

CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE
INDEPENDENT CONSULTANT AGREEMENT

THIS AGREEMENT to furnish certain consultant services is made by and between the California Institute for Regenerative Medicine (hereinafter called the CIRM), and Daniel J. Edelman, Inc. d/b/a Edelman hereinafter called (the Consultant).

I. NATURE AND PLACE(S) OF SERVICE

- A. The Consultant shall furnish to the CIRM the following described services: See Scope of Work, attached hereto as Exhibit A and incorporated herein by this reference
- B. The Consultant shall provide reports as described below.
- C. Place(s) of performance of such services shall be:

Consultant's location:	CIRM's location:
5670 Wilshire Blvd., 22 nd Floor Los Angeles, CA 90036	5858 Horton Street, Suite 455 Emeryville, CA 94608
- D. The CIRM will provide working space, equipment, furniture, utilities, and services, as follows: As agreed upon by the parties.

II. TERM OF AGREEMENT

- A. The term of this Agreement shall be from April 1, 2005 through March 31, 2006.
- B. Either the Consultant or the CIRM may terminate this Agreement at any time for any reason or no reason by giving the other party 30 days' prior written notice.
- C. If one party gives the other 5 days' written notice of a breach of the Agreement and the breaching party fails to cure or commence cure within the 5-day period, this Agreement may be immediately terminated by the non-breaching party.
- D. The respective rights and duties of the parties shall continue in full force and effect during the applicable notice period. Upon expiration or termination of this Agreement, the CIRM shall pay the Consultant its fees through the termination date and reimburse the Consultant for expenses incurred through the termination date. In addition, the CIRM shall either assume liability or pay the Consultant for non-cancelable expenses committed to be incurred prior to the termination date.

III. COMPENSATION AND REIMBURSEMENT FOR EXPENSES

- A. The CIRM shall pay the Consultant for services performed on the following basis:
 - 1. Professional Fees and Internal Expenses: For the services set forth in Exhibit A, the CIRM shall pay the Consultant a monthly fee not to exceed \$27,500, including charges for internal expenses. Fees shall be based on the hourly rates set forth in Exhibit B, attached hereto and incorporated herein by this reference. Internal expenses shall be equal to three percent (3%) of professional fees and shall consist of expenses related to in-house photocopying, local telephone calls (not long distance or phone card calls), facsimile use (including related telephone charges) and U.S. postage (other than mass mailings). Notwithstanding any provision to the contrary in this

Agreement, the Consultant shall not be required to provide the CIRM with an accounting or detail for the internal expense charge.

2. Other Expenses:

(a) Out-of-pocket Expenses. The CIRM shall reimburse the Consultant for all out-of-pocket, third-party vendor expenses incurred by the Consultant, including any applicable sales and use taxes thereon, in performing the Services. The CIRM shall pay a ten percent (10%) service charge on all such expenses incurred and paid by the Consultant. The CIRM may avoid the service charge by either 1) paying vendors directly or 2) prepaying the Consultant for such expenses. Prepayment of expenses must be received by the Consultant no later than fifteen (15) days after the invoice date; if payment is not received by the Consultant within fifteen (15) days of the invoice date, the service charge will be imposed. The CIRM shall be required to prepay the Consultant or direct pay vendors for any individual expense equal to or greater than US\$20,000.

(b) Travel Expenses*. The CIRM shall reimburse the Consultant monthly for all travel related expenses incurred by the Consultant or its employees in performing the Services, including, but not limited to, air travel, ground transportation, lodging, meals, tips and wireless and long distance telephone calls.

* Reimbursement for travel and per diem shall be in accordance with established CIRM rates and policies, except as otherwise approved by CIRM in writing.

- B. Payments shall be made no later than thirty (30) days after Consultant's submission of invoices indicating the Agreement Number and setting forth charges in accordance with paragraph III-A. Each invoice shall include Consultant's taxpayer identification number (Social Security or employer identification number). Invoices shall be submitted in triplicate not more frequently than monthly in arrears to:

California Institute for Regenerative Medicine
P.O. Box 99740
Emeryville, CA 94662-9740
Attn: Walter Barnes

IV. PERFORMANCE SCHEDULE

Consultant is to produce or provide specified materials or perform certain consulting services in accordance with Exhibit A.

V. REPORTING

In performing consulting services under this Agreement, the Consultant shall, subject to the terms and conditions of this Agreement, be accountable to the Independent Citizen's Oversight Committee.

VI. NOTIFICATION

Notices concerning this Agreement shall be addressed as follows:

CIRM:

Walter Barnes
Chief Administrative Officer
CIRM
P.O. Box 99740
Emeryville, CA 94662-9740

TO CONSULTANT:

Daniel J. Edelman, Inc.
5670 Wilshire Blvd., 22nd Floor
Los Angeles, CA 90036
Attn: Gail Becker

WITH A COPY TO:

Daniel J. Edelman, Inc.
200 East Randolph Drive, 63rd Floor
Chicago, IL 60601
Attn: Meredith Mendes

VII. TAXES

The compensation stated in Article III includes all applicable taxes and will not be changed hereafter as the result of Consultant's failure to include any applicable tax or as the result of any change in the Consultant's tax liabilities. Consultant acknowledges that compensation payable hereunder may be subject to withholding of state and federal income tax, including state income tax subject to withholding pursuant to California Revenue and Taxation Code Sections 18661-18677.

VIII. INDEPENDENT CONTRACTOR STATUS

- A. Both parties agree that in the performance of this agreement the Independent Consultant shall not be an agent or employee of the CIRM, shall not be covered by the CIRM's Worker's Compensation Insurance or Unemployment Insurance, shall not be eligible to participate in the CIRM's retirement programs, and shall not be entitled to any other CIRM benefits.
- B. Consultant shall be solely responsible for the conduct and control of the work to be performed by Consultant under this Agreement, except that Consultant is accountable to the individual designated in paragraph IV-A, above, for the results of such work. Consultant's services for CIRM shall be performed in accordance with currently approved methods and ethical standards applicable to Consultant's professional capacity.

California State Contract Code 10515 (a) states: No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after July 1, 2003, for the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

IX. ASSIGNMENT OR SUBCONTRACTING

The Consultant may not assign or transfer this Agreement, or any interest or claim, or subcontract any portion of the work, without the prior written approval of the CIRM. The withholding or granting of such approval is totally discretionary with the CIRM. If the CIRM consents to such assignment or transfer, the terms and conditions of this Agreement shall be binding upon any assignee or transferee.

X. PROPERTY RIGHTS, INCLUDING PATENTS AND COPYRIGHTS

- A. General: Except as otherwise provided herein, all information developed by Consultant pursuant to performance of services under this Agreement shall be the sole property of CIRM upon payment of amounts due the Contractor hereunder without CIRM's payment of additional consideration, and shall be furnished to CIRM on the earlier of either (1) completion or termination of each project, or (2) upon earlier termination of Consultant's services under this Agreement.
- B. Intellectual Property (Patents, Copyrights): Except as otherwise provided herein, in the event Consultant makes any invention or discovery or creates any trade secret (hereinafter collectively referred to as "Intellectual Property Discovery") in the course of performance of this Agreement, Consultant shall furnish CIRM with complete information with respect thereto and CIRM shall have the sole right, title, and interest in such Intellectual Property Discovery without payment of additional consideration. In the event that CIRM, in its sole discretion, shall determine to apply for any patent, copyright or other protection with respect to such Intellectual Property Discovery, Consultant agrees, at CIRM's request and expense, to execute all documents and do all acts reasonably necessary and proper to facilitate the CIRM's application for such patent, copyright or other protection.

Except as otherwise provided herein, the parties hereto agree that any copyrightable work(s) developed

under this agreement and paid for by the CIRM constitute work(s) made for hire under the United States Copyright Laws and that all Consultant's right, title and interest therein, including copyright shall vest in the CIRM. In the event that any such work is determined by a court of competent jurisdiction not to be a work made for hire under the United States Copyright laws, or for any other reason does not constitute a work made for hire, the Consultant, by this agreement, hereby assigns all right, title, and interest, including copyright, in said work(s) to the CIRM, in perpetuity.

Notwithstanding any provision of this Agreement to the contrary, the CIRM shall obtain no ownership rights in or to: (i) materials prepared by the Consultant prior to or outside the scope of this Agreement, even if customized for the CIRM; (ii) the Consultant's proprietary materials, including, without limitation, databases; media lists; media training guides; plans, proposals or ideas that the CIRM does not engage the Consultant to implement; and BrandCare™ materials, even if such proprietary materials are customized for the CIRM; and/or (iii) materials obtained from third parties pursuant to license agreements.

- C. Unless provided for in the budget and paid for by the CIRM, the Consultant does not perform any trademark or patent searches to determine if materials prepared or provided by it, or any portion thereof, may infringe the rights of any third party, and such searches and determinations are the responsibility of the CIRM; provided, Consultant shall not knowingly violate the trademark or patent rights of any third party. Nothing in this Agreement shall prohibit or prevent the Consultant from using materials that are obtained from third parties pursuant to limited licenses.

XI. LIABILITY, INDEMNIFICATION AND INSURANCE REQUIREMENTS

- A. Consultant agrees to defend at CIRM's election, indemnify, and hold harmless CIRM, its officers, agents, and employees from and against all third-party claims, losses, and expenses (including costs and reasonable attorney's fees), or claims for injury or damages that are caused by or result from the negligence or willful misconduct of the Consultant, its officers, employees, or agents, except to the extent such claims are related to Claims for which the CIRM must indemnify Consultant pursuant to this Agreement.

The CIRM shall defend, indemnify and hold the Consultant harmless from and against any third-party liabilities, actions, claims, damages, judgments or expenses, including reasonable attorneys' fees and costs, (collectively "Claims") that arise out of or relate to: (i) information, statements or materials (including any Claims relating to intellectual property rights therein), prepared or provided by the CIRM or that the CIRM directed the Consultant to use, including, without limitation, any Claims of infringement or misappropriation of copyright, trademark, patent, trade secret or other intellectual property or proprietary right, infringement of the rights of privacy or publicity, or defamation or libel (ii) information, statements and materials (including any Claims relating to intellectual property rights therein) prepared for the CIRM that the CIRM approved; (iii) product liability or death, personal injury or property damage arising out of, or relating to, the CIRM's products or services; or (iv) the CIRM's negligence or willful misconduct.

This Section XI(A) shall survive termination or expiration of this Agreement.

- B. Consultant shall furnish a Certificate of Insurance or statement of self-insurance (contractual liability included) showing minimum coverage as follows:

- 1. General Liability: Comprehensive or Commercial Form (Minimum Limits)

(i)	General Aggregate (BI, PD)*	\$1,000,000
(ii)	Products, Completed Operations Aggregate	\$1,000,000
(iii)	Personal and Advertising Injury	\$1,000,000
(iv)	Each Occurrence	\$ 300,000

* (not applicable to comprehensive form)

However, if such insurance is written on a claims-made form following termination of this agreement, coverage shall survive for a period no less than three years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this agreement.

- 2. Business Auto Liability: (Minimum Limits) for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of no less than \$1,000,000 per occurrence.
- 3. Workers' Compensation: as required under applicable State Law.
- 4. Professional Liability Insurance: (Minimum Limits)
 - (1) Each occurrence \$1,000,000
 - (2) Project Aggregate \$2,000,000

If this insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

- 5. Other insurance in amounts as from time to time may reasonably be required by the mutual consent of CIRM and Consultant against such other insurable hazards relating to performance.

Certificate(s) shall name the CIRM as an additional insured under 1 above, obligate the insurer to endeavor to notify CIRM at least thirty (30) days prior to cancellation of or changes in any of the required insurance (unless cancellation is due to non-payment of premium, in which event the insurer shall endeavor to provide ten (10) days notice and include a provision that the coverage will be primary to any valid and collectible insurance program of self-insurance carried or maintained by the CIRM. Premiums on all insurance policies shall be paid directly by the Consultant.

XII. RECORDS ABOUT INDIVIDUALS

- A. Consultant acknowledges that the creation and maintenance of records pertaining to individuals is subject to certain requirements set forth by the California Information Practices Act (Civil Code 1798, et seq.) and by CIRM policy. Such requirements include provisions governing the collection, maintenance, accuracy, dissemination, and disclosure of information about individuals, including the right of access by the subject individuals. The Consultant shall not be bound by any CIRM policy unless and until the CIRM provides a written copy of such policy to the Consultant.
- B. If Consultant creates confidential or personal records about an individual, as defined by the Information Practices Act, including notes or tape recordings, the information shall be collected to the greatest extent practicable directly from the individual who is the subject of the information. When collecting the information, Consultant shall inform the individual that the record is being made and of the purpose of the record.
- C. Records containing confidential or personal information about individuals are the property of the CIRM and subject to CIRM policies and applicable federal and state laws. Consultant agrees to deliver all such records, including originals and all copies and summaries, to the CIRM upon termination of this agreement.
- D. Consultant shall not use recording devices in discussion with CIRM employees without notifying all parties to the discussion that the discussion is being recorded.

XIII. EXAMINATION OF RECORDS

Upon reasonable advance written notice, the CIRM and, upon CIRM's approval, the contractor or grantor under

government contracts or grants, or its authorized representative, shall have access to and the right to examine any pertinent books, documents, papers, and records of Consultant involving financial transactions directly related to this Agreement until the expiration of five years after the final payment hereunder. Consultant considers confidential, and shall not be required to permit access to, records pertaining to employee compensation, benefits or other personnel files, information regarding Consultant's overhead and profit and information regarding the Consultant's other clients. Consultant shall retain project records for a period of two years from the date of final payment. All books, documents, papers and records shall be deemed the confidential information of Consultant, whether or not so designated, and the CIRM shall treat such information in the same manner the Consultant is required to treat the CIRM's confidential information pursuant to this Agreement.

XIV. CONFLICT OF INTEREST

- A. Consultant will not hire any officer or employee of the CIRM to perform any service covered by this agreement. If the work is to be performed in connection with a federal or state contract or grant, Consultant will not hire any employee of the government concerned to perform any service covered by this agreement.
- B. Consultant affirms that to the best of its knowledge there exists no actual or potential conflict between Consultant's business or financial interest and the services provided under this agreement, and in the event of change in either private interests or service under this agreement, any question regarding possible conflict of interest which may arise as a result of such change will be raised with the CIRM.
- C. Consultant shall not be in a reporting relationship to a CIRM employee who is a near relative, nor shall the near relative be in a decision-making position with respect to the Consultant.

XV. AFFIRMATIVE ACTION

The Consultant recognizes that as a federal and state government contractor or subcontractor, the CIRM is obligated to comply with certain laws and regulations of the federal and state government regarding equal opportunity and affirmative action. When applicable, the Consultant agrees that, as a government subcontractor, the following are incorporated herein as though set forth in full: the non-discrimination and affirmative action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations contained in Title 41, part 60 of the code of Federal Regulations, as amended; the non-discrimination and affirmative action clause contained in the Rehabilitation Act of 1973, as amended, as well as the Americans With Disabilities Act relative to the employment and advancement in employment of qualified individuals with disabilities, and the implementing rules and regulations in Title 41, part 60-741 and 742 of the Code of Federal Regulations; the non-discrimination and affirmative action clause of the Vietnam Era Veterans Readjustment Assistance Act of 1974 relative to the employment and advancement in employment of qualified special disabled veterans and Vietnam era veterans without discrimination, and the implementing rules and regulations in Title 41, part 60-250 of the Code of Federal Regulations; and the non-discrimination clause required by California Government Code Section 12900 relative to equal employment opportunity for all persons without regard to race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex, and the implementing rules and regulations of Title 2, Division 4, Chapter 5 of the California Code of Regulations. The Consultant, as a government subcontractor, further agrees that when applicable it shall provide the certification of non-segregated facilities required by Title 41, part 60-1.8(b) of the Code of Federal Regulations.

XVI. CONFIDENTIALITY

The Consultant shall use reasonable efforts to keep confidential any information provided by the CIRM and marked "Confidential Information," or any information conveyed orally to the Consultant by the CIRM with oral notification of its confidentiality, and followed by a written communication within thirty (30) days that said information shall be considered Confidential Information. This non-disclosure provision shall not apply to any of the following:

1. Information which the Consultant can demonstrate by written records was known to him or her prior to the

- effective date of this Agreement;
- 2. Is currently in, or in the future enters, the public domain or becomes publicly available other than through a breach of this Agreement or through other acts or omissions of the Consultant;
- 3. Is obtained lawfully from a third party; or
- 4. is required to be disclosed pursuant to law or legal process.

XVII. APPLICABLE LAW

The laws of the State of California shall govern this Agreement.

XVIII. TERMS TO BE EXCLUSIVE

This Agreement and attachments hereto constitute the entire understanding between the parties regarding the subject matter hereof and supersedes any prior understanding between the parties, oral or written, regarding the same subject matter.

XIX. WAIVER OR MODIFICATION OF TERMS

No waiver, amendment or other modifications of the terms of this Agreement shall be binding upon either party unless expressed in writing and signed by both parties hereto.

XX. STANDARD FOR PERFORMANCE

The parties acknowledge that the CIRM, in selecting the Consultant to perform the services hereunder, is relying upon the Consultant’s reputation for excellence in the performance of the services required hereunder. The Consultant shall perform the services in the manner of one who is a recognized specialist in the types of services to be performed. All deadlines set forth in the Agreement are binding and may be modified only by subsequent written agreement of the parties. The Consultant shall devote such time to performance of its duties under this Agreement as is reasonably necessary for the performance of such duties in accordance with the terms of this Agreement within the deadlines set forth herein. Nothing in the foregoing shall be construed to alter the requirement that time is of the essence in this Agreement.

XXI. EXCLUSION. Independent Consultant warrants that it is not excluded from participation in any governmental sponsored program, including, without limitation, the Medicare, Medicaid, or Champus programs (<http://exclusions.oig.hhs.gov/search.html>) and the Federal Procurement and Nonprocurement Programs (<http://epls.arnet.gov/PrivacyActProvisionsEPLS.html>). This agreement shall be subject to immediate termination in the event that Independent Consultant is excluded from participation in any federal healthcare or procurement program.

INDEPENDENT CONSULTANT

THE CALIFORNIA INSTITUTE FOR
REGENERATIVE MEDICINE

Signature

Date

Walter Barnes

Chief Administrative Officer and Controller

Date

Social Security or Employer Identification Number*

*Pursuant to Federal Privacy Act of 1974, you are hereby notified that disclosure of your Social Security number is mandatory. Disclosure of the Social Security number is required pursuant to Sections 6011 and 6051 of Subtitle F of the Internal Revenue Code and Regulation 4, Section 404.1256, Code of Federal Regulations, under Section 218, Title II of the Social Security Act, as amended. The Social Security number is to verify your identity. The principal uses of the Social Security number shall be to report payments you have received to the Federal and State governments.

Item 6445-501-6047001/Chapter 899/Statutes 2004/FY 04/05
Account/Fund to be Charged