

RIDER 103 STANDARD TERMS & CONDITIONS

1. **Entire Agreement:** This Rider 103 together with any agreement, supplements, and all other Riders (as well as any Exhibits to any of the foregoing) constitutes the sole, entire and only agreement between the parties hereto and all such documents are collectively referred to as this Agreement. This Agreement supersedes any prior agreements or understandings, whether written or oral, between the parties with respect to the goods and/or services contracted for under this Agreement. No course of prior dealings, no usage of trade, and no course of performance will be used to modify, supplement, or explain any terms used in this Agreement. In the event of any conflict between the terms of this Rider 103 and any other document constituting part of this Agreement, the terms of this Rider 103 will control and govern.

2. **Amendment:** No modification, alteration, or waiver of this Agreement will be effective unless it is set forth in a written agreement that is signed by all parties to this Agreement.

3. **Independent Contractor:** Contractor will, at all times, during the performance of this Agreement and in connection with any services rendered by Contractor to MD Anderson, be considered an independent contractor. No employer-employee, partnership, or joint venture relationship is created by this Agreement or by Contractor's service to MD Anderson. MD Anderson is not obligated to provide workers' compensation insurance covering Contractor's personnel or any other employee insurance or benefits. Except as specifically required under the terms of this Agreement, (1) Contractor will not represent itself to be an agent or representative of MD Anderson or any other agency or instrumentality of The University of Texas System ("System") or the State of Texas; and (2) nothing in this Agreement will be construed to constitute or imply the creation or existence of any fiduciary duty or similar obligation between Contractor and MD Anderson.

4. **Confidentiality:** Contractor will not at any time, except as necessary in the performance of this Agreement or as authorized in writing by MD Anderson, supply, disclose, use or otherwise permit access to any information that Contractor may in any way acquire by reason of performance of this Agreement and that concerns or in any way relates to MD Anderson, including without limitation any information, data or records pertaining to MD Anderson's faculty, staff, patients, business, or financial affairs ("Confidential Information"). MD Anderson will have the right to audit and otherwise verify the security of Confidential Information in the possession of or being managed by Contractor. Within ten (10) business days after the termination of this Agreement or the request of MD Anderson, Contractor will return or destroy all Confidential Information.

5. **Consulting Reports:** If Contractor is providing consulting services to MD Anderson, Contractor must provide a copy of all consulting reports and work product submitted pursuant to this Agreement directly to the following:

Chief Compliance Officer, Unit 640
The University of Texas
MD Anderson Cancer Center
1515 Holcombe Boulevard
Houston, Texas 77030

AND

Director, Internal Audit, Unit 641
The University of Texas
1515 Holcombe Boulevard
Houston, Texas 77030

6. **Open Records:** This Agreement and all information, documentation and other material submitted by Contractor in response to any solicitations or under any resulting purchase order thereof may be subject to public disclosure under Chapter 552, *Texas Government Code*. Contractor is hereby notified that

MD Anderson strictly adheres to this statute and the interpretations thereof rendered by the courts and the Texas Attorney General. Contractor will be deemed to have knowledge of this law and the means of protecting Contractor's legitimate interests.

7. **Publicity:** It is the policy of MD Anderson that no endorsement by MD Anderson be stated or implied by Contractor for any of Contractor's products or services. All materials utilizing the name or trademarks of MD Anderson or The University of Texas in advertising, marketing and sales promotion materials must be submitted to MD Anderson's Office of Public Affairs for prior written approval.

Mailing Address: (Via U.S. Mail)

Vice President of Public Affairs, Unit 229
The University of Texas
MD Anderson Cancer Center
1515 Holcombe Boulevard
Houston, Texas 77030
Tel: (713) 792-3030

8. **Assignment:** No rights and privileges granted to any party under this Agreement may be transferred or assigned without obtaining the prior written consent of the other party. The foregoing prohibition will apply to any change in control of Contractor. Any attempt to transfer or assign any rights or privileges under this Agreement without having first obtained written consent from the other party will be null and void and will entitle the other party to immediately terminate this Agreement.

9. **Severability:** If any provision of this Agreement is for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement; and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

10. **Indemnifications:** Subject to the statutory duties of the Texas Attorney General, Contractor will indemnify, defend, and hold harmless MD Anderson and System and their Regents, officers, agents, and employees from any loss, damage, claim, liability, or expense arising out of Contractor's performance of this Agreement, except that Contractor will not be liable for the negligence or willful misconduct of MD Anderson or System. To the extent authorized by the constitution and laws of the State of Texas, MD Anderson will indemnify and hold harmless Contractor, its officers, agents, and employees from any loss, damage, claim, liability, or expense arising out of MD Anderson's performance under this Agreement, except that MD Anderson will not be liable for any negligence or willful misconduct of Contractor.

11. **Infringement Indemnity:** Contractor will indemnify, hold harmless and defend MD Anderson and the University of Texas System against any action brought against them based on a claim that any action of Contractor in the performance of this Agreement, including without limitation, furnishing or using others' intellectual property in connection with fulfilling its obligations under the Agreement, infringes a copyright, trade or service mark, trade secret or patent and Contractor shall pay all costs expenses, royalties, license fees, settlements and damages negotiated or awarded in connection therewith.

12. **Compliance with Laws and Regulations:** Contractor represents and warrants that it is aware of, is fully informed about, and is in full compliance with its obligations under all applicable laws, rules, and regulations. MD Anderson and Contractor will cooperate fully in meeting any obligations imposed upon MD Anderson or Contractor by federal, state, and other regulatory bodies with respect to the goods and/or services to be provided under the terms of this Agreement as such obligations currently exist or may

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be altered from time to time in the future. This obligation will specifically include but not be limited to compliance with the Health Insurance Portability and Accountability Act.

- 13. Non-Waiver of Defaults:** Failure of any party to declare any default by any other party immediately upon occurrence thereof, or delay by any party in taking any action in connection therewith, will not waive such default; rather, a party will have the right to declare any default at any time and take such action as might be lawful or authorized, either at law or in equity.
- 14. Force Majeure:** Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character. Contractor will use its commercially reasonable best efforts to mitigate the impact of any such event or occurrence so that MD Anderson may continue to provide healthcare services during such period.
- 15. Notices:** Any notice required or permitted to be sent under this Agreement will be delivered by hand or mailed by registered or certified mail, return receipt requested, to Contractor at the address set forth in this Agreement and to MD Anderson as noted below. Notice so mailed will be deemed effective upon hand delivery or on the fourth day following the date of deposit into the United States mail.

Mailing Address: (Via U.S. Mail)

The University of Texas
MD Anderson Cancer Center
Supply Chain Management - Unit 546
P O Box 301439
Houston, Texas 77230-1439

AND

Delivery Address: (In person or Via Courier)

Supply Chain Management
The University of Texas
MD Anderson Cancer Center
1020 Holcombe Blvd., Suite 1450
Houston, Texas 77030

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to MD Anderson pursuant to Section 2251.054, *Texas Government Code*, then Contractor shall send that notice to MD Anderson as follows:

Address: Same as above
Fax: 713/792-8084
Email: ProcurementServices@mdanderson.org
Attention: Associate Vice President,
Supply Chain Management

Or such other person or address as may be given in writing by University to Contractor in accordance with this Section.

- 16. Taxes:** MD Anderson is a tax-exempt State of Texas agency and an institution of higher education. Notwithstanding its exemption from certain state taxes, MD Anderson will be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Contractor's personnel, including personal income tax and social security taxes) from which MD Anderson is not exempt. Contractor will provide reasonable cooperation and assistance to MD Anderson in obtaining any tax exemptions to which MD Anderson is entitled.

17. Insurance:

- A. Contractor, consistent with its status as an independent contractor, will carry at least the following insurance in such

form, with such companies and in such amounts (unless otherwise specified) as MD Anderson may require:

- (i) Worker's Compensation insurance with Statutory Limits, and Employer's Liability insurance for at least One Million Dollars (\$1,000,000) per accident or disease. Policy must include All States Endorsement and a waiver of all rights of subrogation and other rights against MD Anderson.
- (ii) Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal and Advertising Injury, Completed Operations/Products Liability, Medical Expenses, Interest of Employees as additional insureds and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) per occurrence on an occurrence basis.
- (iii) Comprehensive Auto Liability insurance covering all owned, non-owned or hired automobiles to be used by Contractor, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.

B. Contractor will deliver to MD Anderson:

- (i) Documentation satisfactory to MD Anderson in its sole discretion, evidencing the existence of all such insurance promptly after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement from or after the date of this Agreement; and
- (ii) Additional evidence, satisfactory to MD Anderson in its sole discretion, of the continued existence of all such insurance not less than thirty (30) days prior to the expiration of any such insurance. If Contractor fails to pay any of the renewal premiums for the expiring policies, MD Anderson will have the right to make the payments and set-off the amount thereof against the next payment coming due to Contractor under this Agreement.

- C.** Such insurance policies, with the exception of Workers' Compensation and Employer's Liability, will name and will reflect MD Anderson as an Additional Insured and will provide that the policies will not be canceled until after thirty (30) days' unconditional written notice to MD Anderson, giving MD Anderson the right to pay the premium to maintain coverage. If MD Anderson exercises its right to pay the premium, Contractor will reimburse MD Anderson for the cost of the premium within ten (10) days after receipt of written request from MD Anderson.

- D.** The insurance policies required in this Agreement will be kept in force for the periods specified below:

- (i) Employer's Liability Insurance, Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance will be kept in force until receipt of final payment by Contractor; and
- (ii) Workers' Compensation Insurance will be kept in force until the services have been fully performed and accepted by MD Anderson in writing.

18. Ownership of Works Created:

- A. Contractor and MD Anderson intend this to be a contract for services and each considers the works created and produced and any and all documentation or other products and results of the services to be rendered by Contractor

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hereunder (the "Work") to be a work made for hire as that phrase is understood under the copyright laws of the United States. Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and will be the sole and exclusive property of MD Anderson.

- B. As a result of Contractor's acknowledgment of MD Anderson's rights as specified above in this Section 18, Contractor agrees its assigns, agents, successors, and personal representatives will not have the right to make any claims in any way or with regard to any aspect of, the Work, notwithstanding the amount of time, money, and effort Contractor contributes to the production or reproduction of the Work and all related objects. Contractor agrees that its only and exclusive rights are to be paid in full upon satisfactory performance of those duties set forth in this Agreement.
- C. If for any reason the Work is not considered a work made for hire under applicable law, Contractor hereby sells, assigns, and transfers to MD Anderson, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and, in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world. Contractor agrees to execute all papers and to perform such other proper acts as MD Anderson may deem necessary to secure for it or its designee the rights herein assigned.

19. Termination: Either party will have the right to terminate all or any undelivered portion of this Agreement as follows: (i) for convenience upon thirty (30) days' written notice to the other party, or (ii) for breach immediately upon the other party's default under this Agreement, so long as such party is provided with written notice and thirty (30) days in which to cure such default or breach to the reasonable satisfaction of the other party. The party terminating this Agreement will send the other party a "Notice of Termination" which will specify the basis for termination and the effective date of the termination.

- A. MD Anderson's responsibility under this Agreement will be limited to payment for only those services performed prior to the effective date set forth in the Notice of Termination.
- B. Under no circumstances will Contractor be entitled to payment for anticipated profits, unabsorbed overhead, or interest on borrowing by reason of such termination.

20. DISPUTE RESOLUTION:

- A. To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used, as further described in this Agreement, by MD Anderson and Contractor to attempt to resolve any claim for breach of contract made by Contractor:
 - (i) Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to MD Anderson in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are

being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that MD Anderson allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of MD Anderson, or such other officer of MD Anderson as may be designated from time to time by MD Anderson by written notice thereof to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims.

- (ii) If the parties are unable to resolve their disputes under subparagraph (A) of this Section, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by MD Anderson.
- (iii) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by MD Anderson nor any other conduct, action or inaction of any representative of MD Anderson relating to this Agreement constitutes or is intended to constitute a waiver of MD Anderson's or the state's sovereign immunity to suit and (ii) Anderson has not waived its right to seek redress in the courts.

- B. The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
- C. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part, except as permitted by Section 2251.051 of the Texas Government Code. MD Anderson and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

21. Right to Audit:

- A. At any time during the term of this Agreement and for a period of four (4) years thereafter, the State of Texas, The University of Texas System, MD Anderson and/or other federal, state and local agencies having jurisdiction over this Agreement, at reasonable times and at their expense, will have the right to audit Contractor's records and books as such pertain to this Agreement. In addition, acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor will cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors. If needed for audit, Contractor will supply at its expense, original or independently certified copies of off-site records within two (2) weeks of written request.
- B. U. S. Government Access to Contractor Books, Documents, and Records

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- (i) If Contractor furnishes services under this Agreement in connection with matters for which the U. S. Government may make payment under Subchapter XVIII, Chapter 7, Title 42 of the United States Code, and the value or cost of such services is \$10,000 or more over a twelve-month period, then the provisions of this Section 21 B. of this Rider will be in full force and effect under this Agreement.
 - (ii) Until the expiration of four (4) years after Contractor completes furnishing all of the services described in Section 21. B. (i) of this Rider under this Agreement, Contractor will make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the United States Comptroller General, or any of their duly authorized representatives, this Agreement, and all of Contractor's books, documents and records that are necessary to certify the nature and extent of the costs for such services. Contractor and MD Anderson agree that this Section will comply with the provisions of 42 U.S.C. §1395x (v) (1) (I) and C.F.R. Title 42, Chapter IV, Subchapter B, Part 420, Subpart D, and in the event that this Section does not comply with such provisions, this Section will be automatically reformed to so comply and such reformation will be documented in writing and signed by both parties.
 - (iii) If Contractor carries out any of the services described in Section 21. B. (i) of this Rider through a subcontract with a related organization, as that term is used in 42 U.S.C. §1395x and interpreted in C.F.R. Title 42, Chapter IV, Subchapter B, Part 420, Subpart D, and that subcontract has a value or cost of \$10,000 or more over a twelve-month period, then Contractor will be responsible for including a clause in its subcontract with the related organization to the effect that until the expiration of four (4) years after the related organization's furnishing of such services pursuant to that subcontract, the related organization will make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the United States Comptroller General, or any of their duly authorized representatives, that subcontract, and books, documents and records of such related organization that are necessary to verify the nature and extent of such costs. Contractor affirms, represents, and warrants that such a clause will fully comply with the requirements set forth in 42 U.S.C. 1395x(v)(1)(I)(ii) and C.F.R. Title 42, Chapter IV, Subchapter B, Part 420, Subpart D. Contractor will be solely responsible for and will indemnify MD Anderson for all MD Anderson costs, losses, or failure to receive payments or reimbursements from the United States Government that result from Contractor's failure to include such a clause in its subcontract with a related organization that fully complies with the requirements set forth in 42 U.S.C. 1395x(v)(1)(I)(ii) and C.F.R. Title 42, Chapter IV, Subchapter B, Part 420, Subpart D.
- 22. Subcontracting:** If subcontracting is permitted under this Agreement, Contractor may be required to obtain MD Anderson's prior written consent before subcontracting any part of the work described in this Agreement. If MD Anderson requires the right to approve any such subcontracting, Contractor may be required to identify the subcontractor(s) to MD Anderson prior to such subcontractor's beginning work. Failure to comply with the above may result in this Agreement being terminated without liability to MD Anderson.
- 23. Heading:** The headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of its terms and conditions.
- 24. Counterparts; Facsimile Signature:** This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed an original of this Agreement, but all of which together will constitute one and the same document. This Agreement also may be evidenced by facsimile signature, and signature via facsimile will be deemed to be an original signature.
- 25. Survival:** Expiration or termination of this Agreement will not affect any right or obligation that either party may have accrued prior to such expiration or termination. In particular, all indemnity provisions of this Agreement will survive the expiration or termination of this Agreement.
- 26. Governing Law and Venue:** This Agreement will be construed under and in accordance with the laws of the State of Texas without reference to its conflicts of law provisions, and all obligations of the parties created under this Agreement are performable in Harris County, Texas. Subject to the sovereign immunity of the State of Texas, any lawsuit brought against MD Anderson under this Agreement may only be filed in the State District Court in Harris County, Texas.
- 27. Installation:** If installation of goods or equipment is included as a part of this Agreement, Contractor will properly install or set up the goods or equipment in accordance with the manufacturer's recommendations. Contractor will remove from MD Anderson's campus, and properly dispose of, or recycle, all waste materials, including packaging. Contractor will not deposit waste materials in MD Anderson's waste receptacles.
- 28. Contractor's Duties and Representations:**
- A. Notwithstanding anything to the contrary contained in this Agreement, MD Anderson and Contractor agree and acknowledge that MD Anderson is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to providing the goods and/or performing the services set forth in this Agreement. Contractor accepts the relationship of trust and confidence established between it and MD Anderson by this Agreement. Contractor covenants with MD Anderson to use its best efforts, skill, judgment, and abilities to provide the goods and/or perform the services set forth in this Agreement and to further the interests of MD Anderson in accordance with MD Anderson's requirements and procedures, in accordance with the highest standards of Contractor's profession or business and in compliance with all applicable national, federal, state and municipal, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction. Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent Contractor's provision of the goods and/or performance of the services set forth in this Agreement.
 - B. Contractor warrants, represents, covenants, and agrees that all of the goods provided and/or services performed by Contractor under or pursuant to this Agreement will be of the standard and quality prevailing among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving an undertaking as set forth in this Agreement.
 - C. Contractor warrants, represents, covenants, and agrees that all goods and services it provides under this Agreement will be accurate and free from any material errors. Contractor's duties as set forth in this Agreement will at no time be in any way diminished by reason of any approval by MD Anderson nor will Contractor be released from any liability by reason of such approval by MD Anderson, it being understood that MD Anderson at all times is ultimately relying upon Contractor's skill and knowledge in providing the goods and performing the services set forth in this Agreement.

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- D. Contractor warrants, represents, covenants, and agrees to maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor warrants, represents, covenants, and agrees that all persons connected with the Contractor directly in charge of providing the goods or performing the services set forth in this Agreement are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations. Contractor will assign to MD Anderson a designated representative who will be responsible for the administration and coordination of Contractor's performance under this Agreement. Contractor represents and agrees to furnish efficient business administration and coordination and provide the goods and perform the services set forth in this Agreement in an expeditious and economical manner consistent with the interests of MD Anderson.
- E. Contractor warrants, represents, covenants, and agrees to call to MD Anderson's attention all information in any reports, studies, plans, drawings, specifications, lists, computations, art work, sketches, models, data, photographs, tapes, renderings, publications, instructions, information, requirements, procedures and all other documentation and materials supplied to Contractor (by MD Anderson or any other party) which it regards in its opinion as unsuitable, improper or inaccurate in connection with the purposes for which such documentation or material is furnished. Nothing will excuse or detract from Contractor's responsibilities or obligations under this Agreement in a case where such documentation or material is furnished, unless Contractor advises MD Anderson in writing that in its opinion such documentation or material and any requests made therein for action are unsuitable, improper or inaccurate and MD Anderson confirms in writing that it wishes Contractor to proceed in accordance with the documentation and material as originally given.
- F. Contractor warrants, represents, covenants and agrees that it will, at its own cost, correct any defects in the goods or services it provides under this Agreement as soon as is practical after Contractor becomes aware of such defects or is notified of such defects. If Contractor refuses or neglects to make good such defects within a reasonable time after receiving notice requesting such remedial work, then MD Anderson will be entitled to make good such defective goods or services at the expense of Contractor. This commitment by Contractor is in addition to, and not in substitution for, any other remedy for defective goods or services that MD Anderson may have at law or in equity.
- G. Contractor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations under this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- H. Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations under this Agreement will result in the violation of any provision, if a corporation, of Contractor's articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of Contractor's knowledge and belief will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.
- I. Except for the obligation of MD Anderson to pay Contractor certain fees and expenses pursuant to the terms of this Agreement, MD Anderson will have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of MD Anderson to Contractor, no present or future partner or affiliate of MD Anderson or any agent, officer, director, employee, or regent of MD Anderson, The University of Texas System, or of the components institutions of The University of Texas System, or anyone claiming under MD Anderson or The University of Texas System has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.
- J. If this Agreement will exceed \$10,000.00 or if the Contractor anticipates or has a history of exceeding \$10,000.00 in sales to MD Anderson within a continuous twelve (12) month period, then Contractor's execution of this Agreement will signify Contractor's compliance with the provisions of Section 202 of Executive Order No. 11246 pertaining to Equal Employment Opportunities, effective September 24, 1965; as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 O.K. 4212).
- K. Contractor agrees to notify MD Anderson in writing within thirty (30) days of any changes in facts or circumstances that render any of Contractor's representations and warranties under this section incorrect.
- 29. Franchise Tax Certification:** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 30. Payment of Debt or Delinquency to the State:** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 31. Texas Family Code Child Support Certification:** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 32. Loss of Funding:** Performance by MD Anderson under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then MD Anderson will issue written notice to Contractor and MD Anderson may terminate this Agreement without further duty or obligation under this

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Agreement. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of MD Anderson.

- 33. Access by Individuals with Disabilities:** Contractor represents and warrants ("EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to MD Anderson under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to MD Anderson, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR accessibility Warranty. In the event that Contractor is unable to do so, then MD Anderson may terminate this Agreement and Contractor will refund to MD Anderson all amounts MD Anderson has paid under this Agreement within thirty (30) days after the termination date.

34. Conformance with and Subordination to Law:

- A. The parties acknowledge that MD Anderson is an agency of the State of Texas and under the Constitution and laws of the State of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Texas. Notwithstanding any provision of this Agreement, nothing in this Agreement is intended to be, nor will it be construed to be, a waiver of the sovereign immunity of the State of Texas or a prospective waiver or restriction of any of the rights, remedies, claims, and privileges of the State of Texas. Moreover, notwithstanding the generality or specificity of any provision of this Agreement (including, without limitation, any provision pertaining to indemnification, a cap on liability, a limitation of damages, or a waiver or limitation of rights, remedies, representations or warranties), the provisions of this Agreement as they pertain to MD Anderson are enforceable only to the extent authorized by the Constitution and laws of the State of Texas.
- B. MD Anderson will not be required to perform any act or to refrain from any act that would violate the laws or Constitution of the State of Texas.
- C. The parties recognize that this Agreement is subject to, and agree to comply with, all applicable local, state, and federal laws, statutes, rules and regulations. Any provision of any law, statute, rule or regulation that invalidates any provision of this Agreement, that is inconsistent with any provision of this Agreement, or that would cause one or both of the parties hereto to be in violation of law will be deemed to have superseded the terms of this Agreement. The parties, however, will use their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of the law and negotiate in good faith toward amendment of this Agreement in such respect.
- D. The Contractor agrees to comply with the applicable provisions of MD Anderson's Institutional Code of Conduct in its performance under this Agreement.

- 35. Quality Assurance.** By signing this Agreement, Contractor affirms, certifies, and warrants that by agreeing to provide the contracted services to MD Anderson, Contractor agrees to (a) comply with all applicable standards of the Joint Commission on Accreditation of Healthcare Organizations ("Joint Commission"); (b) implement and monitor a quality assurance process that

complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to MD Anderson of a licensed independent practitioner's privileging file; and (e) provide MD Anderson with periodic reports of its quality assurance indicators and/or permit MD Anderson to conduct periodic quality assurance audits of Contractor's services as otherwise specified in this Agreement.

- 36. Drug Testing Requirements for Contingent Workers:** Contractor will ensure that all personnel providing services as a contingent worker for MD Anderson under this Agreement have tested negative on a five (5) panel drug test. The test must include the following: (a) Amphetamines, (b) Cocaine, (c) Opiates (2000 ng/ml), (d) PCP, and (e) THC. A "contingent worker" is any individual who is compensated by Contractor for providing a service directly to MD Anderson, whether or not that individual is present on MD Anderson premises. Contingent workers may include consultants, service vendor employees, construction workers, and temporary personnel needed for staff augmentation.