

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between \_\_\_\_\_ (“Visitor”) and Washington University on behalf of its School of Medicine (“WU”).

WHEREAS, Visitor desires to access WU employees and/or facilities for medical observation and to advance Visitor's medical training and education; and

WHEREAS, in connection with such medical observation Visitor may have access to valuable Confidential Information (as hereinafter defined); and

WHEREAS, WU is willing to grant Visitor access to its employees and facilities on the condition that Visitor executes this Agreement and maintains any and all Confidential Information in the strictest confidence.

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

### **1. DEFINITION OF CONFIDENTIAL INFORMATION**

For purposes of this Agreement, Confidential Information shall mean all information, in any form (oral, visual or tangible), of any kind or nature, which has been or will be disclosed or made available to Visitor including without limitation the following:

(a) ***Protected Health Information*** defined as health information that (i) identifies or reasonably could identify an individual, (ii) is created or received by a health care provider or health plan, (iii) is transmitted or maintained in any form or medium and (iv) relates to the past, present or future physical or mental health or condition of a person, the provision of care of the person, or payment for care provided.

(b) ***Proprietary Information*** defined as any information that is not generally known by others with whom WU contracts, competes, does business or intends to compete or do business, including without limitation, WU financial information; information related to the credentialing of physicians; patient lists; development and research activities; costs, sources of revenue and strategic plans; people and organizations with whom the party has business relationships and those relationships; and information that WU may receive or has received that belongs to customers, patients, providers or others who do business with WU.

### **2. REQUIREMENT OF CONFIDENTIALITY**

**2.1. Scope of Agreement.** This Agreement applies to all past, present and future agreements and arrangements, whether written, oral or implied, between WU and Visitor, pursuant to which WU provides or makes available Confidential Information to Visitor in any form or medium.

**2.2 Strict Confidence.** Visitor agrees that Confidential Information is a valuable proprietary asset of WU. All Confidential Information will be received and held in the strictest confidence by Visitor. Visitor shall use best efforts, including at least efforts fully commensurate with those employed by Visitor for the protection of Visitor's confidential information, to protect the Confidential Information of WU. Visitor shall not obtain any rights of any sort in or to the Confidential Information of WU.

**2.3 Permitted Uses.** Except as otherwise limited in this Agreement, Visitor may use Confidential Information only to advance Visitor's medical knowledge and training and to enhance Visitor's pedagogical and clinical medical education. No other use or disclosure of WU's Confidential Information is authorized or permitted under this Agreement.

**2.4. Restrictions on Disclosure.**

(a) Visitor agrees to not use or disclose Confidential Information other than as permitted or required by this Agreement or as required by law. Visitor shall not disclose Confidential Information to any third party for any purpose without the prior, written consent of WU. To the extent WU's written consent is given to make disclosures, Visitor shall maintain a record of each such disclosure, containing at a minimum, the date of the disclosure, the name of the entity or person who received the Confidential Information and, if known, the address of such entity or person, a brief description of the Confidential Information disclosed, and a brief statement of the purpose of the disclosure, and upon request shall provide that information to WU.

(b) Visitor agrees to use appropriate safeguards to prevent use or disclosure of Confidential Information other than as provided for by this Agreement.

(c) Visitor agrees to report to WU any use or disclosure of Confidential Information not provided for by this Agreement of which it becomes aware within ten (10) days of its discovery.

**2.5 Indemnification.**

(a) Visitor will indemnify, defend and hold harmless WU and any of its affiliates, and their respective trustees, officers, directors, employees and agents ("Indemnitees") from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any unauthorized or prohibited use or disclosure of Confidential Information or any other breach of this Agreement by Visitor. In the event a claim is made against an Indemnitee for any such claim, cause of action, liability, damage, cost or expense, WU may, at its sole option: (i) tender the defense to Visitor, who shall provide qualified and competent counsel to represent the Indemnitee's interest at Visitor's expense; or (ii) undertake its own defense, utilizing such professionals as it deems reasonably necessary, holding Visitor responsible for all reasonable costs thereof. In any event, WU shall have the sole right to control and approve any settlement or other compromise of any claim brought against it that is covered by this Section.

(b) Visitor acknowledges that the restrictions contained in this Agreement are reasonable and necessary to protect the legitimate professional and business interests of WU and to ensure WU's compliance with applicable law. Visitor further acknowledges and agrees that a breach of the covenants contained in this Agreement will cause irreparable harm to WU and that damages arising from any breach may be difficult to ascertain and no adequate legal remedy exists. Accordingly, WU shall be entitled to receive injunctive relief and/or specific performance and damages, as well as any and all legal and equitable remedies to which it may be entitled.

### **3. TERM**

**3.1 Term.** The provisions of this Agreement shall be effective as of the later of Effective Date or April 14, 2003 and shall terminate when all of the Confidential Information provided by WU to Visitor, or created or received by Visitor on behalf of WU, is destroyed or returned to WU, or, if it is infeasible to return or destroy such Confidential Information, protections are extended to such information, in accordance with the termination provisions in this Section.

**3.2 Termination.** Upon WU's knowledge of a material breach by Visitor, WU shall either (i) provide an opportunity for Visitor to cure the breach or end the violation and terminate this Agreement along with any other agreements between WU and Visitor which relate to the act or omission constituting the material breach if Visitor does not cure the breach or end the violation within the time specified by WU, or (ii) immediately terminate this Agreement and the agreement(s) or arrangement to which this Agreement relates) if Visitor has breached a material term of this Agreement and cure is not possible.

**3.3 Effect of Termination.** Upon termination of this Agreement, Visitor shall return to WU or destroy all Confidential Information received from WU. Visitor shall retain no copies of such Confidential Information. Visitor shall complete such return or destruction as promptly as possible, but no later than forty-five (45) days after the effective date of termination of this Agreement. In the event that Visitor determines that returning or destroying the Confidential Information is infeasible, Visitor shall provide to WU notification of the conditions that make return or destruction infeasible. If WU concurs, Visitor shall extend the protections of this Agreement to such Confidential Information and limit further uses and disclosures of such Confidential Information to those purposes that make the return or destruction infeasible, for so long as Visitor maintains such Confidential Information. This Agreement shall remain in full force and effect for as long as any Confidential Information of WU is in the possession of Visitor.

### **4. CONSTRUCTION OF AGREEMENT**

**4.1. Assignment.** This Agreement is not assignable without the express written consent of the parties hereto. This Agreement shall inure to the benefit of the parties' successors, heirs and permitted assigns, and the obligations set forth in this Agreement shall be obligations of all successors, heirs and permitted assigns and, in the event of an assignment, shall remain obligations of the original parties.

**4.2. Administration of Agreement.** The parties agree that the undersigned representatives shall be the individuals responsible for administering this Agreement and receiving notices hereunder, and shall remain so until written notification is given to the others that another individual has been designated.

**4.3. Compliance with Law.** This Agreement and any agreements or arrangements arising there from shall be amended so as to comply with all laws, rules and regulations of all federal, state and local governments as required. This Agreement shall be governed by and construed under the laws of the State of Missouri.

**4.4. Entire Agreement.** This Agreement supersedes all previous agreements regarding the matters and obligations contained and described herein. To be effective, an amendment, waiver, or termination of this Agreement or any of its provisions must be in writing duly signed by all the parties hereto.

**4.5. No Third Party Beneficiaries.** There are no intended third party beneficiaries to this Agreement. Without in any way limiting the foregoing, it is the parties' specific intent that nothing contained in this Agreement gives rise to any right or cause of action, contractual or otherwise, in or on behalf of the individuals whose Protected Health Information is used or disclosed pursuant to this Agreement.

**4.6 Waiver.** No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

**4.7. Conflict.** In the event of any conflict between the terms and conditions stated within this Agreement and those contained within any other agreement or understanding between the parties, written, oral or implied, the terms of this Agreement shall govern. Without limiting the foregoing, no provision of any other agreement or understanding between the parties limiting the liability of Visitor to WU shall apply to the breach of any covenant in this Agreement by Visitor.

IN WITNESS WHEREOF, the parties have duly executed this Agreement in multiple counterparts as of the date above first written.

VISITOR

WASHINGTON UNIVERSITY

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

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

Joan M. Podleski.

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

Its: HIPAA Privacy Officer  
Washington University