

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement ("Agreement") is made by and between ("Representative") and the Accreditation Commission for Acupuncture and Oriental Medicine ("ACAOM" or "Commission"), each a Party and collectively, the Parties.

WITNESSETH:

WHEREAS, ACAOM wishes to engage Representative to perform certain accreditation-related activities for the Commission which may include but are not limited to: participating in Commission meetings, performing institutional site reviews; conducting interviews; analyzing documents, records, information and data; and preparing compilations, studies and work products ("assigned activities").

WHEREAS, the Parties contemplate that performance of such assigned activities requires access to confidential information (as hereinafter defined).

WHEREAS, the Parties recognize the value of the confidential information and the importance of maintaining the confidential, proprietary and secret nature of the confidential information.

NOW THEREFORE, for and in consideration of the above premises, and in further consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following definitions shall apply:

- A. **Accreditation.** A type of voluntary, peer review, quality assurance process under which services, operations and outcomes of educational institutions or programs are evaluated by the Commission to determine if its applicable eligibility standards and criteria are met.
- B. **Confidential Information.** "Confidential Information" shall include but not be limited to all non-public documents, records, information and data (whether verbal, visual, electronic or written); including eligibility reports; self-study reports; interim reports; annual reports; financial audits, financial reports and financial projections; marketing plans; processes; technical procedures; current or future business plans and models, and interviews furnished by an institution, program, faculty, student, licensing agency, etc. (each a "Third Party") to the Commission in the course of Accreditation activities contemplated in this Agreement, regardless of whether such Confidential Information has been expressly designated by a Third Party as confidential or proprietary. Confidential Information also includes any analyses, compilations, work products, studies and other data or material prepared by or in the possession or control of the Commission or one of its authorized Representatives, which contain, include, refer to or otherwise relate or are generated from any Confidential Information.
- C. **ACAOM Representative:** an ACAOM employee, Commissioner, volunteer, consultant or person acting in any way as the Commission's designated representative.

2. **CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATION.** Representative shall maintain in strict confidence and not disclose any Confidential Information it receives from the Commission, or use the Confidential Information for his or her own or any other party's benefit, except in furtherance of his or her obligations to the Commission pursuant to his or her assigned activities. Representative shall use, as a minimum, the same degree of care to avoid disclosure or use of the Confidential Information as he or she employs with respect to his or her own confidential, proprietary and secret information of like importance, but in any case using no less than a reasonable degree of care. Representative shall limit access to all Confidential Information to only those Commission staff, agents and representatives who need to know such information for carrying out Representative's obligations to the Commission except as required or permitted by federal or state laws and regulations.

It is likely that as part of his or her assigned activities, Representative will be contacted by various stakeholders and communities of interest including, but not limited to: Acupuncture and Oriental Medicine (AOM) school or program representatives, AOM practitioners, representatives of AOM organizations and various regulatory agencies (each a Third Party) with questions, requests, or comments concerning ACAOM business, or attempting to lobby Representative to take certain actions or policy positions. The US Department Education *Recognition Criteria* requires that the Commission remain separate and independent of "...any related, associated, or affiliated trade association or membership organization" (34 CFR 602.14). Accordingly, when responding to such Third Party contacts, Representative shall treat all of the Commission's Accreditation-related activities, deliberations and work products, except those that are conducted in conjunction with ACAOM public hearing protocols, as

Confidential Information. To preserve the confidentiality of Commission deliberations and to avoid even the appearance of undue influence or conflicts of interest, Representative shall not directly or indirectly make any private or public comment, statement, or communication with respect to, or otherwise disclose or permit the disclosure to any third party of any Confidential Information or of any matter regarding ACAOM operations, policies, procedures, standards, program review decisions, or other matters related to assigned activities without the prior written consent of the Commission. Should Representative be contacted by a third-party regarding Commission business, Representative agrees to timely refer the inquiring party to the Commission's Executive Director.

Upon the Commission's written request Representative will promptly return or destroy Confidential Information in his or her possession whether in written form, electronically stored or otherwise provided by the Commission and deliver to the Commission written certification confirming compliance with the return or destruction request.

3. **EXCLUSIONS.** Information shall not be deemed Confidential Information, and Representative shall have no obligation of confidentiality or restriction against use with respect to any information which:
 - A. was known, in the possession of and documented by Representative through no wrongful act of Representative prior to the Commission's disclosure of such information to Representative; or
 - B. is or becomes publicly known through no wrongful act of Representative and/or through no breach of any obligation to the Commission; or
 - C. is rightfully received from a Third Party who is not subject to restrictions on the use and disclosure of such information in favor of the Commission; or
 - D. is approved for release by written authorization from the Commission.
4. **TERM.** The term of this Agreement shall begin upon the date this Agreement is accepted by the Commission. Representative's obligations of confidentiality and non-disclosure shall survive the termination of this Agreement and remain in effect until the information disclosed by ACAOM no longer qualifies as Confidential Information or until Representative receives written notice from ACAOM releasing Representative from this Agreement, whichever occurs first.
5. **DISCLOSURES REQUIRED BY LAW.** In the event Representative is requested or required by a government or court order, or similar process, to disclose any Confidential Information supplied to it by the Commission, Representative shall provide the Commission with prompt notice of such request so that the Commission may seek an appropriate protective order and/or waive Representative's compliance with the provisions of this Agreement.
6. **INDEMNIFICATION.** Representative shall reimburse, indemnify and hold harmless the Commission and its affiliates, owners, employees, officers, directors, agents and representatives from any damage, loss, penalty, cost or expense incurred by the Commission as a result of or in connection with the use or disclosure of the Confidential Information contrary to the terms of this Agreement by Representative or its affiliates, employees, directors, officers, owners, consultants, agents or representatives or any others to whom such Confidential Information has been disclosed by any such persons or entities. The term "affiliates" as used in this Agreement shall mean any persons, corporations, partnerships, limited liability companies, or other business entities, which directly or indirectly control, are controlled by, or are in common control with such party to this Agreement. As used herein, the term "control" shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise).
7. **OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION.** All Confidential Information disclosed to Representative shall be and remain the property of the Commission. Upon the Commission's written request, Representative shall promptly return all Confidential Information (including all originals, copies, reproductions and summaries of such Confidential Information), or certify its destruction in writing, and keep the same confidential and secret in accordance with this Agreement.
8. **NO LICENSE.** Nothing contained in this Agreement shall be construed as granting or conferring to Representative any rights or license or otherwise, either expressly or by implication, in or to any Confidential Information disclosed by the Commission to Representative as a result of assigned activities, including, without limitation, rights or license under any present or future patent, patent application, copyright, trademark, service mark, trade secret or other proprietary information owned, licensed or controlled by the Commission.
9. **AMENDMENT AND WAIVER.** No amendment or modification of this Agreement shall be valid or binding unless made in writing and signed by both Parties. The waiver of a breach of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach and the failure, for whatever reason, to insist upon enforcement of any provision of this Agreement by either Party shall not be construed as a waiver of its right to do so at any later time.

10. **BINDING AGREEMENT.** This Agreement shall be binding upon Representative, his or her subsidiaries, successors, assigns, legal representatives, and all corporations controlling Representative or controlled by Representative and shall inure to the benefit of the Commission and its subsidiaries, successors, assigns, legal representatives, and all corporations controlling the Commission or controlled by the Commission.
11. **INJUNCTIVE RELIEF.** Recipient understands and agrees that any use or dissemination of Confidential Information in violation of this Agreement will cause the Commission irreparable harm, and that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information, and that the Commission may be left with no adequate remedy at law; therefore, the Commission shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Such remedies shall not be deemed to be the exclusive remedy for any breach of this Agreement but shall be in addition to all other remedies available at law or in equity.
12. **PREVAILING PARTY.** If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses.
13. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to principles of conflict or choice of laws, and Representative consents to venue and jurisdiction in and by the state and federal courts sitting in Hennepin County, Minnesota.
14. **ASSIGNMENT.** This Agreement may not be assigned by Representative without the prior written consent of the Commission.
15. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties relative to the protection of Confidential Information and supersedes all prior and collateral communications, reports, and understanding between the parties in respect thereto. No change, modification, alteration or addition to any provision shall be binding unless it is in writing and signed by an authorized representative of both Parties.
16. **SEVERABILITY.** If a court of competent jurisdiction makes a final determination that any provision of this Agreement (or any portion thereof) is invalid, illegal or unenforceable for any reason whatsoever, and all rights to appeal the determination have been exhausted or the period of time during which any appeal of the determination may be perfected has been exhausted, (i) the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Agreement shall be construed so as to give effect to the intent manifested by the provisions held invalid, illegal or unenforceable.
17. **HEADINGS.** The headings in this Agreement are for reference purposes only and shall not limit or otherwise affect the meaning of the provisions.
18. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts including signing a facsimile copy. Each counterpart shall be deemed an original and all counterparts together shall constitute one and the same instrument.

REPRESENTATIVE

I AGREE THAT ENTERING MY FULL NAME AND DATE BELOW SHALL
SERVE AS MY ELECTRONIC SIGNATURE FOR ALL PURPOSES

Name:

Date:

ACAOM



Jason Wright, MS, LAc, Dipl. OM
ACAOM Director of Accreditation Services

ACAOM ACCEPTANCE DATE:

Related Policies:

ACAOM Code of Conduct; ACAOM Conflict of Interest and Disclosure Policy; ACAOM Commissioners Manual; ACAOM Site Visitor Manual