

## **INDEPENDENT CONTRACTOR AGREEMENT**

**THIS AGREEMENT**, made and executed this [ ] day of [ ] [2009], by and between Rush University Medical Center, an Illinois not-for-profit Corporation, (hereinafter referred to as "Medical Center") and \_\_\_\_\_ (hereinafter referred to as "Contractor").

### **PREAMBLE**

Medical Center desires to obtain services as indicated in **Attachment A** (hereinafter "Services") from Contractor and Contractor agrees to provide said Services;

In consideration of the promises and mutual covenants herein contained and other good and valuable consideration hereinafter recited, the receipt and sufficiency of which is hereby acknowledged, Medical Center and Contractor agree as follows:

### **TERMS**

#### **Section 1. Independent Contractor Relationship.**

- 1.1 **Relationship.** Medical Center and Contractor hereby enter into an independent contractor relationship under which Contractor shall provide Services for Medical Center as set forth in Attachment A. In the event of any conflict between Attachment A and the terms and conditions of this Agreement, this Agreement shall control. Contractor further agrees that he/she shall be solely and exclusively responsible for the exercise of his/her judgment in the performance of Services hereunder. Contractor shall not represent that he/she is an agent or employee of Medical Center.
- 1.2 **Non-Interference; Non-Exclusivity.** Contractor specifically represents and warrants that he/she has full power and authority to undertake the obligations set forth in this Agreement and that he/she has neither entered, nor will enter, into any other agreements or arrangements that would interfere, infringe, conflict with this Agreement or that would render Contractor incapable of satisfactorily performing his/her obligations under this Agreement. This Agreement does not create an exclusive arrangement between the parties for the Services described hereunder.
- 1.3 **Confidential Information.** Notwithstanding any other provision of this Agreement, for purposes of this Agreement, "Confidential Information" shall mean all information of any kind or nature whatsoever (including without limitation, business, financial, proprietary, patient, clinical, strategic, research, or marketing information) whether disclosed in oral, graphic, written, photographic, or recorded form or disclosed in any other manner by one party to the other. Contractor shall not use or disclose to any other person or entity any Confidential Information which comes within the knowledge of or which has been disclosed to

Contractor. Contractor agrees that the Confidential Information shall be used by him/her solely for the purpose of performing the Services hereunder and agrees that they shall make no other use or disclosure of the other party's Confidential Information. Upon written request by Medical Center, Contractor shall deliver or destroy, as specified by Medical Center all Confidential Information furnished or received hereunder.

- 1.4 **Access to Data.** Subject to all applicable federal, state, and local laws, statutes, ordinances, rules and regulations relating to patient confidentiality including without limitation, the Health Insurance Portability and Accountability Act, Medical Center may have physical possession of, copies of, and access to any data and documents generated hereunder, as directed by Medical Center.

## **Section 2. Contractor Covenants.**

- 2.1 **Qualifications.** If applicable to the Services, Contractor shall at all times during the term of this Agreement: (a) possess a valid and unrestricted license to perform Services; (b) meet and comply with all ongoing governmental and regulatory criteria and standards to perform the Services; and (c) maintain eligibility for participating provider status in the Medicare and Medicaid Programs. Contractor shall at all times during the term of this Agreement: (d) comport with applicable professional and ethical standards and written guidelines; (e) conduct himself or herself in a professional manner; and (f) provide Services in accordance with all applicable laws, statutes, ordinances, rules and regulations (including, without limitation, the Health Insurance Portability and Accountability Act and accreditation standards established by the JCAHO).
- 2.2 **Insurance.** Contractor agrees to maintain at his/her sole cost and expense such professional and general liability insurance coverage as set forth in **Attachment B** according to the type of Services to be provided hereunder.
- 2.3 **Publication.** Contractor shall not publish or present any paper or presentation regarding any aspect of the Services provided, absent the prior written authorized consent of Medical Center.
- 2.4 **Medical and Other Records.** Contractor shall prepare, complete, and update accurate and complete medical, time, research, billing and other business records, forms, and documents in such form and manner as Medical Center may reasonably requires. Notwithstanding any other provision of this Agreement, such records and other documentation shall be and remain the sole and exclusive property of Medical Center.

- 2.5 **No Billing.** Contractor specifically acknowledges and agrees that he/she shall not bill the Government, any third party payor, or any patient for the Services it performs hereunder.
- 2.6 **Compliance; Certification.** Contractor shall abide by Medical Center Corporate Compliance Program at all times while providing Services hereunder. Contractor hereby certifies that he/she is not now, nor has he/she ever been, excluded or debarred from any federal health care program (including Medicare or Medicaid). In the event that Contractor is excluded or debarred from any federal health care program this Agreement shall terminate immediately.
- 2.7 **Access to Books and Records.** Contractor agrees that until the expiration of six (6) years after furnishing of the Services pursuant to this Agreement, Contractor, if applicable, shall make available upon written request from the Secretary of the United States Department of Health and Human Services, or upon request from the Comptroller General, any of their duly authorized representatives, or Medical Center, the Agreement and books, documents, and records that are necessary to certify the nature and extent of costs under this Agreement. This section shall have effect only if required by law. This provision shall survive termination of this Agreement.

### **Section 3. Term and Termination.**

- 3.1 **Term.** Unless earlier terminated, this Agreement shall be in full force and effect for a term beginning on the date first stated above, or \_\_\_\_\_ (the "Effective Date") and ending one (1) year from the Effective Date. The Services shall be performed at the discretion of and at the request of Medical Center. Nothing herein shall be construed to obligate Medical Center to utilize the Services of the Contractor at any time.
- 3.2 **Termination.** This Agreement shall automatically and immediately terminate upon the occurrence of any one of the following events:
- (a) Revocation, suspension or limitation of any of Contractor's license or other authorization to perform the Services;
  - (b) Conviction of Contractor of a criminal offense (including without limitation those related to health care, unless Contractor has been reinstated to participate in Medicare after being excluded because of the conviction); or if Contractor is excluded, debarred, or otherwise ineligible for participation in a federal health care program or in any other government payment program;
  - (c) Pursuant to Section 3.3 of this Agreement;
  - (d) Commission of an act of fraud or dishonesty or any other conduct which

jeopardizes the health, safety or welfare of any patient, research subject, visitor or personnel of Medical Center by Contractor;

- (e) Expropriation of any Medical Center tangible, intangible or intellectual property whatsoever, including without limitation patient medical records, financial or business records, memoranda, e-mails, reports, working notes, strategic plans, agreements, pricing lists or information, computer programs, software, patient lists and patient tissue samples;
- (f) Pursuant to Section 2.6 of this Agreement; or
- (g) In the event that the Services described hereunder are no longer needed by Medical Center, as determined by Medical Center.

3.3 **Termination For Cause.** Either party may terminate this Agreement for "cause." "Cause" shall mean a material breach by either party of this Agreement which breach the breaching party has failed substantially to correct after ten (10) days' advance written notice from the non-breaching party stating the specific grounds for the breach.

3.4 **Termination Without Cause.** Medical Center shall have the right to terminate this Agreement without cause upon providing Contractor with sixty (60) days' advance written notice.

#### **Section 4. Compensation and Invoicing**

4.1 **Rate.** Medical Center shall pay Contractor (fill in one applicable blank) \$\_\_\_\_\_ per hour; \$\_\_\_\_\_ per day; \$\_\_\_\_\_ per week; \$\_\_\_\_\_ per month; \_\_\_\_\_ per project/per job as defined in Attachment A. Contractor shall invoice the Medical Center no more frequently than one (1) time per month. Invoices shall be due and payable within forty-five (45) days of receipt. Invoices shall contain detailed information regarding the performance of the Services including but not limited to: name of the individual performing Services, the hourly, daily, weekly or monthly rate, the date upon which the Services were performed, and the number of hours. Invoices shall also contain Contractor's social security number or, if applicable, Contractor's federal tax identification number. Invoices shall be sent to the following address, or to such other address as Medical Center may designate: Rush University Medical Center, P.O. Box 7715, Chicago, Illinois 60607. Expenses will be reimbursed only when approved in writing in advance by Medical Center and only upon presentation of original receipts if requested.

4.2 **Final Compensation.** Compensation shall cease upon the effective date of termination of this Agreement, or submission and payment of final invoice, whichever occurs later.

4.3 **No Benefits.** Contractor will not be eligible to participate in any of the employee benefit plans and programs offered by Medical Center to its employees. Medical Center shall not be responsible for withholding any taxes from the compensation paid to Contractor. Contractor will not be eligible for any fringe benefits provided by Medical Center to its employees. Contractor assumes all liabilities and responsibilities concerning the withholding of federal and state income taxes, social security obligations, worker's compensation, and occupational disease benefits.

**Section 5. Entire Agreement; Modification; Severability; Headings; Governing Law.**

This Agreement contains the entire agreement between the parties and can only be modified by a written document executed by both parties. If any provisions of this Agreement (or portions thereof) are held to be illegal, invalid or unenforceable, such shall not affect the legality, validity, or enforceability of the remaining provisions of the Agreement. The headings of the sections herein are for reference purposes only. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

**Section 6. Notice.**

Any notice required to be given pursuant to the terms of this Agreement shall be in writing, postage prepaid and shall be personally delivered or sent by certified mail, return receipt requested and shall be directed as follows:

Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Medical Center:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to:  
Office of Legal Affairs  
1700 W. Van Buren, Suite 301  
Chicago, IL 60612

**Section 7. Assignment.**

The parties acknowledge that Medical Center has the unilateral right to assign this Agreement and Contractor further acknowledge that the Services he/she provides hereunder are personal and that he/she may not assign or delegate any of his/her rights or obligations hereunder.

**Section 8. Use of Name.**

Contractor agrees that he/she shall not use the name or logo of or make reference in any way to Medical Center or any of its affiliates or subsidiaries (including but not limited to the Rush System for Health) or employees, without the express prior written authorized approval of Medical Center.

**Section 9. Business Associate Agreement.**

In the event that the Contractor is to be given access to Protected Health Information as defined by HIPAA, the parties shall execute **Attachment C**, a business associate agreement, which is attached hereto and incorporated herein by reference.

**Section 10. Intellectual Property.**

10.1 **Third Party Intellectual Property Rights.** Contractor shall be responsible for obtaining written permission for all copyrighted material that Contractor intends to reproduce, modify or distribute in providing Services and shall be solely liable for its failure to do so. Contractor shall indemnify Medical Center for any and all claims, liabilities and expenses arising from any infringement, misappropriation, or other violation by the Services of any patent, copyright, trademark, service mark, trade secret, or other intellectual property right of a third party, except to the extent finally judicially determined to have resulted from the bad faith or intentional misconduct of Medical Center.

10.2 **Ownership of Rights.** All information, data, writings, inventions and other work products, in any form whatsoever, both tangible and intangible, developed as a result of Consultant's performance under this Agreement (collectively, the "Works"), shall be considered works made for hire pursuant to copyright or other intellectual property law, and shall be the sole and exclusive property of Medical Center. Consultant hereby assigns all right title and interest in and to any such Works to Medical Center. Medical Center shall be the sole owner of all the rights in and to such Works in any form and in all fields of use know or hereafter existing. Consultant will reasonably cooperate with and provide assistance to Medical Center in connection with executing all documents and performing all acts reasonably necessary to protect Medical Center's intellectual property rights to the Works. The provisions of this Paragraph shall survive termination of this Agreement.

The Medical Center and Contractor execute this Agreement on the day and year first written above.

**Contractor:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Rush University Medical Center:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT A**

- I. **Services.** Contractor shall [insert description of Services].

## **ATTACHMENT B**

### **INSURANCE REQUIREMENTS**

Contractor shall provide insurance in commercially reasonable coverage amounts and types (includes without limitation workers compensation coverage). At a minimum, Contractor shall maintain general and professional liability insurance, including errors and omissions coverage, with minimum coverage levels of \$1,000,000 per occurrence and \$3,000,000 annual aggregate. Contractor shall maintain tail coverage on any claims made insurance policies for a period of six (6) years after expiration of this Agreement. In place of the aforementioned insurance, Contractor will indemnify Rush.

**ATTACHMENT C**

**BUSINESS ASSOCIATE AGREEMENT**

[insert Rush's standard business associate agreement]