

## **Fictional Example of Contractual Agreement**

*For the purpose of the student event only.*

*Not a real legal contract or document.*

WHEREAS, EMPLOYEE is licensed to practice dentistry in the State of \_\_\_\_\_ on the effective date of this agreement; and WHEREAS, the parties hereto wish to enter into an agreement whereby EMPLOYEE shall practice the specialty of periodontics on the premises as an independent contractor under the terms and conditions set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this agreement, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

- 1. TERMINATION OF PRIOR AGREEMENTS:** This agreement supercedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all the covenants and agreements among the parties with respect to such subject matter.
- 2. TERM:** The term of this agreement shall commence on the effective day hereof and continue until terminated as described herein.
- 3. DUTIES:** EMPLOYEE shall practice dentistry on the premises and maintain an acceptable quality of service and professionalism.
- 4. PATIENT RECORDS:** EMPLOYEE shall maintain appropriate records on all patients treated on the premises.
- 5. HOURS AND PATIENT SCHEDULING:** EMPLOYEE agrees to cooperate with EMPLOYER in maintaining a schedule that will be agreeable to both parties.
- 6. DISTRIBUTION OF PATIENTS:** EMPLOYER shall be under no obligation to provide EMPLOYEE with any specific number of patients.

**7. LIMITATIONS AND WARRANTIES:** A. EMPLOYEE hereby warrants and agrees that, without the written consent first being given by EMPLOYER, EMPLOYEE will not:

- (i) Use any money belonging to EMPLOYER or pledge its credit; or
- (ii) Release or discharge any debt due to EMPLOYER with out receiving the full amount thereof; or
- (iii) Commit or suffer to be committed any act whereby EMPLOYER's property may be subject to attachment or seizure; or
- (iv) Cause EMPLOYER to become a guarantor, surety or endorser, or any note for any person whomsoever; or
- (v) Withhold any money received by EMPLOYEE for services performed in EMPLOYER's office other than the compensation payable to EMPLOYEE under this agreement; or
- (vi) Except as required in EMPLOYEE's duties, EMPLOYEE shall not directly or indirectly, use, disseminate or disclose to anyone, or make, copy or obtain a list of the patients of the practice for EMPLOYEE's use or for anyone else; or
- (vii) Copy or remove any patient files and/or financial records from the premises, other than as described elsewhere herein; or
- (viii) Make any equipment, leasehold, furnishing or decorating changes to EMPLOYER's office; or
- (ix) Either directly or indirectly, make or cause to be made, during the term hereof, any guaranty or warranty for any professional services rendered by EMPLOYEE on any patient of the practice; or
- (x) Terminate or cancel EMPLOYEE's malpractice insurance, prior to termination of this agreement (EMPLOYEE shall provide EMPLOYER with a copy of the malpractice insurance policy and proof of continuing coverage).

(xi) Will not offer to refund a fee or any part of a fee paid by a patient of the practice for services rendered by EMPLOYER, with out the prior written consent of EMPLOYER; and

B. EMPLOYEE and EMPLOYER further warrant and agree that during the term of this agreement and subsequent to its termination:

(i) Neither will harm, misuse or bring into dispute the name and character of the other, nor offer an unwarranted opinion or make comments to anyone, that are derogatory and/or may discredit the other or any other members of the staff, except as may relate to legal claims brought or threatened by or against either party hereto; and

(ii) Neither will make any statement to any patient of the practice, relating to any alleged defective treatment rendered by another member of the practice, without conferring with the other party and obtaining all the pertinent facts that existed at the time such services were rendered; and

(iii) Neither will convey, to any patient of the practice, an opinion of the need to corrective or replacement treatment rendered by the other member of the practice (unless such treatment would be considered ordinary replacement treatment), unless positive, material evidence exists that determines said treatment was defective and such corrective or replacement treatment is therefore required; and

(iv) Each will treat all employees of the practice with respect that reflects the professionalism of the practice; each party agrees to respect the privacy of the other and agrees not to take any action that would be construed as, or results in, an invasion of privacy of the other.

**8. FEES:** A. EMPLOYEE hereby authorizes and appoints EMPLOYER as EMPLOYEE's attorney in fact to endorse, by facsimile or otherwise, any and all payments made to EMPLOYEE, from any sources, and any and all insurance forms for services rendered to patients by EMPLOYEE under the terms of this agreement.

B. All fees for services for patients provided by EMPLOYEE shall be made payable to EMPLOYER or EMPLOYEE and deposited in EMPLOYER's business account.

**9. USE OF EMPLOYEE'S NAME:** EMPLOYER shall have the right to use the name of EMPLOYEE for the conduct of the practice during the term of this agreement. Upon termination of this agreement, EMPLOYER shall immediately discontinue the use of EMPLOYEE's name for the conduct of the practice.

**10. COMPENSATION:** A. EMPLOYER shall pay to EMPLOYEE, as full consideration for EMPLOYEE's services, each month, a percentage of EMPLOYEE's production of fees realized by EMPLOYER for services rendered by EMPLOYEE.

B. EMPLOYEE's percentage of the production of fees for services rendered by EMPLOYEE shall be 60%.

**11. BOOKS AND RECORDS:** EMPLOYER agrees to keep current, and maintain all the books and records relating to EMPLOYEE's patients, on the premises, and shall provide EMPLOYEE or allow access to, on the 3<sup>rd</sup> day of each month, a list of the fees collected by EMPLOYER for services performed by EMPLOYEE on the patients of the practice for the prior month. Said monthly statement shall include the patients name, services rendered, net production, amount collected and any outstanding monies due for prior services performed by EMPLOYEE.

**12. VACATION AND PROFESSIONAL MEETINGS:** EMPLOYEE shall have the right to determine EMPLOYEE's own vacation time.

**13. EMPLOYER's Responsibilities:** EMPLOYER agrees to provide suitable work facilities that are appropriate for the performance of EMPLOYEE's duties. EMPLOYEE shall have the right to use the equipment, furniture and fixtures, and instruments on the premises during the term of the agreement. The compensation to EMPLOYER for such use and for services rendered by EMPLOYEE as an independent contractor are as stated in #10 hereinabove.

**14. EMPLOYEE's Responsibilities:** EMPLOYEE shall provide and pay for EMPLOYEE's own life and disability insurance, supplies, specialty equipment, personnel, where EMPLOYEE desires such malpractice insurance, professional fees and dues, personal stationery, and long distance telephone calls except those directly related to the business of the practice.

**15. TERMINATION:** A. Either party may terminate this agreement at anytime with thirty day written notice to the other party.

B. Upon termination, both parties warrant and agree that all the applicable warranties and covenant herein shall survive the termination of this agreement and said warranties and covenant shall remain in full force and effect.

C. This agreement shall terminate upon the occurrence of any of the following events:

(i) Whenever the EMPLOYEE shall cease to be licensed by the State of \_\_\_\_\_ to practice dentistry.

(ii) Whenever EMPLOYEE loses the right to dispense therapeutic drugs.

(iii) Whenever EMPLOYEE fails to provide evidence of malpractice insurance.

**16. WAIVER OF NOTICE:** If either party receives written termination notice from the other, then the party receiving such notice reserves the right to waive fulfillment of any part of all of the aforementioned notice period.

## **GENERAL PROVISIONS**

**1. AMENDMENT:** EMPLOYER and EMPLOYEE, by mutual written consent, shall have the right at any time, or from time to time, in a written instrument, to amend or revoke this agreement and its exhibits in whole or in part.

**2. ATTORNEY'S FEES:** Both parties acknowledge their right to separate legal counsel. In the event a party hereto seeks to enforce any of its right hereunder in a court of competent jurisdiction and if such action results in a judgment (a dismissal, with prejudice, by the party commencing such action, shall be deemed a judgment in favor of the other party) for either party, then the prevailing party shall be entitled to recover from the other party, in addition to the relief awarded the prevailing party, all court costs, investigative expenses, and reasonable attorney fees by the prevailing party in such action.

**3. EXPENSES:** Unless otherwise herein expressly provided each party shall pay all consultants', attorneys' or accountants' fees and expenses incurred by such party with respect to this agreement and the transaction contemplated hereby.

**4. WAIVER OF BREACH OR VIOLATION NOT DEEMED CONTINUING:** The waiver by either party of any provision of this agreement shall not operate as, or be constructed to be, a waiver or any subsequent breach hereof. No provision hereof may be waived except by an agreement in writing signed by the waiving party.

**5. NOTICES:** Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing, sent by registered or certified mail, return receipt requested, to the last known residence of EMPLOYEE, or in the case of EMPLOYER, the premises.

A. Either party may change its address, or the designation of its representative, by notifying the other party of such change in writing.

B. Both parties agree to give to the other party, ten (10) days written notice of any alleged claim or violation of this agreement, or of a law-suit filed against the other arising out of this agreement. The party receiving such notice shall have ten (10) days to cure such default before the other party may proceed with any further legal action against the other. If the party receiving notice fails to respond to a notice of default, then the party sending such notice may seek to enforce its right hereunder without further notice.

C. Each party shall immediately notify the other of any request from a patient treated by that party, or that patient's legal representative, for a copy of their respective patient records for possible use in a malpractice action against that party.

**6. LAW GOVERNING:** This agreement shall be construed in accordance with the laws of the State of \_\_\_\_\_ and if any part or portions hereof shall be determined to be invalid or illegal or unenforceable in whole or in part, the validity of any other term of this agreement shall not in any way be affected thereby.

**7. ASSIGNMENT:** It is specifically agreed that the mutual and reciprocal covenants and agreements contained in this agreement are assignable only by EMPLOYER.

**8. INDEMNIFICATION:** A. The parties agree that there shall be no partnership relationship between the parties inferred by this agreement, or by any other act or action of the parties.

B. Neither party shall be considered the agent of the other party, nor shall either party have any right or authority to bind the other party to any agreement in any way whatsoever.

C. Neither party shall be responsible for the other party's acts or actions, taxes, obligations or liabilities in any way.

D. Each party releases the other, and agrees to indemnify and defend the other against any claims, liabilities', obligations, undertakings, actions, judgments, liens, or encumbrances binding upon or imposed upon the other based upon an alleged partnership relationship.

E. The parties specifically state herein that EMPLOYER has no control over how and when EMPLOYEE conducts EMPLOYEE's practice of dentistry other than those controls specifically stated herein.

F. Both parties hereto specifically hereby indemnify each other against and agree to save and hold each other harmless from any and all claims, demands, actions, causes of actions, costs, expenses, damages, liabilities and reasonable counsel fees which may in any manner arise from or be attributed to any acts or omissions of the other party during the course and scope of this agreement; specifically including but not limited to, the use of their automobiles in their practice.

**9. MEDIATION:** Any disputes arising under this agreement are to be subject to mediation prior to any court proceedings being filed by either party.

**10. ITEM HEADINGS:** The item headings contained in this agreement are for convenience only and shall in no manner be construed as part of this agreement.

**11. COUNTERPARTS:** The agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one in the same agreement.

**12. NOMENCLATURE:** The use of the neuter singular pronoun to refer to EMPLOYER or EMPLOYEE shall be deemed a proper reference even though the parties may be an individual, male or female.

**13. BINDING AGREEMENT:** All the terms of this agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto

and shall inure to the benefit of and shall be enforceable by the parties hereto and their respective heirs, executors, personal representatives; successors and assigns.

**14. ENTIRE AGREEMENT:** This agreement sets forth the entire understanding between the parties, and any prior conversations or writings are merged herein and extinguished. No subsequent amendments to this agreement shall be binding upon either party unless reduced to writing and signed by both parties hereto.

**15. SEVERABILITY:** In the event any section of this agreement, or any of the attached exhibits shall be adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections or exhibits, which shall remain in full force and effect as in the section or exhibit so declared or adjudged invalid were not originally a part hereof.

**16. CONSULTANTS DISCLOSURE:** Each party hereby acknowledges, covenants, and agrees that at the commencement of, and during all stages of working on this agreement, the parties have been advised by ABC Consulting to have this agreement reviewed by an attorney and ABC Consulting has made no representations or warranties, expressed or implied relating to this transaction. The parties understand that the documents provided them by ABC Consulting are offered as a convenience and/or for reference purposes for each party's respective attorney; opinion on the legality, validity, effect, and tax consequences of these document must be given by each party's respective attorney, and, in addition, ABC Consulting assumes no responsibility for any errors and/or omissions.