**IHDLab Sublease Contract Requirement**

1. Total Rent per month ($)
2. Start date to assume Lease (Commencement Date)
3. Exclusive Space Square Footage (Blood Draw Room w/ measurements)
4. Common Area Total Square Footage (w/measurements)
5. Total Square Footage of ENTIRE office suite
6. Sketch Floor plan of ENTIRE Suite and highlight the area occupied by IHDLab
7. Owner Full Name, email and Business Name (Master Lessor)
8. Owner email address
9. Sublessee Full name and Company (LLC, Corp, DBA)
10. Sublessee email address
11. Address and Name of Building Complex

**{SAMPLE CONTRACT IS FILLED OUT BELOW**

**PREVIEW ONLY}**

**MEDICAL OFFICE SUB-LEASE**

THIS SUB-LEASE AGREEMENT is executed as of **April 12, 2024** (“Sublease”), by and between **Dr. Kabir Ahmed Inc.** (“Sublessor”), and MD Tox Laboratory ("Sublessee").

In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

**1.** **Basic Agreement Terms.** The following terms are defined as set forth below:

|  |  |
| --- | --- |
| **SUBLESSOR’S CURRENT ADDRESS** **FOR NOTICES AND PAYMENTS:** | 320 Superior Ave Suite #210Newport Beach, CA 92663 |
| **SUBLESSEE’S CURRENT ADDRESS****FOR NOTICES:** | Innovative Health Diagnostics2850 Red Hill Ave #130Santa Ana, CA 92705ATTN: Compliance Department  |
| **BUILDING:** | The building known as **Newport Medical Arts Building**, located at 320 Superior Ave Suite #210Newport Beach, CA 92663. |
| **PREMISES:** | **88** square feet of dedicated space within Suite #**210** of the Building. |
| **SQUARE FOOTAGE OF PREMISES:** | The Premises shall consist of **88** square feet of space dedicated exclusively to Lessee’s use, as well as use of common area within the Building including Suite **210**’s total square footage of **1,200** square feet (this consists of offices, closets, toilets and internal common area), as defined below. A floorplan of the Premises is attached hereto as **Schedule 1.1**. |
| **COMMON AREAS:** | All area and facilities of the Building (and the property on which it is located) provided for the general use and convenience of tenants and other occupants of the Building and their respective employees, invitees and guests. Common Areas include, but are not limited to, sidewalks, entryways, passages, corridors, elevators, stairways, fire escapes, landscaped areas, parking lot and restrooms not situated in the Premises. |
| **INITIAL TERM:** | **Twelve (12)** months or termination of the Master Lease, whichever occurs sooner.  |
| **COMMENCEMENT DATE:** | May 1, 2024 |
| **BASIC RENT:** | **See Schedule 1.2.** |
| **MASTER LESSOR:** | **Dr. Kabir Ahmed Inc.** |

**2.** **Premises.**

**2.1** **Square Footage Calculation of Premises.** Sublessor hereby subleases to Sublessee and Sublessee hereby subleases from Sublessor, upon all of the conditions set forth herein, the portion of the Premises labeled as IHDLab PSC on **Schedule 1.1** (the “Premises”). The Premises shall be for the full-time, exclusive use of Sublessee and its guests. Sublessor and Sublessee acknowledge and agree that the direct rentable square footage of the Premises is **88** square feet, calculated as follows:

|  |  |
| --- | --- |
| Lab Draw Room | 88 sf |
| Total of Direct Rentable Space  |  88 sf |

**2.2** **Square Footage Allocation Calculation of Common Area.**  Sublessor agrees to allow Sublessee to use the common areas within the Premises, and Sublessee agrees to use the Premises, for the uses, at the times and on the terms and conditions set forth in this Agreement. Sublessor and Sublessee acknowledge that this Agreement provides for use by Sublessee of the common areas within the Premises, or portions thereof, on a non-exclusive basis.

In accordance with the *2000 Office of Inspector General Special Fraud Alert - Rental of Space in Physician Offices by Persons or Entities to Which Physicians Refer* (“OIG Lease Alert”), attached hereto as **Exhibit A**, Sublessee shall pay rent for a portion of the interior office common space, i.e., rest room, hallways. Sublessor and Sublessee acknowledge and agree that the rentable square footage of the common area allocation is **33** square feet (the “Internal Common Area Allocation”), calculated as follows:

|  |  |
| --- | --- |
| (A) Square footage of Sublessee’s exclusive space: | 88 sf  |
| (B) Square footage of non-common space (add up all exclusive space of anyone in the suite):  | 912 sf |
| (C) Total internal common area square footage of suite:  | 300 sf  |
| (D) Sublessee’s Internal Common Area Allocation*(A divided by B, multiplied by C):* |  33 sf  |
| (E) Sublessee’s Total Rentable Square Footage *( D plus A; to be used to calculate Fair Market Value):*  | 121 sf |

**3.** **Term.**

 **3.1 Initial Term.** The initial term of this Agreement shall be **twelve (12)** month(s), commencing **May 1, 2024** and continuing until **May 1, 2025** (the "Term"). Further, if the Master Lease expires or is terminated for any reason, this Agreement shall automatically terminate.

 **3.2** **Renewal Option**. Sublessee shall have the right and option to renew this Sublease for **one (1)** additional **five (5)** year terms (the “Renewal Term”) by delivering notice of the exercise thereof to Sublessor at least **60** days prior to the expiration of the Initial Term provided and upon the condition that at the time of such notice and at the commencement of the Renewal Term, Sublessee is not in default hereunder.

 **3.3 Out Clause.** Either party may terminate this agreement at any time and for any reason by giving the other party written notice not less than **thirty (30)** days prior to the effective date of termination. In the event this Lease shall terminate for any reason during any 12-month Term, the parties agree that they will not enter into a new lease during the 12-month period after such termination."

**4.** **Rent.**

**4.1** **Base Rent.** Sublessee shall pay to Sublessor without demand, deduction, or offset, for Sublessee’s use of the Premises, an amount equal to the amounts set forth in **Schedule 1.2** ("Base Rent"). The Base Rent shall be paid monthly in advance commencing on the Commencement Date and thereafter on the first day of each month during the Term. If the Commencement Date or expiration date occurs other than on the first or last day of any-calendar month, the Base Rent for the first or last month shall be based on the number of days in the month in which the Commencement Date or expiration date occurs. The parties agree that such late charge represents a fair and reasonable estimate of the costs Sublessor will incur by reason of late payment by Sublessee. Acceptance of such late charge by Sublessor will not constitute a waiver of Sublessee's default with respect to such overdue amount, nor prevent Sublessor from exercising any of its other rights and remedies.

 **4.2** **Additional Rent.** In addition to Base Rent, Sublessee shall pay to Sublessor during the Initial Term and the Renewal Term, if exercised, Sublessee’s proportionate share of the items listed on **Schedule 4.2**. Sublessee’s proportionate share shall be calculated as a ratio, the numerator of which is the square footage of Sublessee’s exclusive space (**88** sf) and the denominator of which is the total square footage **121** sf) of **1,200 sf**. As such, Sublessee’s proportionate share shall be **ten (10%).** Sublessor shall provide Sublessee with a copy each rental invoice showing additional rent items for the **9** month period prior to the initial term, or any renewal term of the Sublease, from which an average amount of additional monthly rent to be paid as a flat fee will be determined for the next term.

**4.3** **Representations and Warranties Regarding Rent.** Sublessor hereby represents and warrants that it is familiar with the OIG Lease Alert. Sublessor further represents and warrants that the Base Rent to be paid by Sublessee hereunder shall not exceed the rate paid by Sublessor pursuant to the Master Lease for the Premises. Additionally, Sublessor represents and warrants that the Additional Rent to be paid by Sublessee hereunder shall not exceed Sublessee’s proportionate share of the Additional Rent payable pursuant to the Master Lease and those items set forth on **Schedule 4.2**.

**5.** **Excise, Sales or Privilege Taxes.** Sublessee, simultaneously with and in addition to the payment of Base Rent required hereunder, shall pay to Sublessor in addition to all other sums, any excise, sales, transaction privilege or rental occupancy tax imposed or levied by any federal, state or local government or governmental agency upon Sublessor as a result of Sublessor’s receipt of any such payment.

**6.** **Compliance with Law.**

 **6.1 Physician Lease Laws.** The parties agree that at the time this Sublease is executed the subject matter hereof is legal and enforceable. It is expressly recognized and understood by the parties to this Sublease that the federal physician self-referral law, commonly known as the "Stark Law and the California Physician Ownership and Referral Act (“PORA”) and related regulations, and the federal Antikickback Statute (“Physician Lease Laws”), specifically prohibit a physician from making a referral to a clinical laboratory if the physician (or a member of the physician's immediate family) has a financial arrangement with such clinical laboratory. It is further recognized by the parties hereto that the prohibitions of the Physician Lease Laws will affect the parties hereto except to the extent the parties otherwise fall within a safe harbor or other exception to the Physician Lease Laws; therefore, the parties agree that the terms and conditions of this Sublease must at all times comply with those exceptions (“Permitted Lease Exceptions”). Accordingly, if either party, in good faith, determines at any time or is reliably informed by governmental authorities that the Sublease violates or is likely to be determined by a third party to violate such laws, rules, regulations, policies or interpretations, this Sublease will be deemed to be automatically modified to comply with such law or regulation. The parties further agree to meet immediately upon such determination and in good faith to amend this Lease so as to eliminate such concern or violation and to bring this Sublease into compliance with the foregoing. If the Lease cannot be brought into compliance with such law or regulation, it shall be terminated.

 **6.2 American with Disabilities Act.** Sublessor is responsible for seeing that the Premises and the common areas are in compliance with the applicable provisions of the Americans with Disabilities Act of 1990 and its implementing regulations, as amended or supplemented from time to time, and all similar applicable state and local laws, rules and regulations.

**7. Services Provided.** During the term, and provided an Event of Default does not exist, Sublessor shall furnish (or, by exercising its rights under the Master Lease, cause to be furnished), without charge to Sublessee, during generally recognized business days the following: (i) janitorial. services for the Premises; (ii) domestic running water and all lavatory facilities; (iii) heating, ventilation and air conditioning (HVAC) as may be reasonably required for the comfortable use and occupancy of the Premises; (iv) electricity as reasonably required for use by Sublessee of the Premises; and (v) the use of the medical office and telephone equipment existing on the Premises on the Commencement Date. Sublessor shall not be in default hereunder or be liable for any damages directly or indirectly resulting from any failure of Sublessor to supply any of the services set forth in this Paragraph, nor shall the Base Rent be abated by reason of any failure to supply any of such services, during any period when Sublessor used reasonable diligence to supply such services. Notwithstanding the foregoing, if any such services cannot be provided for a period of five days or more and Sublessee cannot use the Premises in the ordinary course of business during such period, Sublessee may abate the Base Rent on a pro rata basis. Sublessor reserves the right temporarily to discontinue such services, or any of them, at such times as may be reasonably necessary by alterations or improvements or whenever by reasons of strikes, lockouts, riots, acts of God, or any other happenings beyond control of Sublessor, Sublessor is unable to furnish such services. Within 10 days after Sublessee’s receipt of a written invoice therefor, Sublessee shall pay Sublessor for all telephone charges incurred on the Premises’ telephone system by Sublessee.

**8.** **Use.** Sublessee shall be entitled to exclusive use of the Premises for the purpose of providing clinical laboratory draw station services and for no other purpose. Sublessee shall be permitted non-exclusive use of the common area of the Premises between the hours of [8:00 a.m.], local time, and [6:00 p.m.], local time, on Monday through Friday of every work week. Without the prior written consent of Master Lessor, which Master Lessor can give or withhold in its sole discretion, Sublessee shall not use the Premises for any use or purpose not permitted by the Master Lease. Sublessee shall not do anything which it knows would invalidate or increase the premiums for any policies of insurance on the Premises, the Building or the Common Areas, or do anything which would violate or be a default under the Master Lease if done or permitted by Sublessor.

**9.** **Hazardous Waste.** While using the premises pursuant to this Sublease, Sublessee agrees to comply fully and in a timely manner with, and to cause all employees, agents, contractors and subcontractors of Sublessee and any other persons occupying or present on the Premises to comply with all applicable federal, state and local laws, regulations, guidelines, codes and other legal requirements relating to the generation, presence, use, handling release, storage, transport and disposal of any Hazardous Material (as defined in the Master Lease) located or present on the Premises . Sublessee shall indemnify, defend, protect and hold harmless Sublessor and Master Lessor, and their respective directors, officers, employees and agents, from and against any and all claims, liabilities, penalties, response costs, losses, damages and expenses (including all litigation costs and reasonable attorneys fees) arising out of or relating to the use, generation, storage, presence, release, transport or disposal of Hazardous Material which is or was attributable to Sublessee’s activities or the activities of Sublessee's employees, agents or contractors while using the Premises pursuant to this Agreement. This agreement to indemnify, defend, protect and hold harmless shall be in addition to any other obligations or liabilities that Sublessee may have to Sublessor or Master Lessor arising under any laws relating to Hazardous Material, at law or otherwise and shall survive the termination of this Agreement.

**10.** **Maintenance, Repairs and Alterations.**  Sublessor shall (directly or through enforcement of its rights under the Master Lease) cause the Premises to be properly maintained and repaired, unless such maintenance or repairs are caused by the act, negligence, fault or omission of Sublessee, it agents, officers, employees, or contractors, in which case Sublessee shall pay the reasonable cost of such maintenance or repairs. Sublessee shall not make any additions, alterations, or improvements to the Premises without the prior written consent of Sublessor

**11.** **Insurance/Indemnity.** Sublessee shall, at its expense, maintain comprehensive general liability insurance and all risk on Sublessee’s equipment and personal property in the Premises.

**12.** **Assignment and Subletting.** Sublessee shall not, either voluntarily or by operation of law, assign, mortgage, hypothecate or otherwise transfer this Agreement or any interest herein, or permit the use of the Premises by any person or persons other than Sublessee and Sublessee’s employees and patients, or sublet the Premises or any part thereof without the prior express written consent of both Sublessor and Master Lessor, not to be withheld in the event of a transfer in connection with a sale of substantially all of the Sublessee’s assets or stock, provided transferee has a documented net worth greater than or equal to $2 Million; and in no case shall consent be unreasonably withheld.

**13.** **Notices.** Notices under this Agreement shall be given and effective as provided in the Master Lease, using the address in Paragraph 1 above, but either party may change its address for such purpose by giving the other party written notice of the change.**14.** **Sublessor’s Remedies.** The occurrence of any one or more of the following events shall constitute a material default or breach of this Agreement by Sublessee (“Event of Default”): (i) failure of Sublessee to pay when due the Base Rent or any other payment required hereunder; (ii) failure of Sublessee to perform any of its other obligations hereunder, where such failure continues for **ten (10)** days after written notice thereof is received by Sublessee; (iii) filing of any petition by or against Sublessee to declare Sublessee a bankrupt or appointment of a receiver or trustee for Sublessee or its property, if such actions are not dismissed within 30 days; or (iv) if Sublessee abandons or vacates the use of the Premises without paying rent. Upon the occurrence of any Event of Default Sublessor may, at its option, immediately terminate this Agreement by notice to Sublessee, and may also pursue any other rights and remedies available to Sublessor at law or equity.

**15.** **Signage and Directory**. Sublessee, at Sublessee’s sole cost and expense, shall be permitted to install a sign at the entrance to the Subleased Premises.

**16.** **Quiet Enjoyment.** Sublessee shall have quiet possession of the Subleased Premises for the entire term hereof, subject to all of the provisions of this Sublease.

**17. Counterparts.** This Sublease may be executed in counterparts, each is hereby declared to be an original; all counterparts constitute but one and the same agreement.

**18.** **Miscellaneous.** In the event of any legal action arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees incurred in such action and such amount shall be included in any judgment rendered in such proceeding. The provisions hereof shall apply without regard to the number or gender of words and expressions used herein. Each of the provisions of this Agreement bind and inure to the benefit of Sublessor, Sublessee, and their respective heirs, legal representatives, successors and assigns, provided this clause shall not permit any assignment contrary to any provision contained herein. Time is of the essence of every provision of this Agreement. No waiver by Sublessor or Master Lessor of any provision of this Agreement or any breach by Sublessee hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Sublessee of the same or any other provision. The captions contained in this Agreement are for convenience only and shall not be considered in the interpretation hereof. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Master Lessor is an intended third-party beneficiary of this Agreement, and shall have the right, in its own name or on behalf of Sublessor or Sublessee, to enforce the provisions hereof (including, without limitation, the provisions of Section 14 above).

[Signature Page Below]

IN WITNESS WHEREOF, this MEDICAL OFFICE SUB-LEASE by and between SUBLESSOR and SUBLESSEE is executed and effective as of the **12** day of **April**, **2024**.

**SUBLESSOR:**Dr. Kabir Ahmed Inc.

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Dr. Kabir Ahmed**

Its Owner

**SUBLESSEE:**MD Tox Laboratory

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Edith Ramirez

Its Chief Compliance Officer

**MASTER LESSOR CONSENT:**

**Dr. Kabir Ahmed Inc.**, the Master Lessor, hereby consents to the foregoing Medical Office Sublease Agreement.**MASTER LESSOR**

Dr. Kabir Ahmed Inc.

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Dr. Kabir Ahmed**

Its Owner

**SCHEDULE 1.1[FLOOR PLAN OF THE PREMISES]**





Bolded area is Sublessee’s (IHDLab) Total Rentable Square Footage (IHD Draw Rm) with Common Use Areas

(Not to Scale)

**SCHEDULE 1.2[BASIC RENT]**

Base Rent shall be for the Premises (88 sf) and the Internal Common Area Allocation (33 sf ) (totaling 121 sf) in the amount of: $16.52 per sf. (current rate per sf of Master Lease).

|  |  |
| --- | --- |
| Year | Base Rent |
| 2024 | $2,000 |
| 2025 (+4%) | $2,080 |
| 2026 (+4%) | $2,163 |

**SCHEDULE 1.3[DEPOSIT]**

The Sublessee (IHDLab) agrees to pay a security deposit amounting to one month’s rent, **two-thousand dollars (USD 2,000).** This deposit is to be paid to the Sublessor prior to the commencement of the lease term, as security for the Tenant's compliance with the terms and conditions of the lease agreement.

The said deposit shall be held by the Landlord without accruing interest, as a guarantee against damages beyond normal wear and tear to the Premises, and for any unpaid rent or other charges as stipulated in the lease agreement. Upon termination of the lease, the Landlord shall inspect the Premises and, if there are no damages beyond normal wear and tear, unpaid rent, or other charges, the full deposit amount of USD 2,000 shall be refunded to the Sublessee within 30 days. Any deductions from the deposit shall be itemized and provided to the Sublessee in writing, along with the remainder of the deposit (if any), within the same timeframe.

It is understood that this security deposit does not relieve the Sublessee of the obligation to pay the last month's rent or any other financial obligations under the terms of the lease agreement.

**SCHEDULE 4.2**

**[ADDITIONAL RENT ITEMS]**

[EXAMPLES ONLY--Property Tax, Water, Gas, Electricity, Trash Pickup, Janitorial Service, Gardening/Landscape, Elevator Service, Security, Insurance, Building Maintenance, HVAC Maintenance, Carpet Cleaning, Pest Control, Window Washing, Water Treatment.]

Average amount of Additional Rent charges for the **twelve(12)** month period prior to the initial term of the Sublease :

Sublessee’s share of Additional Rent = Additional Rent Items Total x **10%.**

**EXHIBIT A**

**Special Fraud Alert**

**RENTAL OF SPACE IN PHYSICIAN OFFICES BY PERSONS**

**OR ENTITIES TO WHICH PHYSICIANS REFER**

February 2000

The Office of Inspector General (OIG) was established at the Department of Health and Human Services by Congress in 1976 to identify and eliminate fraud, abuse and waste in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, investigations and inspections.

To reduce fraud and abuse in the Federal health care programs, including Medicare and Medicaid, the OIG actively investigates fraudulent schemes that are used to obtain money from these programs and, when appropriate, issues Special Fraud Alerts that identify practices in the health care industry that are particularly vulnerable to abuse.

This Special Fraud Alert focuses on the rental of space in physicians' offices by persons or entities that provide health care items or services (suppliers)[(1)](http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/#N_1_) to patients that are referred either directly or indirectly by their physician-landlords. In this Special Fraud Alert, we describe some of the potentially illegal practices the OIG has identified in such rental relationships.

**Questionable Rental Arrangements For Space in Physician Offices**

A number of suppliers that provide health care items or services rent space in the offices of physicians or other practitioners. Typically, most of the items or services provided in the rented space are for patients, referred or sent, either directly or indirectly, to the supplier by the physician-landlord. In particular, we are aware of rental arrangements between physician-landlords and:

* comprehensive outpatient rehabilitation facilities (CORFs) that provide physical and occupational therapy and speech-language pathology services in physicians' and other practitioners' offices;
* mobile diagnostic equipment suppliers that perform diagnostic related tests in physicians' offices; and
* suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) that set up "consignment closets" for their supplies in physicians' offices.

The OIG is concerned that in such arrangements, the rental payments may be disguised kickbacks to the physician-landlords to induce referrals. We have received numerous credible reports that in many cases, suppliers, whose businesses depend on physicians' referrals, offer and pay "rents" -- either voluntarily or in response to physicians' requests -- that are either unnecessary or in excess of the fair market value for the space to access the physicians' potential referrals.

**The Anti-Kickback Law Prohibits Any Payments to Induce Referrals**

Kickbacks can distort medical decision-making, cause overutilization, increase costs and result in unfair competition by freezing out competitors who are unwilling to pay kickbacks. Kickbacks can also adversely affect the quality of patient care by encouraging physicians to order services or recommend supplies based on profit rather than the patients' best medical interests.

Section 1128B(b) of the Social Security Act (the Act) prohibits knowingly and willfully soliciting, receiving, offering or paying anything of value to induce referrals of items or services payable by a Federal health care program. Both parties to an impermissible kickback transaction are liable. Violation of the statute constitutes a felony punishable by a maximum fine of $25,000, imprisonment up to five years, or both. The OIG may also initiate administrative proceedings to exclude persons from Federal health care programs or to impose civil money penalties for fraud, kickbacks and other prohibited activities under sections 1128(b)(7) and 1128A(a)(7) of the Act.[(2)](http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/%22%20%5Cl%20%22N_2_)

**Suspect Rental Arrangements For Space in Physician Offices**

The questionable features of suspect rental arrangements for space in physicians' offices may be reflected in three areas:

* the appropriateness of rental agreements;
* the rental amounts; and
* time and space considerations.

Below, we examine these suspect areas, which separately or together may result in an arrangement that violates the anti-kickback statute, in order to help identify questionable rental arrangements between physicians and the suppliers to which they refer patients. This list is not exhaustive, but rather gives examples of indicators of potentially unlawful activity.

**Appropriateness of Rental Agreements.** The threshold inquiry when examining rental payments is whether payment for rent is appropriate at all. Payments of "rent" for space that traditionally has been provided for free or for a nominal charge as an accommodation between the parties for the benefit of the physicians' patients, such as consignment closets for DMEPOS, may be disguised kickbacks. In general, payments for rent of consignment closets in physicians' offices are suspect.[(3)](http://www.oig.hhs.gov/fraud/docs/alertsandbulletins/#N_3_)

**Rental Amounts.** Rental amounts should be at fair market value, be fixed in advance and not take into account, directly or indirectly, the volume or value of referrals or other business generated between the parties. Fair market value rental payments should not exceed the amount paid for comparable property. Moreover, where a physician rents space, the rate paid by the supplier should not exceed the rate paid by the physicians in the primary lease for their office space, except in rare circumstances. Examples of suspect arrangements include:

* rental amounts in excess of amounts paid for comparable property rented in arms-length transactions between persons not in a position to refer business;
* rental amounts for subleases that exceed the rental amounts per square foot in the primary lease;
* rental amounts that are subject to modification more often than annually;
* rental amounts that vary with the number of patients or referrals;
* rental arrangements that set a fixed rental fee per hour, but do not fix the number of hours or the schedule of usage in advance (i.e., "as needed" arrangements);
* rental amounts that are only paid if there are a certain number of Federal health care program beneficiaries referred each month; and
* rental amounts that are conditioned upon the supplier's receipt of payments from a Federal health care program.

**Time and Space Considerations.** Suppliers should only rent premises of a size and for a time that is reasonable and necessary for a commercially reasonable business purpose of the supplier. Rental of space that is in excess of suppliers' needs creates a presumption that the payments may be a pretext for giving money to physicians for their referrals. Examples of suspect arrangements include:

* rental amounts for space that is unnecessary or not used. For instance, a CORF requires one examination room and rents physician office space one afternoon a week when the physician is not in the office. The CORF calculates its rental payment on the square footage for the entire office, since it is the only occupant during that time, even though the CORF only needs one examination room;
* rental amounts for time when the rented space is not in use by the supplier. For example, an ultrasound supplier has enough business to support the use of one examination room for four hours each week, but rents the space for an amount equivalent to eight hours per week;
* non-exclusive occupancy of the rented portion of space. For example, a physical therapist does not rent space in a physician's office, but rather moves from examination room to examination room treating patients after they have been seen by the physician. Since no particular space is rented, we will closely scrutinize the proration of time and space used to calculate the therapist's "rent".

In addition, rental amount calculations should prorate rent based on the amount of space and duration of time the premises are used. The basis for any proration should be documented and updated as necessary. Depending on the circumstances, the supplier's rent can consist of three components: (1) exclusive office space; (2) interior office common space; and (3) building common space.

1. Apportionment of exclusive office space - The supplier's rent should be calculated based on the ratio of the time the space is in use by the supplier to the total amount of time the physician's office is in use. In addition, the rent should be calculated based on the ratio of the amount of space that is used exclusively by the supplier to the total amount of space in the physician's office. For example, where a supplier rents an examination room for four hours one afternoon per week in a physician's office that has four examination rooms of equal size and is open eight hours a day, five days per week, the supplier's prorated annual rent would be calculated as follows:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Physician Office Rent Per Day**  |  | **% of Physician Office Space Rented  by Supplier**  |  | **% of Each Day Rented by Supplier**  |  | **No. of Days Rented by Supplier Per Year**  |  |  |
| annual rent of primary leaseno. of work days per year | X | sq. ft. exclusivelyoccupied by suppliertotal office sq. ft. | X | 4 hours 8 hours | X | 52 days (i.e., 1 day per week) | = | Supplier's annual  rent for  exclusive space |

2. Apportionment of interior office common space - When permitted by applicable regulations, rental payments may also cover the interior office common space in physicians' offices that are shared by the physicians and any subtenants, such as waiting rooms. If suppliers use such common areas for their patients, it may be appropriate for the suppliers to pay a prorated portion of the charge for such space. The charge for the common space must be apportioned among all physicians and subtenants that use the interior office common space based on the amount of non-common space they occupy and the duration of such occupation. Payment for the use of office common space should not exceed the supplier's pro rata share of the charge for such space based upon the ratio of the space used exclusively by the supplier to the total amount of space (other than common space) occupied by all persons using such common space.

3. Apportionment of building common space - Where the physician pays a separate charge for areas of a building that are shared by all tenants, such as building lobbies, it may be appropriate for the supplier to pay a prorated portion of such charge. As with interior office common space, the cost of the building common space must be apportioned among all physicians and subtenants based on the amount of non-common space they occupy and the duration of such occupation.  For instance, in the example in number one above, the supplier's share of the additional levy for building common space could not be split 50/50.

**The Space Rental Safe Harbor Can Protect Legitimate Arrangements**

We strongly recommend that parties to rental agreements between physicians and suppliers to whom the physicians refer or for which physicians otherwise generate business make every effort to comply with the space rental safe harbor to the anti-kickback statute. (See 42 CFR 1001.952(b), as amended by 64 FR 63518 (November 19, 1999)). When an arrangement meets all of the criteria of a safe harbor, the arrangement is immune from prosecution under the anti-kickback statute. The following are the safe harbor criteria, all of which must be met:

* The agreement is set out in writing and signed by the parties.
* The agreement covers all of the premises rented by the parties for the term of the agreement and specifies the premises covered by the agreement.
* If the agreement is intended to provide the lessee with access to the premises for periodic intervals of time rather than on a full-time basis for the term of the rental agreement, the rental agreement specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals.
* The term of the rental agreement is for not less than one year.
* The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions, and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.
* The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

Arrangements for office equipment or personal services of physicians' office staff can also be structured to comply with the equipment rental safe harbor and personal services and management contracts safe harbor. (See 42 CFR 1001.952(c) and (d), as amended by 64 FR 63518 (November 19, 1999)). Specific equipment used should be identified and documented and payment limited to the prorated portion of its use. Similarly, any services provided should be documented and payment should be limited to the time actually spent performing such services.