

DIAGNOSTIC EQUIPMENT LEASING AGREEMENT

This DIAGNOSTIC EQUIPMENT LEASING AGREEMENT ("Agreement") is effective as of this _____ day of _____ 20____, between ACCESS MEDICAL DIAGNOSTICS, INC. having an office at 149 S. Barrington Ave, Ste 754 Los Angeles, CA 90049 (hereinafter referred to as AMDx) and the Physician and/or Professional and/or Healthcare entity named below having its principal office located at the address listed below, (hereinafter referred to as the LESSEE).

Lessee's Name: _____ Entity Name: _____

Lessee's Address: _____
Street Address Suite # City State Zip

WHEREAS, AMDx has in its possession certain diagnostic equipment, supplies and qualified technicians to operate the equipment (hereinafter collectively referred to as the "Equipment") to perform certain diagnostic tests that may be useful, provided there is medical necessity, to the Lessee's practice. Equipment and personnel (technician) will test patients under the direct control and direct supervision provided by the Physician/Professional.
WHEREAS, it is uneconomical for LESSEE to obtain and maintain the necessary biomedical equipment and the trained technicians necessary to perform the procedures; and
WHEREAS, AMDx wishes to lease to LESSEE and LESSEE wishes to lease from AMDx said Equipment on the terms, conditions and provisions hereinafter set forth and in consideration of the foregoing upon the mutual covenants, conditions and agreements contained herein.

NOW THEREFORE, both parties agree to the following:

1. Description of Equipment and Services:
 - 1.1 AMDx leases to Lessee and Lessee accepts the lease of Equipment, as described in Exhibit 1, or an equivalent or superior machine as determined by AMDx in its sole discretion. Equipment may include one or more of the following:
 - a.) Neurodiagnostic testing equipment to perform nerve conduction velocity, EMG, somatosensory evoked potential and/or dermatomal evoked potential tests (hereinafter collectively referred to as the "tests")
 - b.) Diagnostic ultrasound testing equipment to perform extremity and/or spinal musculoskeletal ultrasound tests (hereinafter collectively referred to as the "tests")
 - 1.2 AMDx shall be responsible for all costs associated with the acquisition, maintenance and any repairs of the equipment.
 - 1.3 AMDx shall provide any conductive medium, gauze pads, tape and other supplies incidental to performing the Tests with the Equipment. LESSEE will be charged the fair market value for these consumable supplies.
 - 1.4 During the term of this Lease Agreement, LESSEE shall have the exclusive use of the equipment for the purpose of performing the Tests for dates reserved, scheduled and paid in advance with AMDx. LESSEE shall have no rights to the Equipment during any other days or times without prior agreement or upon notification.
 - 1.5 At its sole cost, LESSEE shall provide a patient examination room reasonably suitable for performing the Tests.
 - 1.6 LESSEE agrees and understands that LESSEE shall not hire, contract or subcontract with any personnel of AMDx during the term of this Agreement and for a period of three (3) years after termination hereof, without AMDx's prior written consent.
2. Leasing Fee:
 - 2.1 AMDx shall provide Equipment and personnel to LESSEE, at the designated location, and on the days set forth in Exhibit II.
 - 2.2 LESSEE hereby agrees to pay AMDx a lease fee of Four Hundred fifty-two dollars (\$452.00) for each day (the term day generally shall refer to an 8 hour period) scheduled during the term of this Agreement. LESSEE will be liable for the fees stated herein irrespective of any reimbursement the LESSEE may receive from the patient and/or third party payer. Additional hours to be charged at the fair-market value rate of \$75.00 per additional hour.
 - 2.3 Payment of these charges are due and payable net 14 days prior to each testing day.
 - 2.4 Reasonableness of Payment: The rates charged by AMDx reflect fair market value for all services rendered. No amount charged hereunder by AMDx, is intended to be, nor shall it be construed to be an inducement or payment, for the quantity of value, if any referrals or business, otherwise generated between the LESSEE and AMDx. In addition, the amount charged does not include any discount, rebate, kickback, or other reduction in charge, and the amount so charged is not intended to be, nor shall it be construed to be, an inducement or payment, for referral of any patient by AMDx to LESSEE, or by LESSEE to AMDx.
 - 2.5 The parties acknowledge that valuation for equipment and labor charges reflect fair market allowance and, upon written notice, are subject to change.
 - 2.6 The LESSEE is not requested to provide any certain volume of testing at any time during the term of this agreement. The terms and conditions of the contract are only to make equipment available on an as-needed basis.
 - 2.7 LESSEE shall not be entitled to any reduction in rent on the basis that LESSEE did not need or use the Equipment for any portion of any agreed upon period.
 - 2.8 Cancellation Fees: Cancellation made more than seven (7) days, but less than fourteen (14) days prior to the scheduled service date, will be assessed a cancellation fee of 50% of the leasing fee (\$226.00). Cancellation made seven days or less of scheduled service date will incur a cancellation fee of 100% of the leasing fee (\$452.00). AMDx reserves the right, at its sole discretion, to waive said cancellation fees.
3. Ownership of Equipment:
LESSEE understands and agrees that the Equipment is and will be owned exclusively by AMDx and that LESSEE will at no time have right to the title of the equipment.
4. Indemnity:
LESSEE shall indemnify and hold harmless AMDx and its owners, shareholders, officers, directors, members, managers, contractors, agents and employees, to the extent that AMDx is not covered by insurance, from and against any and all claims, actions, suits, proceedings, investigations, settlements, costs, expenses, refunds, claims, damages and liabilities, including reasonable attorney's fees and costs and all amounts paid in investigation, defense, settlement and/or appeal incurred by AMDx and agents arising out of, resulting from connected with this Agreement and/or the lease of the Equipment. This includes but is not limited to (a) breach of this Lease by LESSEE and Agents; (b) any alleged or actual acts or omissions by LESSEE and Agents including with limitation the ordering or interpreting of tests; or (c) failure of LESSEE and Agents to comply with federal, state or local law (including regulations.)
5. Location Of Equipment:
AMDx shall provide the Equipment to LESSEE at LESSEE'S designated location or such other location as LESSEE requests in writing.

6. Supervision:
- 6.1 LESSEE agrees that equipment and/or technician is/are under the direct control and direct supervision of the LESSEE and/or its authorized personnel at the time of testing, will determine medical necessity, prescribe which tests are to be performed, and directly supervise all testing procedures.
- 6.2 Authorized personnel is to be a duly-licensed physician/professional as required by applicable governing state and federal rule for testing location.
- 6.3 LESSEE is responsible to insure that testing and procedures being supervised and ordered are within the scope of practice of said personnel/professional as per state and federal regulations.
7. Covenant Not to Compete:
- 7.1 LESSEE acknowledges that violation of the covenants not to compete contained in this Agreement would result in immediate irreparable injury to AMDx for which adequate remedy at law will not be available. Accordingly, LESSEE hereby consents to the entry of an injunction prohibiting any conduct by LESSEE in violation of the terms of those covenants not to compete set forth in this Agreement. LESSEE expressly agrees that it may conclusively be presumed that any violation of the terms of the said covenants not to compete was accomplished by and through LESSEE'S unlawful utilization of AMDx's confidential information, know-how, technology, methods, and procedures. Further LESSEE expressly agrees that the existence of any claims he/she may have against AMDx, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by AMDx of the covenants not to compete set forth in this Agreement. LESSEE further agrees to pay all costs and expenses (including reasonable attorney's and expert's fees) incurred by AMDx in connection with the enforcement of those covenants not to compete set forth in this Agreement. LESSEE further agrees that:
- 7.2 During the term of this Agreement and for a period of three (3) years after termination of this Agreement for any reason, LESSEE agrees not to be associated, either directly or indirectly, by virtue of being an employee, employer, proprietor, partner, stockholder, agent, principal, owner, part-owner, co-venturer, officer, director, manager, operator, financier, salesman, or other participant or through family relationship, with a competing business within the trade area served by any health care entity that has or had a contract with AMDx.
8. Term and Termination:
- This Agreement shall begin on the date executed and shall continue in full force and effect for ONE YEAR unless terminated as provided herein. Either party may terminate this Agreement for good cause at any time upon thirty (30) days written notice, provided such termination is effective on or after the first (1st) anniversary of the Effective date. This agreement shall automatically renew and continue in force after ONE YEAR or until either party provides such written notice of termination. Additionally, AMDx may terminate this agreement on five (5) days written notice if LESSEE fails to timely pay the lease fee which group and Lessee agree would be a material breach of this agreement and good cause for termination. If this agreement is terminated for good cause, the party shall not enter into a similar agreement for the provision of tests prior to the first anniversary of the effective date of this agreement.
9. Insurance:
- LESSEE shall maintain at all times and pay for:
- 9.1 Combined public liability and property damage insurance.
- 9.2 LESSEE will maintain professional liability insurance covering the LESSEE, its staff, agents, subcontractors, and physicians.
- 9.3 LESSEE shall furnish to AMDx on request certificate(s) of insurance evidencing the existence of such coverage.
- 9.4 LESSEE shall immediately notify AMDx in writing of any cancellation or modification of such coverage.
10. Utilization Review:
- 10.1 LESSEE shall have the sole responsibility for determining the medical necessity for and complying with any preauthorization or other utilization procedure related to the performance of the procedures and in conjunction with same, LESSEE shall formulate and implement adequate and proper utilization review procedures promulgated by LESSEE.
- 10.2 LESSEE shall be solely responsible for interpreting or arranging the interpretation of test results.
11. Legislative Changes:
- In the event that any federal state or local law rule, regulation or official interpretation at any time during the term of this Agreement prohibit, restrict or in any way substantially change the method or amount of reimbursement or payment for a service as rendered under this Agreement, then this Agreement shall automatically be adjusted to provide for payment or compensation in a manner which will satisfy any such prohibition, restriction, limitation or change, and as so adjusted, shall be deemed a provision of this Agreement as though originally included herein. In the event any provision of this Agreement subject to such prohibition, restriction, limitation or change is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though the provision had never been entered into. In either case the remaining provisions of this Agreement shall remain in full force and effect. If this Agreement is not capable of being amended to satisfy the above, prior to the effective date of such prohibition, restriction or change, this Agreement shall terminate as of such date.
12. Compliance:
- 12.1 To the extent required by 1395x(V)(1)(1) of Title 42 of the United States Code, until the expiration of four (4) years after the termination of this Agreement. AMDx shall make available upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by AMDx under this Agreement.
- 12.2 AMDx further agrees that in the event AMDx carries out any of its duties under this Agreement through a Subcontract with a value or cost of Ten Thousand (\$10,000.00) Dollars or more over a twelve (12) month period with a related organization, such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such Subcontract, the related organization shall make available upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives a copy of such Subcontract and such books, documents and records of such organization as are necessary to verify the nature and extent of such costs.
13. Miscellaneous:
- 13.1 Notices: Any notice, request, demand, or other communication given pursuant to the terms of this Agreement shall be deemed given upon delivery, if hand delivered, or forty-eight (48) hours after deposit in United States mail, postage prepaid, and sent certified or registered mail, return receipt requested, correctly addressed to the addresses of the parties stated above or at such other address as such party shall in writing have advised the other party.
- 13.2 Entire Agreement. This agreement constitutes the entire agreement between the parties and no oral, contemporaneous or other agreements or statements shall be part of this Agreement.
- 13.3 Modifications: This Agreement shall not be changed, modified or amended, except by writing and signed by the parties hereto.
- 13.4 Binding Effect: This Agreement shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, successors, assigns, executors and administrators.

- 13.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard for conflicts of law principles. All questions with respect to the construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California without regard to this conflicts of laws provisions. The parties agree that jurisdiction and venue for any action relating to this agreement will be in the county of Los Angeles, State of California. The parties expressly waive any claim to jurisdiction in any federal forum.
- 13.6 Excluded liabilities: In no event will AMDx's liability under this Agreement or in connection with any services or equipment provided by AMDx regardless, of the form of action, include any indirect, incidental, special or consequential damages or claims for loss of business or profit, even if AMDx has been advised of the possibility of such potential loss or damage. No responsibility is assumed by AMDx for any damages resulting from any failure of the equipment or its operation, or the acts or omissions of personnel, including incidental, consequential or punitive damages.
- 13.7 Independent Counsel: Each party warrants and represents that the party has had sufficient time to obtain the advice of the party's independent attorney and either has done so or, knowing the substantial legal effect this Lease could have on the party's legal and other rights and obligations, waived the right to do so.
- 13.8 Assignment: Neither party shall assign this Agreement or any interest or obligation herein, by operation of law or otherwise, without consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, AMDx may contract with others to perform services on its behalf.
- 13.9 Severability: In the event any paragraph or provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable part had been severed and deleted.
- 13.10 Attorney Fees: Except as otherwise provided herein, if a dispute should arise between the parties, the prevailing party shall be reimbursed for all reasonable expenses incurred in resolving such dispute, including attorneys fees and costs.
- 13.11 Jurisdiction and Venue. The parties hereto, hereby agree that jurisdiction and venue for any dispute shall be the County of Los Angeles, State of California.
- 13.12 Headings and Interpretation: The section and other headings in this agreement are for convenience only and are not to be a substantive part of this agreement. Neither this Agreement nor any uncertainty of ambiguity herein shall be construed or resolved against one party whether under any rules of construction or otherwise. On the contrary, this agreement has been negotiated by and between both parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.
- 13.13 Survival of Provisions. No party shall have any further obligation under this agreement after its expiration or termination except for:
 - (i) obligations due and owing that arose prior to the date of expiration or termination and
 - (ii) obligations, promises or covenants contained herein which expressly or impliedly extend beyond the expiration or termination of this Agreement.
- 13.14 Third Parties. This agreement is not intended and shall not be construed to create any rights for any third party.
- 13.15 Use of Terms. Where necessary to carry out the intentions of this Agreement, all words used herein in the singular shall extend to and include the plural; all words used in plural shall extend to and include the singular and all words used in any gender shall extend to and include all genders.
- 13.16 Modification and Waiver: No modification or waiver of any provision of this Agreement shall be valid unless in a writing that refers to this agreement and is duly excluded by AMDx and LESSEE. The failure of any party to enforce any of that party's right against the other party for breach of any of the terms of this agreement shall not be construed as a waiver of such rights as to any continued or subsequent breach.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date(s) given below.

Date: _____

ACCESS MEDICAL DIAGNOSTICS, INC.

By: _____
Signature

Its: _____
Print Title

Date: _____

If LESSEE is an individual

By: _____
Signature

Lessee: _____
Printed Name

If LESSEE is a corporation, partnership or other entity:

By: _____
Signature

Its: _____
Print Title

