will at all times include a substantial portion of those services that are provided to University's students from University's student fee assessment. It is understood that these services and fees do not pertain to students who reside full-time outside of Ada and Canyon counties, Idaho during their third and fourth clinical training years. ICOM agrees to pay University for the Student Services in accordance with the terms set forth below.

1. ICOM agrees, on an annual basis, to select from among the listed services in Schedule A, to compensate University with an annual lump sum payment to University for the Student Services, to be remitted in advance of services being rendered, as provided herein below.

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- a. The Annual Services Payment (“ASP”) amount shall be calculated by the following formula:

(ICOM Headcount x University Graduate Student Fee x Number of University Semesters in Academic Year x Administrative Cost Factor)

Where:

- i. “ICOM Headcount” equals the number of duly enrolled full-time students attending COM as determined on the 7th day after the start of its academic calendar year;
 - ii. “University Student Fee” equals the per semester full-time student fee amount, as established annually by the Board for University’s students (based on the fees charged to University’s graduate students taking 9 or more graduate credits);
 - iii. “University Semesters in Academic Year” is equal to the number of academic semesters which occur in an academic year in which University’s enrolled students are required to pay the University student fee (currently there are 2 University Semesters in the Academic Year plus a summer session; additional student fees are assessed during the summer session); and
 - iv. “Administrative Cost Factor” is a multiplier determined by University to account for indirect costs of administering Student Services which are not included in University’s process of establishing its University Student Fees (the University’s best estimate at this time is a factor of 15%, however, University may adjust this number periodically to provide recovery of all actual indirect costs). Should the Administrative Cost Factor increase to a rate that is not satisfactory to ICOM then the parties shall discuss in good faith, and if no agreement is reached, ICOM may choose to discontinue the use of certain services listed in Schedule A.
- b. Under no circumstances shall the compensation paid for Student Services be less than University’s actual costs, both direct and indirect, in making the support services available to ICOM Students. No public funding can or will be utilized in providing the Student Services. In the event that it is determined by an audit of University by a public official or a certified public accountant that public funds have been used for the benefit or support of ICOM, without payment of full and fair consideration, in addition to the compensation set out above, ICOM will reimburse University for such use of public funds within thirty (30) days after notification to ICOM of the circumstances and the amount due if the total amount to be refunded is \$50,000 or less and ninety (90) days after notification to ICOM of the circumstances and the amount due if the total amount to be refunded is greater than \$50,000.

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- c. University student fee amount is subject to annual review and adjustment by the Board in accordance with Idaho state law and Board Governing Policies and Procedures. In the event that during the academic year, the Board approves a student fee increase for University's students, then within 30 days of notification, ICOM will remit an additional fee assessment in an amount to be determined in accordance with the formula set out above.
 - d. ICOM will provide University with an estimated headcount at least 45 days before the first day of ICOM's academic calendar year in the fall of each year. University will calculate an estimated ASP based on the estimated headcount and selected services for full-time first and second year students and will submit an invoice for that amount to ICOM at least 30 days prior to the start of ICOM's academic year. ICOM will remit payment of 85% of the estimated ASP amount to University no later than 15 days prior to the start of ICOM's academic calendar year.
 - e. ICOM shall report its actual enrollment headcount to University no later than 10 days after the start of ICOM's academic calendar year, and within 15 days of receipt of the headcount number, University will submit an adjusted invoice for the actual ASP amount, showing a credit for the amount previously paid. ICOM shall, within 45 days after the start of classes under ICOM's academic calendar, remit the balance due, if any, for the annual compensation payment amount.
 - f. The ASP provided herein is intended as compensation for the Student Services to be provided by University. ICOM and University understand and agree that University may provide additional services to University's students which are not included in Schedule A and will not be provided to ICOM students, and that there will be no adjustment in the ASP for those omitted services; provided that, the student services made available to ICOM students will always include a substantial portion of those services offered to University's students and paid for by student fees. The selected services by ICOM may vary from year to year.
2. University's obligation to provide ICOM students with the Student Services specifically listed in Schedule A is subject to the terms, restrictions and conditions set forth in this Agreement.
 - a. The Student Services will be provided to ICOM students only during such times, and on such terms, as such benefits are provided to University's students. University is under no obligation to provide Student Services at any time in which such services are not available to University's students. Any services discontinued, restricted or altered for University students will also be discontinued, restricted or altered for ICOM students without reduction in or rebate of the compensation paid under this Agreement.
 - b. When the Student Services listed in Schedule A are subject to capacity limitations, University reserves the right to give priority to University students in the distribution of Student Services. University will undertake good faith

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- efforts to provide adequate capacity for both University and ICOM students.
- c. University agrees to issue an identification card, similar in form and function to those issued by University to its own students, to the duly enrolled full-time active ICOM students. This identification card will be used by University to identify eligible ICOM students and by ICOM students to access the Student Services provided under this Agreement. Only students presenting the ICOM student identification card will be provided Student Services under this Agreement. ICOM shall be responsible for providing University with a list of the duly enrolled ICOM students who are to be provided with identification cards. ICOM students will be charged the same rate for new or replacement identification cards as University students (currently \$15).
 - d. All duly enrolled full-time active ICOM students are eligible to receive Student Services as provided in this Agreement, except as otherwise stated herein. Notwithstanding the foregoing statement, while physically present on the Meridian Campus, ICOM students are subject to all University policies, rules and regulations regarding visitors to the Meridian Campus. University reserves the right to prohibit ICOM students from access to the Meridian Campus consistent with applicable University policy. University will, as soon as practicable, provide ICOM with notification of any such action taken by University with respect to any ICOM student. In such an event, ICOM shall not be entitled to refund or rebate of any portion of the ASP.
3. No Individual Rights: ICOM students are not third-party beneficiaries under this Agreement and have no individual rights hereunder. The services and license to access facilities on the Meridian Campus as provided for herein do not indicate or signify enrollment, academic standing, nor employment with University.
 4. In addition to the Student Services provided through this Agreement and listed in Schedule A, and subject to approval by ICOM, ICOM students shall be eligible to purchase or receive the Optional Services described in Schedule B if the University has the capacity to provide the Optional Services after first serving its University students.

C. Accreditation

1. At all times after securing accredited status as an Osteopathic Medical College through COCA, ICOM shall maintain that accreditation, or some equivalent national accreditation (should COCA cease to exist or be replaced with a similar accrediting body), as well as ensure compliance with applicable state statutes and regulations governing private postsecondary educational institutions in Idaho. The denial or termination of provisional accreditation, or the denial of or termination of accreditation, or the withdrawal from accreditation, after the exhaustion of or expiration of all opportunities for reconsideration or appeal under COCA standards or rules, is a breach of this Agreement.
2. ICOM shall provide the provost of University with a copy of all accreditation results and

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reports including AOA approvals at the time of each evaluation. ICOM shall immediately notify the provost of University in writing at any such time that ICOM receives notice of accreditation with warning, probationary accreditation status, pending loss or loss of accreditation from AOA.

D. Maintaining Separate Legal Identities

1. When entering into legal documents of any type, ICOM shall not hold itself out as being controlled by, being part of, or acting on behalf of University. ICOM shall not use University's taxpayer identification number or University's tax-exempt status or represent itself as part of the University in connection with purchases or sales by ICOM, gifts to ICOM, interest or other income of ICOM, or any other activity of ICOM.
2. University and ICOM agree to take reasonable measures to ensure that third parties understand that ICOM is not part of University. However, ICOM and University may inform third parties of the existence of the Public/Private collaboration created by this Agreement.
3. The parties understand that particular care must be taken during any gift solicitation or development or fundraising efforts to ensure that donors and potential donors are not mislead or confused regarding the relationship and association of the parties. Accordingly, each party agrees to explicitly inform any donors or potential donors of their independent status in the event of any inquiry or if there is ever any indication of confusion on the part of such third party.
4. Any research grant proposals prepared as a result of collaboration between the parties and submitted to external third parties shall explicitly identify the parties as independent legal entities.

E. Conduct of Faculty, Staff and Students

1. Regardless of the affiliation of any faculty, staff, students or visitors who may be involved, any criminal misconduct or violation of state or federal statute or law shall be reported by either party having knowledge of such misconduct or violation. Subject to Section I.3., certain reports may be made to the appropriate law enforcement agency, which in the case of any property owned by University, shall be the University Public Safety Department and if applicable, to the appropriate University and/or ICOM department (i.e., Title IX Coordinator, Student Affairs). *(Note: Once a specific location is officially determined, we'll include a clause identifying whether the property is owned by the campus or a third party and subject to city PD jurisdiction.)* Any other governmental agency found or believed to have jurisdiction may be notified as well.
2. ICOM has primary jurisdiction with respect to conduct issues that arise with ICOM students, faculty, or staff. ICOM will adopt appropriate policies to address such situations and ICOM administrators to take the lead in investigating resolving such issues in accord with that policy. ICOM administrators will inform and coordinate with appropriate University parties in the event the conduct involves University students, faculty or staff or otherwise has consequences that affect University.

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3. Notwithstanding the foregoing, ICOM and University agree that University maintains the right to bar specific ICOM students, faculty, or staff from the University's campus, excepting lands leased to ICOM, in accordance with University policy, or as provided in Paragraph B.2.d. above, and to report any illegal or dangerous activity to any appropriate law enforcement agency or fire and emergency services offices.

F. University Engagement with ICOM Governance

For the purpose of ensuring ongoing collaboration between the parties and to facilitate efforts of the parties to realize the potential benefits for each that this collaboration affords, ICOM agrees that two positions on the ICOM Board of Trustees will be designated for individuals who are employees or otherwise affiliated with the University ("University Affiliated ICOM Board Member"). Prior to the time of the ICOM Board of Trustees' initial formation, and thereafter at least 30 days before the selection of replacement University Affiliated ICOM Board Members, ICOM will solicit nominations from the President of University for individuals to serve in the University Affiliated Board Member positions. At least 10 days prior to the selection date, the University President shall forward recommendations of interested, qualified individuals for these University Affiliated ICOM Board Member positions to the ICOM President, for consideration for appointment. Final decisions regarding which of the individuals so recommended are to be appointed to the ICOM's Board of Trustees rest solely with ICOM. If the University President's nominees are not appointed, the ICOM President will request additional nominees from the University President, until acceptable nominees are submitted.

In addition to participation on ICOM's Board of Trustees, the ICOM President shall ask University President for recommendations of interested, qualified individuals to serve on ICOM Advisory Boards that may be developed in the future.

G. Academic Collaborations

The parties have entered into the Lease and this Agreement with the expectation that this relationship will be more than an economic arrangement. Both parties are seeking to maximize the benefits that may flow from the collaborations made possible by the geographic proximity of their respective academic enterprises. The following terms are intended to establish the framework for such collaborations with the understanding and expectation that the nature, duration and commitments arising from academic collaborations will evolve over time and will be subject to separate and additional documentation as deemed necessary or desirable by the parties.

1. Curriculum: Each party will develop and maintain its own curriculum and student policies and procedures independent of the other. Neither party will have authority or exercise control over the other with respect to curriculum, degree requirements or the award of degrees. ICOM will develop its clinical and hospital contracts for the benefit of its students without any commitment of or obligation on the part of University. However, University and ICOM will be allowed to collaborate and enter into clinical and

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hospital affiliation agreements that are mutually beneficial. Such agreements are subject to mutual written approval of both ICOM and University.

2. Faculty Collaboration: The parties shall use good faith efforts to collaborate regarding faculty teaching and research expertise. Faculty employed by one party may seek non-tenure track appointments with the other party for the purpose of teaching or research. When faculty from University provide teaching or research services to ICOM, ICOM shall reimburse University, or the faculty providing those services, consistent with the rate and other terms and conditions mutually agreed upon in writing by the parties, and predicated upon compliance with applicable Board Governing Policies and Procedures, and Idaho state law. Each party agrees to notify and seek the consent of the immediate supervisor and academic Dean of any faculty employed by the other party to whom they wish to offer a joint appointment. Faculty teaching in these joint appointments shall be granted a title appropriate to their status and may be listed in course catalogs and for purposes of accreditation as teaching faculty.
3. Joint Degree Program Development: University and ICOM agree to use good faith efforts to collaborate in pursuit of development of joint degrees. Both parties agree to seek and pursue opportunities that are mutually beneficial to both parties, and to avoid, to the extent practicable, competition between the parties concerning the establishment of the same or similar/duplicative academic programs.
4. Joint Research Initiatives: The shared goal of both parties to this Agreement is to collaborate to obtain an increase research funding and other grants available to healthcare related disciplines. ICOM and University agree to use good faith efforts to collaborate on research projects that will be mutually identified and which the parties agree will be mutually beneficial. Any specifically agreed upon research project shall be the subject of a separate research memorandum that will detail the scope of work, benefits to University and ICOM, ownership and publication rights with respect to any intellectual property arising from or generated by the research, budgets and funding mechanisms for each project. Any such research memorandum shall incorporate by reference and be subject to the terms and conditions of this Agreement. It is agreed by the parties that no public funding appropriated or granted for the exclusive use by University will be used to support any portion of a research project conducted by ICOM.

H. Liability Insurance and Defense

1. ICOM understands and agrees that University will not be liable for any of ICOM's contracts, torts, or other acts or omissions, or for those by ICOM's directors, officers, members, managers, employees or students. ICOM understands and agrees that neither it, nor its directors, officers, members, managers, employees, staff or students will be protected by University's or the State of Idaho's insurance policies or self-insurance plans in connection with ICOM's activities, and University and the State of Idaho will not provide any legal defense for ICOM.
2. ICOM shall indemnify and hold harmless University, its trustees, officers, employees or

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any other agents from any and all claims, damages, losses, liability, costs and expenses including attorney fees, arising out of or in connection with any activity conducted by ICOM, including but not limited to contracts, torts, and other acts or omissions by ICOM, its directors, members, managers, officers, employees and students.

3. University understands and agrees that ICOM will not be liable for any of University's contracts, torts or other acts or omissions, or for those by University's directors, officers, employees, or other agents. University shall hold harmless ICOM, its directors, members, managers, officers, employees, and students only from claims, damages, losses, liability, cost and expenses consistent with University's immunity as a public institution under Idaho law, and subject to the limitations on liability and damages provided by the Idaho Tort Claims Act; this indemnity is only to the extent that is allowed by law.

I. Legal Compliance

1. The parties agree and understand that although they are separate and distinct legal entities, and although every effort will be made to ensure that no confusion exists on the part of third parties or the public regarding the nature of their relationship, as a public entity, University is expected to maintain high standards and to serve the public interest, and its reputation and standing in the community could be adversely affected by any illegal conduct by ICOM. Accordingly, as part of this agreement, ICOM is obligated to fully comply with all laws and regulations applicable to its operation of the COM and its use of the leased/subleased premises.
2. During the term of this Agreement, ICOM shall comply with all current and future state and federal statutes, rules and regulations pertaining to its operation of the COM. ICOM shall prepare and timely file all tax returns and reports including information returns required to be filed by it under federal, state and local laws. Further, ICOM shall notify University within ten (10) days from receipt of any report of noncompliance with any state or federal statute, rule or regulation. Any failure to comply with applicable laws and regulations is a breach of this agreement.
3. ICOM agrees to meet the requirements of Title IX, Education Amendment of 1972, VAWA and SAVE Acts, the Clery Act and all other applicable laws. The parties agree to work collaboratively and to coordinate action as may be necessary for compliance with Title IX, Education Amendment of 1972, as amended, and the Clery Act.

J. Termination of Agreement and Remedies Upon Default

1. In the event ICOM breaches any provision of this Agreement or the Lease, and remains in default after notice and an opportunity to cure said breach, University may elect to terminate this Agreement and pursue any remedies at law or equity available to it for breach of contract. For any breach involving non-payment of amounts due under this Agreement, the opportunity to cure the breach shall be a period of ten (10) days after notice of breach. For all other types of breach, the opportunity to cure the breach shall be a period of sixty (60) days after notice of breach.

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2. In the event of the termination of this Agreement due to termination of the Lease, the closure of the COM, the failure to obtain accreditation, loss of accreditation of ICOM, or the dissolution or final liquidation of ICOM, University shall be entitled to recover from ICOM the value of any unpaid fees due hereunder and any remedies at law or equity available to it for breach of contract.
3. In the event University breaches any provision of this Agreement or the Lease, and remains in default after notice and a sixty (60) day opportunity to cure said breach, ICOM may elect to terminate this Agreement; however, in such event, the sole remedy available to ICOM for any claimed breach of this Agreement shall be any remedies at law or equity available to it for breach of contract or specific performance.

K. General Contract Terms

1. **Waiver:** Failure of either party to enforce any of the provisions of the Agreement shall not be construed as a waiver of that, or any other, provision or any later breach thereof.
2. **Notices:** Any notice under this Agreement shall be deemed given when delivered in person or received in the mail, postage prepaid, and addressed as follows:

If to ICOM:

Daniel C. Burrell, Manager
 401 Paseo de Peralta
 Santa Fe, NM 87501
 Note: A new Idaho Address will be established.

If to Idaho State University:

President Arthur C. Vailas
 Idaho State University
 921 So. 8th Ave, Stop 8310
 Pocatello, ID 83209

3. **Amendments:** This Agreement embodies the entire agreement of the parties with regard to the subject matter hereof. No other agreements, oral or written, shall vary the terms of this agreement, and this Agreement may not be amended except by written document executed by both parties.
4. **Severability; Reformation:** Each paragraph and provision of this Agreement is severable from the entire Agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect and shall be reformed so as to allow, to the maximum extent allowed by law, for the parties' intent in the original drafting.
5. **Governing Law:** The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, without reference to its conflicts of law principles.

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IN WITNESS WHEREOF, the parties have executed this Agreement below:

Idaho College of Osteopathic Medicine, LLC, by:

Daniel C. Burrell

Title: Manager

Date:

Idaho State University, by:

Arthur C. Vailas

Title: President

Date:

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SCHEDULE A to Collaborative Affiliation Agreement

ICOM Affiliated Student Services

Effective February 17, 2016

(Subject to periodic review and adjustment as provided in the Collaborative Affiliation Agreement)
(Services listed in this agreement are subject to availability assuming University students have first priority if capacity is limited)

1. Fitness Center

ICOM Students shall be provided the ability to access and utilize the Fitness Center.

2. Student Health Center

ICOM Students shall be provided access to Student Health Services at Unity Health and at the various ISU Clinics.

3. Intercollegiate Athletics

ICOM Students shall be provided the ability to access University Intercollegiate Athletic Events, subject to ticket availability.

4. University Information Technology

- a. ICOM Students shall be provided the ability to access and utilize University wireless information technology systems and specified printing capabilities while on University's Meridian campus.
- b. ICOM Students shall be provided the ability to access and utilize University's Meridian computer labs.

5. Emergency Notifications (<http://www.idaho.edu/ISUAlert/>)

ICOM faculty, staff and students, may elect to be entered into University's Emergency Notification System (ISU Alert) database in order to receive emergency notifications disseminated by University's Meridian Campus.

6. University Library Services

ICOM Students and University Students shall be provided the ability to access, utilize and check out materials from each party's library as is mutually beneficial. (ICOM shall be responsible for providing its own internal library and collections as required to meet ICOM's instructional and accreditation requirements. University bears no responsibility to alter its collections to address needs of ICOM Students, faculty or staff.)

- If ICOM wants to discuss options where the University provides/subcontracts library resources specific to the needs of ICOM students, University's Library Dean, needs to be involved with those discussions.

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7. Student ID Card

ICOM students will receive a student identification card allowing them to utilize many of the services outlined in this agreement. University reserves the right to create a unique ID card for ICOM students, so they are distinct from University students.

- a. Student ID cards have no initial cost.
- b. Replacement ID cards (for any reason) are \$15.

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SCHEDULE B to Collaborative Affiliation Agreement

ICOM Affiliated Optional Student Services

Effective February 17, 2016

(subject to periodic review and adjustment as provided in the Collaborative Affiliation Agreement)

1. On-Campus Parking

- a. ICOM Students shall be eligible to purchase University Parking Permits on the same basis and subject to the same rules and restrictions as University's students.
- b. ISU Parking Permits are not required for parking that is accomplished within the premises defined under the ICOM Sublease.
- c. ICOM Students will have the same options afforded University students regarding types of parking permits made available.
- d. ICOM Students shall be charged at the established Parking Permit rates as adopted by University for University students.
- e. University reserves the right to give parking permit priority to University students.