

DRAFT

**AGREEMENT FOR
FACILITIES MASTER PLANNING SERVICES**

BETWEEN

THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER

AND

[INSERT SERVICE PROVIDER'S NAME]

MD Anderson Agreement No. 506-____ - ____

This Agreement ("Agreement"), effective as of _____, 20__ (the "Effective Date"), is by and between The University of Texas M. D. Anderson Cancer Center ("MD Anderson"), an institution of higher education and one of the institutions of The University of Texas System ("System"), which has its principal address at 1515 Holcombe Boulevard, Houston, Texas 77030, and [Enter Service Provider's Name], a [Enter State] [Enter type of entity], which has its principal address at [Enter Service Provider's Address] ("Service Provider").

WHEREAS, MD Anderson desires to obtain certain services from Service Provider as described in the Scope of Services attached hereto as Rider 101 (the "Services"), and Service Provider desires to perform the Services for MD Anderson; and

WHEREAS, Service Provider represents that it has the knowledge, ability, skills and resources to perform the Services required under this Agreement, and MD Anderson in reliance on such assurances is willing to contract with Service Provider on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, subject to the terms, conditions, mutual benefits, and covenants in this Agreement, the parties hereby confirm and agree as follows:

Section 1. TERM OF AGREEMENT:

- 1.1 The term of this Agreement will be for a period of _____ (____) months, commencing on [Insert commencement date] and continuing through [Insert termination date], unless sooner canceled or terminated in accordance with the provisions of this Agreement, including all riders, schedules, exhibits, or other documents attached to and incorporated into this Agreement.

Section 2. SCOPE OF SERVICES:

- 2.1 Service Provider will perform the Services for MD Anderson as described in the Scope of Services attached hereto as Rider No. 101.

Section 3. CONSIDERATION AND INVOICING:

- 3.1 Service Provider will be compensated in accordance with the Fee Schedule and Compensation Requirements attached hereto as Rider No. 102.
- 3.2 The total cost of the Services under this Agreement will not exceed \$_____ (the "Cap Amount") without an amendment to this Agreement.
- 3.3 Invoicing/billing, payment methodology, supplier inquiries, materials management and other aspects of invoice payment requirements will be in accordance with Rider 116 attached hereto.
- 3.4 All funds held by MD Anderson are subject to the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. Chapter 2251 of the Texas Government Code governs (i) when a payment by MD Anderson is overdue, and (ii) the rate of interest that accrues on such overdue payments.

- 3.5 This Agreement may be subject to review and approval by The Board of Regents of The University of Texas System (the “Board”). If Board approval is required, but the Board does not approve this Agreement, the Agreement will terminate, except for those provisions that by their terms or nature will survive such termination. MD Anderson will pay Service Provider only for the Services performed by Service Provider prior to the notice, if any, of the Board’s approval or non-approval. Notwithstanding any other provision of this Agreement, if the Board does not approve this Agreement, the total amount that MD Anderson pays to Service Provider under this Agreement will not in any event exceed \$5,000,000.
- 3.6 Notwithstanding anything to the contrary herein, MD Anderson must submit to Service Provider a purchase order (“PO”) referencing this Agreement and the Services to be performed prior to the commencement of any Services hereunder.

Section 4. MD ANDERSON REPRESENTATIVE & ACCEPTANCE OF SERVICES:

- 4.1 All Services performed and deliverables submitted under this Agreement will be subject to the review, coordination, and approval of an MD Anderson Representative. Unless and until a successor is appointed by MD Anderson, the MD Anderson Representative will be:

Name: Karen Mooney, Associate Vice President
Facilities Planning, Design and Construction
Address: 6900 Fannin, Suite FHB10.1016
Houston, TX 77030
Tel. Number: 713-563-4137
Email Address: kmooney@mdanderson.org

Section 5. REPRESENTATIONS AND WARRANTIES OF SERVICE PROVIDER:

5.1 Service Provider’s Duties and Representations:

- 5.1.A Service Provider warrants, represents, covenants, and agrees that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent Service Provider’s performance of the Services or MD Anderson’s use of the Services.
- 5.1.B Service Provider warrants, represents, covenants, and agrees that all of the Services performed by Service Provider 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.
- 5.1.C Service Provider warrants, represents, covenants, and agrees that all Services it performs under this Agreement will be accurate and free from any material defects or errors.
- 5.1.D Service Provider warrants, represents, covenants, and agrees that all persons performing Services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction (collectively “Governmental Authorities”).
- 5.1.E Service Provider warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the State of Texas, or is a foreign entity duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing the Agreement on behalf of Service Provider has been duly authorized to act for and bind Service Provider.
- 5.1.F Service Provider warrants, represents, covenants, and agrees that neither the execution and delivery of this Agreement by Service Provider nor the performance of its obligations under this Agreement will result in the violation of any provision of Service Provider’s organizational documents or conflict with any order or decree of any court or governmental instrumentality, and

there are no pending, or to Service Provider's knowledge threatened, proceedings for the dissolution, liquidation, insolvency, or rehabilitation of Service Provider.

5.1.G If this Agreement will exceed \$10,000.00 or if the Service Provider anticipates or has a history of exceeding \$10,000.00 in sales to MD Anderson within a continuous twelve (12) month period, then Service Provider's execution of this Agreement will signify Service Provider's compliance with the provisions of Section 202 of Executive Order No. 11246 pertaining to Equal Employment Opportunities, effective September 24, 1965, as amended, and Section 503 of the Rehabilitation Act of 1973, as amended. If this Agreement is \$100,000.00 or more, then Service Provider's execution of this Agreement will signify Service Provider's compliance with the provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 O.K. 4212). **Without limiting the foregoing, MD Anderson and Service Provider shall abide by the requirements of 41 CFR Sections 60-1.4(a) (or, if applicable, 60-4.3(a)), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that MD Anderson and Service Provider take affirmative action to (i) ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin; and (ii) employ and advance in employment qualified protected veterans and qualified individuals with disabilities.**

5.1.H Service Provider agrees to notify MD Anderson in writing within thirty (30) days of any changes in facts or circumstances that render any of Service Provider's representations and warranties under this section incorrect.

5.2 **Compliance with Laws, Regulations and Policies:** Service Provider is aware of, is fully informed about, and is in full compliance with its obligations under all applicable laws, rules, and regulations.

5.3 **Access by Individuals with Disabilities:** Service Provider 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 Service Provider becomes aware that the EIRs, or any portion thereof, do not comply with this EIR Accessibility Warranty, then Service Provider 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 Service Provider is unable to do so, then MD Anderson may terminate this Agreement and Service Provider will refund to MD Anderson all amounts MD Anderson has paid under this Agreement within thirty (30) days after the termination date.

Section 6. COVENANTS

6.1 **Confidentiality:** Service Provider will not at any time, except as required to perform the Services or as authorized in writing by MD Anderson, supply, disclose, use or otherwise permit access to any information, in whole or in part, that Service Provider may acquire by reason of its performance under this Agreement and that concerns or in any way relates to MD Anderson, the System, or the Board, including without limitation any information, data or records pertaining to MD Anderson's faculty, staff, patients, business, or financial affairs ("Confidential Information"). The obligations in this Section 6.1 shall not apply to any Confidential Information that (i) is rightfully already in Service Provider's possession at the time of disclosure by MD Anderson, (ii) is or later becomes part of the public domain through no fault of Service Provider, (iii) is received from a third party having no obligations of confidentiality to MD Anderson, (iv) is independently developed by Service Provider without use of the Confidential Information, or (v) is required by law to be disclosed, provided that (a) Service Provider provides MD Anderson prompt written notice before any such disclosure so that MD Anderson may seek a protective order or other appropriate remedy and (b) Service Provider complies with any such protective order (or equivalent) imposed on such disclosure. In the event that a protective order or other remedy is not obtained, Service Provider shall furnish only that portion of the Confidential Information which is legally required to be disclosed in the

opinion of Service Provider's legal counsel. MD Anderson will have the right to audit and otherwise verify the security of Confidential Information in the possession of or being managed by Service Provider. Within ten (10) business days after the termination of this Agreement or the request of MD Anderson, Service Provider will return or destroy all Confidential Information, which complete return or destruction shall be certified in writing to MD Anderson. Without prejudice to the rights and remedies otherwise available to MD Anderson under this Agreement, MD Anderson shall be entitled to equitable relief by way of injunction if Service Provider breaches or threatens to breach any of the provisions of this Section 6.1, without the necessity of posting bond or other security. The provisions of this Section 6.1 shall expressly survive the termination of this Agreement.

6.2 **Public Information:** This Agreement and related information may be subject to public disclosure under Chapter 552, *Texas Government Code*. Service Provider will be deemed to have knowledge of this law and the means of protecting Service Provider's legitimate interests.

6.3 **Publicity:** Service Provider will not state or imply that MD Anderson endorses any of Service Provider's products or services. All materials utilizing the name, trademarks, service marks or symbols of MD Anderson or The University of Texas for any purpose, including but not limited to the use in advertising, marketing and sales promotion materials or any other materials or mediums (such as the internet, domain names or URL addresses), must be submitted to MD Anderson's Chief Legal Officer for prior written approval at the following address:

Mailing Address: (Via U.S. Mail)

The University of Texas MD Anderson Cancer Center
ATTN: Chief Legal Officer
7007 Bertner Ave.
Houston, Texas 77030

6.4 **Compliance with Laws, Regulations and Policies:** MD Anderson and Service Provider will cooperate fully in meeting any obligations imposed upon MD Anderson or Service Provider by any Governmental Authority with respect to the Services performed under the terms of this Agreement. This obligation will specifically include but not be limited to compliance with the Health Insurance Portability and Accountability Act. Service Provider (and its representatives, agents, employees and permitted subcontractors) will comply with all applicable MD Anderson rules and policies, including, without limitation, those related to environmental quality, safety, fire prevention, noise, information security, and architectural barriers issued by MD Anderson's Department of Environmental Health and Safety, and those that restrict the use of alcohol on MD Anderson's campus. In the course of performing the Services under this Agreement, Service Provider may have access to student education records that are subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Such "education records" are considered Confidential Information and are also protected under FERPA. To the extent Service Provider has access to "education records" under this Agreement, MD Anderson hereby designates Service Provider as a "school official" as each of these terms are defined under FERPA. Service Provider agrees that it shall not use the education records for any purpose other than in the performance of its obligations under this Agreement, and except as required by law, Service Provider shall not disclose any education records to, or share any education records with, any third party unless permitted by the terms of this Agreement.

6.5 **Insurance:**

6.5.A Service Provider will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to conduct the business of insurance in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:

- (i) Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:
 - Employers Liability – Each Accident \$1,000,000
 - Employers Liability – Each Employee \$1,000,000
 - Employers Liability – Policy Limit \$1,000,000

- Workers' Compensation policy must include any state in which Services are to be performed for MD Anderson.
- (ii) Commercial General Liability Insurance with limits of not less than:
- Each Occurrence Limit \$1,000,000
 - Damage to Rented Premises \$ 300,000
 - Personal & Advertising Injury \$1,000,000
 - General Aggregate \$2,000,000
 - Products – Completed Operations Aggregate \$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Service Provider's and subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement. To the extent Service Provider's Commercial General Liability Insurance is written on a claims-made basis, Service Provider shall purchase an Extended Reporting Period Endorsement effective for twenty-four (24) months after the expiration or cancellation of the policy.

- (iii) Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

6.5.B Service Provider will deliver to MD Anderson:

- (i) Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Services by Service Provider under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.
- (ii) All insurance policies (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board and MD Anderson as Additional Insureds for liability caused in whole or in part by Service Provider's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Service Provider. The Commercial General Liability Additional Insured endorsement, including ongoing and completed operations coverage, will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
- (iii) Service Provider hereby waives all rights of subrogation against the Board and MD Anderson. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the Board and MD Anderson. No policy will be canceled until after thirty (30) days' unconditional written notice to MD Anderson. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to MD Anderson thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this Section 6.5.
- (iv) Service Provider will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by MD Anderson prior to the performance of any Services by Service Provider under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- (v) Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following MD Anderson contact:

Name: _____
 Address: _____

Facsimile Number: _____
Email Address: _____

- 6.5.C Service Provider's or subcontractor's insurance will be primary and non-contributory to any insurance carried or self-insurance program established by MD Anderson or System. Service Provider's or subcontractor's insurance will be kept in force until all Services has been fully performed and accepted by MD Anderson in writing.

6.6 Ownership of Created Works:

- 6.6.A All inventions, discoveries, technologies, trade secrets, know-how, works of authorship, deliverables, documentation, results, data, software, processes, products, methods, formulas and techniques that are discovered, developed, created, made, produced, authored, conceived or reduced to practice by Service Provider, whether patentable or not, in the course of performing the Services hereunder, or otherwise arising from the conduct of the services hereunder (including without limitation all Intellectual Property therein and all tangible and intangible manifestations thereof) shall be hereinafter referred to as the "Created Works." "Intellectual Property" includes all right, title, and interest in or arising under patents, industrial designs, trade secrets, know how, confidential information, copyrights, moral rights, trademarks, applications for registration or issuance of any of the foregoing, and all other intellectual property rights of a similar nature or effect anywhere in the world.
- 6.6.B Notwithstanding anything to the contrary in this Agreement, Service Provider shall retain ownership of all Intellectual Property owned by Service Provider and developed by it prior to the Effective Date and outside of the performance of any Services for MD Anderson ("Service Provider Background IP"), and nothing in this Section 6.6 shall result in a transfer of ownership of any such Intellectual Property.
- 6.6.C Notwithstanding anything to the contrary herein, all of the data pertaining to MD Anderson including but not limited to the Confidential Information, all of MD Anderson's proprietary information, and any other materials pertaining to MD Anderson's operations that are provided by MD Anderson to Service Provider shall at all times remain the property of MD Anderson, and MD Anderson does not provide a license or right to use the same or a license under any Intellectual Property of MD Anderson except to the extent necessary for Service Provider to perform the Services that is contemplated hereunder.
- 6.6.D The Created Works shall be solely owned by and are hereby assigned to MD Anderson. Contractor hereby grants to MD Anderson an irrevocable, perpetual and royalty-free license to use, disclose, modify, and copy Contractor Background IP for the purpose of using the Created Works in the normal course of MD Anderson's operations and activities.
- 6.6.E With respect to any software (including, but not limited to, software in object code or source code form) that is being licensed to MD Anderson under this Agreement ("Software"), Contractor represents and warrants that: (1) Contractor has the authority and right to grant to MD Anderson the license to the Software as set forth in this Agreement; and (2) except as to any express provisions to the contrary stated herein, there shall be no restrictions, obligations, or conditions on MD Anderson's use, distribution, transfer, commercialization, attribution of authorship, licensing or sublicensing (for a fee or otherwise), decompilation, disclosure, duplication, or creation of derivative works, of the Software or any portion thereof.
- 6.6.F Without limiting the foregoing, if any copyrightable Created Works are created or produced by Contractor, the Created Works are deemed to be a work made for hire to the extent possible as that phrase is understood under the copyright laws of the United States. If for any reason the copyrightable Created Works are not considered a work made for hire under applicable law, Contractor hereby assigns to MD Anderson, its successors and assigns, the entire right, title and interest in and to the copyright in the copyrightable Created Works 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 copyrightable Created Works.

6.6.G Contractor represents and warrants that 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, any Created Works.

6.6.H Contractor agrees to promptly execute and deliver all papers, instruments, and documents and to perform such other proper acts as necessary to secure for MD Anderson or its designee the right, title, and interest in the Created Works assigned to MD Anderson hereunder. Furthermore, Contractor shall procure the necessary assignments, signatures and approvals of its employees and agents to perfect MD Anderson's right, title and interest in and to all Created Works.

6.7 **Right to Audit:**

6.7.A At any time during the Term of this Agreement and for a period of four (4) years thereafter, the State of Texas, System, MD Anderson and/or other Governmental Authorities having jurisdiction over this Agreement, including the Texas State Auditor's Office or any successor agency, at reasonable times and at their expense, will have the right to audit Service Provider's records and books as such pertain to this Agreement. Service Provider will include this provision in all contracts with permitted subcontractors. If needed for audit, Service Provider will supply at its expense, original or independently certified copies of off-site records within two (2) weeks of written request.

6.7.B U. S. Government Access to Service Provider Books, Documents, and Records

(i) If Service Provider 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 6.7.B of this Agreement will be in full force and effect under this Agreement.

(ii) Until the expiration of four (4) years after Service Provider completes furnishing all of the services described in Section 6.7.B(i) under this Agreement, Service Provider 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 Service Provider's books, documents and records that are necessary to certify the nature and extent of the costs for such services. Service Provider 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. If Service Provider carries out any of the services described in Section 6.7.B(i) of this Agreement 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 Service Provider will include a clause in its subcontract with the related organization setting forth all of the requirements of this Section 6.7.B.

6.8 **Quality Assurance:** Service Provider agrees to (a) comply with all applicable standards of The Joint Commission (the "Joint Commission"), and any successor organization; (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 Service Provider's services as otherwise specified in this Agreement.

6.9 **Drug Testing Requirements:** Prior to commencing any Services under this Agreement, Service Provider will ensure that all Service Provider Personnel 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. “Service Provider Personnel” is any individual who is compensated by Service Provider, or by a subcontractor engaged by Service Provider, for providing a service directly to MD Anderson, whether or not that individual is present on MD Anderson premises. Service Provider Personnel may include consultants, service vendor employees, construction workers, and temporary personnel needed for staff augmentation.

- 6.10 **Ethics Matters; No Financial Interest:** Service Provider and its employees, agents, representatives and subcontractors have read and understood the following prior to performing Services under this Agreement: MD Anderson’s Ethics Policy, Conflicts of Interest Policy and Standards of Conduct Guide available at <http://www.mdanderson.org/about-us/doing-business/vendors-and-suppliers/index.html> and at <https://www.mdanderson.org/about-md-anderson/business-legal/conflict-of-interest.html>, and applicable state ethics laws and rules available at www.utsystem.edu/offices/systemwide-compliance/ethics. Neither Service Provider nor its employees, agents, representatives or subcontractors will assist or cause MD Anderson employees to violate MD Anderson’s Ethics Policy, Conflicts of Interest Policy, Standards of Conduct Guide, or applicable state ethics laws or rules. Service Provider represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of the Agreement.
- 6.11 **Responsibility for Individuals Performing Services; Criminal Background Checks:** Each Service Provider Personnel who is assigned to perform Services under this Agreement will be an employee of Service Provider or an employee of a subcontractor engaged by Service Provider. Service Provider is responsible for the performance of all Service Provider Personnel performing Services under this Agreement. Prior to any Service Provider Personnel commencing Services, Service Provider will have the following criminal background checks and screenings performed on the Service Provider Personnel assigned: (1) Positive Identification Check– Social Security Number Trace, Maiden & Alias Name Search; (2) Criminal Record Search – County, Statewide and Nationwide Level (past 15 years); (3) Employment Verification (all previous employers for past 15 years); and (4) Sex Offender Registry Search. Service Provider will be provided The University of Texas Police at Houston (the “UTP-H”) Security Sensitive Investigations Criminal Background Manual (the “Manual”). Service Provider will maintain all documentation, including the results of any background checks, during the Term of this Agreement and will provide The University of Texas Police Department investigators copies of such documentation upon request. Service Provider will determine on a case-by-case basis whether each Service Provider Personnel assigned to perform Services is qualified to do so. Service Provider will not assign any Service Provider Personnel to perform Services under this Agreement who has a felony conviction or convictions of theft, embezzlement, fraud or property crime offenses of any grade, or a history of criminal conduct, or who does not otherwise comply with the Manual or MD Anderson’s Criminal and Personal Background Check Policy (ADM0312). Upon request, Service Provider will provide MD Anderson a letter signed by an authorized officer of Service Provider that certifies compliance with this Section. Service Provider should send any questions regarding investigations to the UTP-H at UTPD-SSR@mdanderson.org.
- 6.12 **Direct Patient Care/Contact:** Service Provider will ensure that all Service Provider Personnel performing Services at MD Anderson’s campus who have direct patient care/contact under this Agreement will be able to show proof that (1) a tuberculosis screening was completed within ninety (90) calendar days prior to starting Services at MD Anderson’s campus, and (2) such Service Provider Personnel do not have active tuberculosis. Service Provider will further ensure that all Service Provider Personnel with direct patient care/contact will be able to show proof of current immunization to influenza and proof of immunization or immunity to varicella (chicken pox) prior to active duty at MD Anderson. Service Provider shall make records of screenings, vaccinations, immunity and related reports immediately available to MD Anderson upon request.
- 6.13 **HUB Subcontracting Plan:**
- 6.13.A MD Anderson’s expenditures under this Agreement are expected to reach or exceed \$100,000, or Supply Chain Management has otherwise directed Service Provider to submit a HUB subcontracting plan (“HSP”) for the utilization of Historically Underutilized Businesses (“HUB”). Service Provider has submitted an HSP in accordance with MD Anderson’s requirements, including but not limited to Sections 6.14.B to 6.14.D of this Agreement.

- 6.13.B Except as specifically provided in the HSP or with the prior written consent of MD Anderson, Service Provider's duties and obligations under this Agreement and the fees due to Service Provider under this Agreement may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on MD Anderson; and (b) be a breach of this Agreement for which Service Provider will be subject to all remedial actions provided by Texas law, including Chapter 2161, Texas Government Code, and Title 34, Part I, Chapter 20, Subchapter C, §§20.101 – 20.108, Texas Administrative Code.
- 6.13.C Service Provider agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to MD Anderson in the format required by the Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, "TPASS"). Submission of compliance reports will be required as a condition for payment under this Agreement.
- 6.13.D If at any time during the Term of this Agreement, Service Provider desires to change the HSP, Service Provider must adhere to the following prior to executing such changes: before the proposed changes become effective (a) Service Provider must comply with Title 34, Part I, Chapter 20, Subchapter B §20.14, Texas Administrative Code; (b) the changes must be reviewed and approved by MD Anderson; and (c) if MD Anderson approves changes to the HSP, this Agreement must be amended in accordance with Section 8.2 of this Agreement to replace the HSP with the revised HSP.
- 6.13.E If MD Anderson expands the scope of Services under this Agreement through a properly executed change order or other form of amendment, MD Anderson will determine if the additional Services contains probable subcontracting opportunities not identified in MD Anderson's initial solicitation for the Services provided under this Agreement. If MD Anderson determines additional probable subcontracting opportunities exist, Service Provider will submit an amended HSP covering those opportunities. The amended HSP must comply with the requirements set out in Sections 6.14.B above before (a) this Agreement is amended to include the additional Services; and (b) Service Provider provides the additional Services.
- 6.14 **Service Provider Certification regarding Boycotting Israel:** Pursuant to Chapter 2270, *Texas Government Code*, Service Provider certifies that Service Provider (1) does not currently boycott Israel, and (b) will not boycott Israel during the Term of this Agreement. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate or becomes inaccurate at any time during the Term.
- 6.15 **Service Provider Certification regarding Business with Certain Countries and Organizations:** Pursuant to Chapter 2252, *Texas Government Code*, Service Provider certifies that Service Provider is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Service Provider acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate or becomes inaccurate at any time during the Term.

Section 7. INFRINGEMENT INDEMNITY:

- 7.1 **SUBJECT TO THE STATUTORY DUTIES OF THE TEXAS ATTORNEY GENERAL, SERVICE PROVIDER WILL INDEMNIFY, HOLD HARMLESS, AND DEFEND MD ANDERSON, SYSTEM, THE BOARD, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES AGAINST ANY LOSSES, DAMAGES, CLAIMS, DEMANDS, ALLEGATIONS, LIABILITIES, COSTS, SETTLEMENTS, OR EXPENSES FOR OR AS A RESULT OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHTS, OR MISAPPROPRIATION OR MISUSE OF ANY TRADE SECRET OR PROPRIETARY INFORMATION BASED ON OR RELATED TO THE USE OR APPLICATION (I) BY SERVICE PROVIDER OR ITS SUBCONTRACTORS OF THE SERVICES OR (II) BY MD ANDERSON OF ANY SERVICES THAT IS SUPPLIED, DESIGNED OR PROVIDED TO MD ANDERSON BY SERVICE PROVIDER UNDER THIS AGREEMENT (COLLECTIVELY, THE "CLAIMS"). THE INDEMNITY IN THIS SECTION 7 SHALL NOT APPLY TO ANY CLAIMS TO THE EXTENT SUCH CLAIMS ARE BASED ON (I) SERVICE PROVIDER'S FULL COMPLIANCE WITH MD ANDERSON'S SPECIFIC WRITTEN DESIGN REQUIREMENTS OR**

SPECIFICATIONS OR WRITTEN INSTRUCTIONS ON SERVICE PROVIDER'S METHOD OF PERFORMANCE, BUT ONLY IF SUCH INSTRUCTIONS ARE INCONSISTENT WITH THE METHOD OF PERFORMANCE OR WITH THE GOODS THAT SERVICE PROVIDER CUSTOMARILY PROVIDES TO ITS OTHER CUSTOMERS, OR (II) USE BY MD ANDERSON OF SERVICE PROVIDER'S SERVICES IN CONNECTION OR IN COMBINATION WITH EQUIPMENT OR PROCESSES NOT PROVIDED BY SERVICE PROVIDER OTHER THAN EQUIPMENT OR PROCESSES FOR WHICH THE SERVICES IS INTENDED TO BE USED.

- 7.2 If Service Provider is prevented from performing any portion of the Services or should MD Anderson be prevented or estopped from use or application of any Services designed or provided by Service Provider by reason of legal proceedings based upon Claims described in this Section 7, MD Anderson shall be relieved of any obligation to make payment for Services not performed, or of which the Services may not be used, as a result thereof, and Service Provider shall, at its own cost, either:
- 7.2.A obtain the necessary license to allow Service Provider and MD Anderson, as applicable, to use such third-party rights to the extent necessary to allow performance of the Services in complete compliance with this Agreement and to allow MD Anderson to use the Services in the manner contemplated by this Agreement; or
- 7.2.B re-design and re-perform such Services to enable complete performance of the Services in accordance with this Agreement without infringing any such third-party rights and without affecting the utility and functionality of the Services.

Section 8. GENERAL PROVISIONS

- 8.1 **Entire Agreement:** This Agreement and all riders, work orders, and purchase orders (as well as any exhibits to any of the foregoing) constitutes the sole, entire and only agreement between the parties and all such documents are collectively designated as the Agreement. This Agreement supersedes any prior agreements or understandings, whether written or oral, between the parties with respect to the Services. 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 Agreement and any other document constituting part of this Agreement, the terms of this Agreement will control and govern.
- 8.2 **Amendment:** No modification, alteration, waiver, or supplement of this Agreement will be effective unless it is set forth in a written instrument that is signed by all parties to this Agreement.
- 8.3 **Independent Contractor:** Service Provider is an independent contractor for purposes of this Agreement. No employer-employee, partnership, or joint venture relationship is created by this Agreement or by Service Provider's service to MD Anderson. Except as specifically required under the terms of this Agreement, Service Provider will not represent itself to be an agent or representative of MD Anderson or System or the State of Texas.
- 8.4 **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 also apply to any change in control of Service Provider. 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. Notwithstanding anything to the contrary herein, any assignment of this Agreement or the subcontracting of any Services to be performed hereunder shall not relieve Service Provider of its obligations hereunder.
- 8.5 **Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make such provision enforceable, or, if necessary, this Agreement shall be deemed to be amended to delete the unenforceable provision or portion thereof. In the event any provision is deleted or amended, the remaining provisions shall remain in full force and effect.

- 8.6 **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 or a potential remedy for such default.
- 8.7 **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. Service Provider 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.
- 8.8 **Notices:** Any notice required or permitted to be sent under this Agreement will be delivered by hand, by facsimile (with confirmation of transmission) or mailed by a nationally recognized overnight courier service (delivery receipt requested) with charges paid by the dispatching party or mailed by registered or certified mail, return receipt requested, to Service Provider or to MD Anderson, as the case may be, at the respective notice addresses identified in this Section 8.8. Notice so mailed will be deemed effective (A) upon hand delivery, (B) on the scheduled date of delivery by a nationally recognized overnight courier service, or (C) on the third (3rd) day following the date of deposit into the United States mail.

SERVICE PROVIDER:

ATTN: _____

MD ANDERSON:

Mailing Address: (Via U.S. Mail)
The University of Texas
MD Anderson Cancer Center
Supply Chain Management - Unit 1680
P O Box 301407
Houston, Texas 77230-1407

AND

Delivery Address: (In person or Via Courier)
Supply Chain Management
The University of Texas
MD Anderson Cancer Center
7007 Bertner Ave., Suite 11.2339
Houston, Texas 77030

WITH COPIES TO

James H. Waters, J.D., P.E.
Director, Facilities Project Contract and Control Services
Facilities Planning, Design and Construction
6900 Fannin, Office FHB10.1024
Houston, Texas 77030

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

Address: Same as above
Fax: 713/792-8084
Email: ProcurementServices@mdanderson.org

ATTN: Associate Vice President,
Supply Chain Management

Or such other person or address as may be given in writing by MD Anderson to Service Provider in accordance with this Section.

- 8.9 **Taxes:** MD Anderson is a tax-exempt State of Texas agency and an institution of higher education. Notwithstanding its exemption from certain state and federal taxes, MD Anderson will be responsible for any taxes it may be liable for and from which MD Anderson is not exempt. Notwithstanding anything to the contrary herein, MD Anderson shall never be liable for Service Provider's federal or state income taxes, franchise taxes, or taxes on Service Provider's Personnel, including personal income tax and social security taxes associated therewith. Service Provider will cooperate with, and provide reasonable assistance to, MD Anderson in obtaining any tax exemptions to which MD Anderson is entitled.
- 8.10 **Termination:** MD Anderson will have the right to terminate all or any undelivered portion of this Agreement for convenience upon thirty (30) days' written notice to Service Provider. Either party will have the right to terminate all or any undelivered portion of this Agreement for breach immediately upon the other party's breach of this Agreement, so long as such party is provided with written notice and thirty (30) days in which to cure such 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 ("Termination Date").
- 8.10.A MD Anderson's responsibility under this Agreement will be limited to payment for only the Services performed prior to the Termination Date.
- 8.10.B Under no circumstances will Service Provider be entitled to payment for anticipated profits, unabsorbed overhead, or interest on borrowing by reason of such termination.
- 8.11 **Dispute Resolution:**
- 8.11.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 by MD Anderson and Service Provider to attempt to resolve any claim for breach of contract made by Service Provider.
- 8.11.B 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 Service Provider, in whole or in part, except as permitted by Subchapter D, Chapter 2251 of the Texas Government Code. Any periods set forth in this Agreement for notice and cure of defaults are not waived.
- 8.12 **Subcontracting:** Unless expressly provided otherwise in this Agreement, before subcontracting any part of the Services described in this Agreement Service Provider is required to (i) obtain MD Anderson's prior written consent, which consent may be withheld in its sole and absolute discretion, and (ii) comply with Section 6.13.
- 8.13 **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 or by e-mail delivery of a ".pdf" format data file, and facsimile or ".pdf" signature page will be deemed to be an original signature.
- 8.14 **Survival:** Expiration or termination of this Agreement will not affect any right or obligation that either Party may have accrued prior to, or that expressly survives, the expiration or termination of this Agreement.
- 8.15 **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.

- 8.16 **Franchise Tax Certification:** Service Provider certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, Texas Tax Code or that Service Provider is exempt from the payment of those taxes, or otherwise not subject to those taxes.
- 8.17 **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. 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 Service Provider and MD Anderson may terminate this Agreement without further duty or obligation under this Agreement.
- 8.18 **Construction.** This Agreement shall not be construed either more favorably for or strongly against either of the parties based upon which party drafted it. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning.
- 8.19 **Headings.** The headings used in this Agreement are used for reference purposes only and do not constitute substantive matters to be considered in construing the terms of this Agreement.
- 8.20 **Eligibility Certifications:** Pursuant to Section 2155.006, Texas Government Code, Service Provider 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 withheld if this certification is inaccurate.
- 8.21 **Payment of Debt or Delinquency to the State:** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Service Provider agrees that any payments owing to Service Provider under this Agreement may be applied directly toward any debt or delinquency that Service Provider 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.
- 8.22 **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, Texas Family Code, Service Provider 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.
- 8.23 **Group Purchasing:**
- 8.23.A MD Anderson is an institution of System, which consists of eight (8) academic and six (6) health institutions. Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, Education Code). Therefore, if this Agreement resulted from a competitive procurement method, Service Provider acknowledges that additional Texas institutions of higher education may elect to enter into a contract with Service Provider for the Services set forth in this Agreement, on the same terms and conditions recited herein, by entering into a separate contract with Service Provider, or by concluding an appropriate addendum to this Agreement. In either case, it is understood and agreed that:
- (i) Unless specifically stated otherwise, any volume of Services stated in this Agreement reflects only Services to be purchased by MD Anderson and does not include potential purchases by other System institutions; and
 - (ii) Each System institution is a financially separate entity and will be solely responsible for its own commitments to Service Provider.
- 8.24 **Texas State Agency:**
- 8.24.A 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. Nothing in this Agreement is intended to be, or will be construed as, 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.

8.24.B Any provision of any applicable law, rule or regulation that invalidates any provision of this Agreement or 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.

8.24.C The Service Provider agrees to comply with the applicable provisions of MD Anderson's Institutional Code of Conduct in its performance under this Agreement.

Section 9. EXHIBITS:

The documents marked below are attached to and fully incorporated into this Agreement as substantive parts of this Agreement. In the event of a conflict between the provisions above and the documents marked below, the documents marked below will take precedence.

Rider 101. Scope of Services Attachment 1. Additional Services Proposal Form Attachment 2. Facilities Programming Guidelines	Rider 106. Premises Rules
Rider 102. Fee Schedule and Compensation Requirements Attachment 1. Statement of Services Rendered Form	Rider 107. Travel Policy
Rider 104. Policy on Utilization of Historically Underutilized Businesses	Rider 116. Invoice Payment Requirements
Service Provider's Approved HUB Subcontracting Plan	Rider 117. Institutional Policies on Fraud, Hospital Compliance, and Non-Retaliation
Rider 105. Contractor's Affirmations & Warranties	Execution of Offer

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Having agreed to the foregoing terms, and with the intention of being bound, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

(Click And Insert Service Provider's Name):

By: _____
(Insert Authorized Signatory's Name)
(Insert Authorized Signatory's Title)
Tax Identification No. (Insert TaxID)

Date: _____

**THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER:**

By: _____
Spencer Moore
Vice President
Operations and Facilities Management

Date: _____

By: _____
(Insert Authorized Signatory's Name)
MD Anderson-Authorized Representative
Supply Chain Management

Date: _____

Rider 101 – Scope of Services

Attachment 1 – Additional Services Proposal Form

Attachment 2 – Facilities Programming Guidelines

Rider 102 – Fee Schedule and Compensation Requirements

Attachment 1 – Statement of Services Rendered Form

Rider 102. Fee Schedule and Compensation Requirements

1. DEFINITIONS

- 1.1. **Additional Services Fee.** “Additional Services Fee” shall mean the compensation to be paid by MD Anderson to Service Provider for providing Additional Services for the Project. Payments for Additional Services Fees shall be made pursuant to the requirements set forth below.
- 1.2. **Basic Services Fee.** “Basic Services Fee” shall mean the compensation to be paid by MD Anderson to Service Provider for providing Basic Services for the Project. Payments of the Basic Services Fee shall be made pursuant to the requirements set forth below.
- 1.3. **Reimbursable Expenses.** “Reimbursable Expenses” shall mean actual out-of-pocket reasonable expenditures made by Service Provider and Service Provider’s employees and consultants incurred solely and directly in connection with Service Provider’s performance of its services.
 - 1.3.1. Reimbursable Expenses recoverable by Service Provider under this Agreement are limited to the following:
 - 1.3.1.1. Expenses in connection with out-of-state travel, including coach class air fare and reasonable living expenses, as directed and approved in advance and in writing by MD Anderson. Said expenses to be reimbursed per MD Anderson’s Rider 107, Travel Policy, a copy of which is included as an Exhibit to the Agreement;
 - 1.3.1.2. Expenses in connection with in-state travel, including reasonable travel and living expenses, for Service Provider’s employees and consultants when the Assignment requires travel to a project site that is located more than 50 miles from the place where they are usually and customarily assigned, but only as directed and approved in advance and in writing by MD Anderson. Said expenses to be reimbursed per MD Anderson’s Rider 107, Travel Policy, which is included as an Exhibit hereto;
 - 1.3.1.3. Fees paid for securing approval of authorities having jurisdiction over the Project;
 - 1.3.1.4. Expenses of reproductions, printing, collating, postage and handling of drawings, specifications, reports and other Project-related work product, but excluding costs of reproductions for the use of Service Provider and Service Provider’s consultants.
 - 1.3.1.5. Communication expenses such as long-distance telephone, facsimile transmissions, express delivery charges and postage that are directly attributable to the Project;
 - 1.3.1.6. Disbursements made by Service Provider under approved subcontracts if approved in advance and in writing by MD Anderson;
 - 1.3.1.7. Reasonable costs for rental or use of special equipment, tools, and electronic data processing equipment required in connection with the Project if approved in advance and in writing by MD Anderson;
 - 1.3.1.8. Expense of any additional insurance coverage or limits, requested by MD Anderson but excluding professional liability and errors and omissions insurance required

Rider 102. Fee Schedule and Compensation Requirements

under this Agreement, that exceed those normally carried by Service Provider and Service Provider's consultants;

- 1.3.2. Expenses not allowed for reimbursement include amounts paid for alcoholic beverages, laundry, valet service, entertainment and any expenses not directly related to the implementation of a specific Assignment. All tips must be included within the per diem allowances.

2. COMPENSATION FOR SERVICES RENDERED

2.1. General

- 2.1.1. MD Anderson's Approval Required: MD Anderson agrees to pay Service Provider for those services rendered at MD Anderson's specific request, in advance and in writing.
- 2.1.2. Scheduled Billing Rates: Attached hereto and incorporated herein, is Service Provider's Schedule of Billing Rates, including hourly billing rates and/or per-service billing rates as applicable. The billing rates include all costs for any identified services and Service Provider shall not be entitled to any additional compensation for providing those services. The Schedule of Billing rates shall remain in full force and effect for the full term of the Agreement.
- 2.1.3. Consultant Costs: Unless approved in advance by MD Anderson, Service Provider shall pay for all consultant services and costs associated with Service Provider's services under this Agreement out of Service Provider's fees. MD Anderson is not responsible for any such consultant fees or costs unless otherwise agreed to in writing. When consultant fees or costs are approved by MD Anderson, Service Provider's fee, or mark up, associated with approved consultant costs shall be calculated as an amount not to exceed 0.10 times the amount that the consultant actually bills Service Provider.

2.2. Basic Services Fee

- 2.2.1. For Basic Services rendered pursuant to the terms of the Agreement, Service Provider shall be paid a Basic Services Fee, which is to be firm, fixed price amount and is hereby stipulated to be _____ (\$ _____), and is apportioned by Deliverable as follows:

Institutional Facilities Master Plan 2030		
Institutional Facilities Master Plan 2030 Executive Summary Presentation		
New Inpatient Bed Tower Site Analysis Summary Report		
New Inpatient Bed Tower Facility Program		
TOTAL BASIC SERVICES FEE:	100%	

- 2.2.2. For Basic Services, Service Provider shall be compensated monthly on an hourly rate basis, unless MD Anderson and Service Provider expressly otherwise, upon MD Anderson's

Rider 102. Fee Schedule and Compensation Requirements

receipt and approval of an acceptable Statement of Services Rendered, as more specifically prescribed below.

- 2.2.3. MD Anderson's obligations to make payments for Basic Services shall be limited such that amounts paid toward the completion of each Deliverable shall not exceed the progress made by Service Provider toward completing that Deliverable in accordance with the following schedules:

Institutional Facilities Master Plan 2030		
Submittal at 50% Completion	50%	
Submittal at 75% Completion	25%	
Submittal at 100% Completion	25%	
TOTAL BASIC SERVICES FEE:	100%	

Institutional Facilities Master Plan 2030 Summary Microsoft PowerPoint Presentation		
Submittal at 50% Completion	50%	
Submittal at 75% Completion	25%	
Submittal at 100% Completion	25%	
TOTAL BASIC SERVICES FEE:	100%	

New Inpatient Bed Tower Site Analysis Summary Report		
Submittal at 50% Completion	50%	
Submittal at 75% Completion	25%	
Submittal at 100% Completion	25%	
TOTAL BASIC SERVICES FEE:	100%	

New Inpatient Bed Tower Facility Program		Basic Services Fee
Submittal at 50% Completion	50%	
Submittal at 75% Completion	25%	
Submittal at 100% Completion	25%	
TOTAL BASIC SERVICES FEE:	100%	

- 2.2.4. Service Provider shall not proceed beyond any previously approved stage of completion for a Deliverable unless authorized by MD Anderson in writing, except at Service Provider's own financial risk.

2.3. Additional Services Fees

- 2.3.1. For Additional Services rendered pursuant to this Agreement, Service Provider shall be compensated on an hourly rate basis or per-service fee basis in accordance with Service Provider's Additional Services Proposal accepted by MD Anderson, up to the maximum

Rider 102. Fee Schedule and Compensation Requirements

“not-to-exceed” amount approved in the Additional Services Proposal and as confirmed in the subsequent revised Purchase Order issued by MD Anderson to Service Provider.

2.4. Reimbursable Expenses

- 2.4.1. Compensation for Reimbursable Expenses is in addition to compensation for services rendered. Service Provider and its employees and consultants, shall be compensated for the actual, out-of-pocket, reasonable costs for all approved Reimbursable Expenses that are incurred solely and directly in connection with the performance of Service Provider's services and duties under this Agreement. Service Provider shall submit receipts for all expenses along with any reimbursement request. MD Anderson shall not pay a mark-up on Reimbursable Expenses. Unless expressly directed and approved in advance and in writing by MD Anderson, Service Provider shall not invoice MD Anderson for any Reimbursable Expense which is not expressly listed in this Rider 102.
- 2.4.2. Service Provider is solely responsible for any expenses or costs, including expenditures of time, incurred by Service Provider and its employees and consultants in the development of proposals. Such expenses or costs are not Reimbursable Expenses.

2.5. Requests for Payment

- 2.5.1. Unless MD Anderson and Service Provider expressly agree otherwise, Service Provider shall submit a monthly record or statement of services rendered identifying all fees earned and Reimbursable Expenses incurred in the previous month. Statements shall be submitted in a format approved by MD Anderson and must contain at least the following information:
 - MD Anderson's Project Name;
 - MD Anderson's Agreement Number;
 - MD Anderson's Purchase Order Number;
 - Service Provider's Tax Identification Number;
 - Name of MD Anderson's Representative overseeing the Project;
 - Identification of billing period, by calendar month, to which the statement applies;
 - Itemized description of services provided by Deliverable including the names, billing rates and amount of time per task expended by all persons who performed services on the Deliverable during the billing period;
 - Completion status of Deliverable by percentage;
 - Total amount of payment requested;
 - Total amount of prior requests for payment and Purchase Order Amount;
 - Copy of all receipts in support of any Reimbursable Expenses for which Service Provider requests compensation.
- 2.5.2. It is the responsibility of Service Provider not to provide services or submit requests for payment that exceed MD Anderson's Purchase Order Amount. Services provided, and/or expenses incurred that exceed MD Anderson's Purchase Order Amount will be at Service Provider's financial risk and MD Anderson shall not be obligated to compensate Service Provider for any such services or expenses.
- 2.5.3. For purposes of Texas Government Code § 2251.021(a)(2), the date the performance of service is completed is the date when MD Anderson's Representative approves the Service Provider's request for payment. Payment shall be made within 30 days of MD Anderson's approval.

Rider 102. Fee Schedule and Compensation Requirements

- 2.5.4. Service Provider shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.
- 2.5.5. Regardless of any other provision of this Agreement, MD Anderson shall not be obligated to make any payment requested by Service Provider under this Agreement if any of the following conditions precedent exist:
 - 2.5.5.1. Service Provider is in breach or default under this Agreement;
 - 2.5.5.2. The requested payment includes Services not performed in accordance with the Agreement; provided, however, payment shall be made on the balance of the Services that are performed in accordance with this Agreement;
 - 2.5.5.3. The total of Service Provider's requests for payment exceed MD Anderson's Purchase Order Amount;
 - 2.5.5.4. Service Provider has failed to make payments promptly to consultants or other third parties used in connection with the services for which MD Anderson has made payment to Service Provider;
 - 2.5.5.5. Service Provider becomes insolvent, makes a general assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under the bankruptcy laws; or
 - 2.5.5.6. If MD Anderson, in its good faith judgment, determines that the balance of unpaid compensation for a specific Deliverable is insufficient to complete the services required under this Agreement for that Deliverable.
- 2.5.6. No partial payment by MD Anderson shall constitute or be construed as final acceptance or approval of any services or as a release of any of Service Provider's obligations or liabilities with respect to such services.
- 2.5.7. Final Payment and Release: The acceptance by Service Provider or Service Provider's successors of final payment under this Agreement, shall constitute a full and complete release of MD Anderson from any and all claims, demands, and causes of action whatsoever that Service Provider or Service Provider's successors have or may have against MD Anderson pursuant to this Agreement except those claims specifically identified in writing by Service Provider as unsettled at the time of the final request for payment.

ATTACHMENTS:

- Attachment 1 Service Provider's Schedule of Billing Rates
- Attachment 2 Statement of Services Rendered Form

Rider 104 – Policy on Utilization of Historically Underutilized Businesses

Service Provider's Approved HUB Plan

Rider 105 – Service Provider’s Affirmations and Warranties

RIDER 105

CONTRACTOR'S AFFIRMATIONS AND WARRANTIES

Contractor affirms, certifies, and warrants that the information set forth in this Rider is current, complete, and accurate. Contractor agrees that in the event Contractor makes a false statement by affirming, certifying, or warranting the information set forth in this Rider, MD Anderson may, at its option, terminate the Agreement/Purchase Order to which this Rider is attached without further liability, and Contractor shall be removed from all MD Anderson bid lists.

Contractor agrees to notify MD Anderson in writing within thirty (30) days of any changes in the affirmations, certifications, and warranties made by Contractor under this Rider.

1. Contractor has neither given, offered to give, and has no intention to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement/Purchase Order.
2. Neither Contractor nor the firm, corporation, partnership or institution represented by Contractor, or anyone acting for such firm, corporation, or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et. seq. *Texas Business and Commerce Code*, or the federal antitrust laws, nor communicated directly or indirectly Contractor's bid or proposal made to MD Anderson to any competitor or any other person engaged in such line of business. Contractor has not received compensation for participation in the preparation of the specifications for this Agreement or of the request for proposal-on which this Agreement is based.
3. Contractor is not excluded, debarred, or otherwise suspended from participating in the Federal Healthcare programs, as defined in 42 U.S.C. §1320a – 7b(f), or listed in the U.S. System for Award Management's ("SAM") List of Parties Excluded From Federal Procurement or Non-Procurement Programs, or the United States Office of Inspector General's List of Excluded Individuals/Entities ("LEIE"). Contractor further acknowledges that MD Anderson is prohibited by federal regulations and arrangements with third party payors from allowing any employee, subcontractor or agent of Contractor to provide services to MD Anderson if such employee, subcontractor, or agent is not eligible to participate in the Federal Healthcare programs. Therefore, Contractor shall not assign any employee, subcontractor or agent that is excluded from participating in any Federal Healthcare program, including but not limited to Medicare, Medicaid, or Tricare, to work on an MD Anderson engagement. Contractor shall perform an LEIE, SAM, and State Medicaid sanction check monthly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on an MD Anderson engagement. Contractor acknowledges that MD Anderson will require immediate removal of any employee, subcontractor or agent of Contractor assigned to work on an MD Anderson engagement if such employee, subcontractor or agent is found to be excluded from participating in any Federal Healthcare program. Upon request, Contractor will provide MD Anderson a letter signed by an authorized officer of Contractor that certifies compliance with this Section.
4. Contractor certifies it qualifies status in one of the below as defined by the State of Texas:
 - A. Contractor **is a Small Business** (as defined by Chapter 2155 of the Texas Government Code), and claims the following status:
 - _____ (100) Small Business, Non-HUB
 - _____ (100N) Disabled Person, Small Business
 - _____ (141) Black American, Male, Small Business
 - _____ (142) Black American, Female, Small Business
 - _____ (151) Hispanic American, Male, Small Business
 - _____ (152) Hispanic American, Female, Small Business
 - _____ (160) Non-minority, Female, Small Business
 - _____ (171) Asian Pacific American, Male, Small Business
 - _____ (172) Asian Pacific American, Female, Small Business
 - _____ (181) Native American, Male, Small Business
 - _____ (182) Native American, Female, Small Business
 - B. Contractor **is not a Small Business** as defined above and claims the following status:

_____ (900N) Disabled Person	_____ (971) Asian Pacific American, Male
_____ (941) Black American, Male	_____ (972) Asian Pacific American, Female
_____ (942) Black American, Female	_____ (981) Native American, Male
_____ (951) Hispanic American, Male	_____ (982) Native American, Female
_____ (952) Hispanic American, Female	_____ (900) None of the above
_____ (960) Non-minority, Female	

RIDER 105
CONTRACTOR'S AFFIRMATIONS AND WARRANTIES

- C. Contractor is to indicate below if it is not certified by the Texas Procurement and Support Services Division of the Texas Comptroller's Office as a Historically Underutilized Business.

_____ **YES**, Contractor is certified by the Texas Procurement and Support Services Division of the Texas Comptroller's Office.

_____ **NO**, Contractor is not certified by the Texas Procurement and Support Services Division of the Texas Comptroller's Office.

- D. Contractor is:

_____ A Non-Resident Contractor (e.g., does not maintain a permanently staffed full time office in Texas).

_____ A Resident Contractor (e.g., does maintain a permanently staffed full time office in Texas).

_____ Anticipating the use of Texas Non-Resident firms as sub-contractors and will provide information of such contracts, when requested.

_____ Not anticipating the use of Texas Non-Resident firms as sub-contractors.

[Sourcing, item 5 should only be included if the Contractor is a franchise.]

5. If Contractor is a franchise, then:

- A. Contractor affirms, certifies, and warrants that it shall maintain such franchise in full force and effect at all times during the existence of this Agreement/Purchase Order; and

- B. Contractor shall provide MD Anderson with all data that MD Anderson, in its sole discretion, deems necessary to identify Contractor's franchise, the date on which Contractor's franchise will expire, and to certify that Contractor's franchise remains in good standing at all times during the existence of the Agreement/Purchase Order.

6. (1) No relationship (whether by blood, marriage, business association, capital funding agreement or by any other kinship or connection) exists between Contractor and an employee of MD Anderson, and (2) Contractor has not been an employee of MD Anderson within the twelve (12) month period immediately prior to the date of this Agreement/Purchase Order, or (3) in the event such a relationship does exist, full written disclosure of the relationship has been made by Contractor to MD Anderson prior the execution of this Agreement, or acceptance of Purchase Order. Contractor understands that all such disclosures will be subject to administrative review, and approval by MD Anderson prior to MD Anderson's execution of this Agreement/Purchase Order. Subsection (2) of this item does not prohibit MD Anderson from entering into a contract with a corporation, firm, or other business entity that employs a former or retired employee of MD Anderson within 12 months of the employee's leaving MD Anderson, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by MD Anderson.
7. (1) Contractor is not a party to any agreement with MD Anderson whereby it has licensed from MD Anderson any technology, invention, or other intellectual property that relates to or is used with any goods or services being acquired by MD Anderson hereunder; and (2) as a result of the sale to MD Anderson of the goods or services hereunder, Contractor will not owe, directly or indirectly, any royalties, fees, or other consideration of any kind to MD Anderson or any employee of MD Anderson under the terms of any license agreement with MD Anderson. Contractor will advise MD Anderson in writing of any change in status with respect to the foregoing items (1)-(2), by sending written notice within ten (10) days of such status change to: Legal Services, Unit 537, The University of Texas MD Anderson Cancer Center, P.O. Box 301439, Houston TX 77230-1439, ATTENTION: Chief Legal Officer.
8. **OSHA COMPLIANCE:** By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that all goods and services furnished under this Agreement/Purchase Order will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and its regulations in effect as of the date on which the goods or services are furnished.
9. **AFFIRMATIVE ACTION COMPLIANCE:** In addition to the Contractor's affirmation, certification, and warranty under section 8 of this Rider, if this Agreement exceeds \$50,000.00 in value, Contractor shall provide a copy of its written Civil Rights "Affirmative Action Compliance Program" which shall be incorporated into Exhibit A to this Rider. If Contractor is NOT required to have such a written Civil Rights "Affirmative Action Compliance Program", Contractor must state the reasons why it is not required to have such a written program in

RIDER 105
CONTRACTOR'S AFFIRMATIONS AND WARRANTIES

Exhibit A to this Rider.

EXHIBIT A

Civil Rights "Affirmative Action Compliance Program"

Rider 106 – Premises Rules

RIDER 106 PREMISES RULES

If this Agreement requires Contractor's presence on MD Anderson's premises, buildings, grounds, facilities, or campus, whether owned, leased or otherwise controlled by MD Anderson (collectively, "MD Anderson's campus"), Contractor represents and warrants that it will ensure that its representatives, agents, employees, and permitted subcontractors are aware of, fully informed about and in full compliance with Contractor's obligations under the following rules:

- A. Contractor (and its representatives, agents, employees and permitted subcontractors) will comply with all applicable MD Anderson rules and policies, including, without limitation, those related to environmental quality, safety, fire prevention, noise, information security, and architectural barriers issued by MD Anderson's Department of Environmental Health and Safety, (713) 792-2888, and those that restrict the use of alcohol on MD Anderson's campus.
- B. MD Anderson is a smoke-free institution. Smoking, or use of smokeless tobaccos, is prohibited throughout MD Anderson's campus.
- C. Contractor will have the right to access only those areas in MD Anderson's campus that are public areas or areas that it is necessary for Contractor to access in order to provide the products and perform the services under this Agreement. Cellular telephones and two-way radios are prohibited in some areas of MD Anderson's campus and Contractor affirms, certifies, and warrants that its representatives, agents, employees, and permitted subcontractors will abide by such prohibitions.
- D. It is the policy of MD Anderson to maintain a safe environment free from violence on MD Anderson's campus. Any direct or indirect threats or acts of violent behavior are prohibited. Violence includes, but is not limited to, intimidating, threatening, or hostile behavior; physical or verbal abuse; harassment, stalking, vandalism, arson, sabotage, use of weapons, possession of weapons on institutional property, the threat of any of the above, or any other act inconsistent with MD Anderson's campus violence policy. Intentionally bringing a prohibited weapon including a licensed, concealed handgun on MD Anderson's campus is a violation of MD Anderson's campus violence policy. Furthermore, any violation of a law prohibiting violence and violent behavior (including, but not limited to, the violation of Section 37.125 of the Texas Education Code or of Section 46.03 of the Texas Penal Code) also constitutes a violation of MD Anderson's campus violence policy. Violators of MD Anderson's campus violence policy or of any law prohibiting violence or violent behavior may be removed from or refused further access to MD Anderson's campus. Contractor represents and warrants that Contractor and all of its representatives, agents, employees, and permitted subcontractors will comply with MD Anderson's campus violence policy and all laws prohibiting violence and violent behavior. MD Anderson reserves the right to pursue criminal or civil actions against violators of MD Anderson's campus violence policy or of any law prohibiting violence and violent behavior. Contractor will remove from the performance of any work under this Agreement any Contractor representative, agent, employee, or permitted subcontractor that MD Anderson, in its sole discretion, finds has violated MD Anderson's campus violence policy or any law prohibiting violence and violent behavior.
- E. Contractor will ensure all personnel sent to work at MD Anderson's campus that have direct patient care/contact under this Agreement will be able to show proof of a tuberculosis screening having been completed within ninety (90) calendar days prior to starting work at MD Anderson's campus and every two years thereafter. Contractor will also be able to show proof that these same personnel do not have active tuberculosis. Contractor will ensure all personnel with direct patient care/contact will be able to show proof of current immunization to influenza and proof of immunization or immunity to varicella (chicken pox) prior to active duty at MD Anderson. Records of screenings, vaccinations, immunity and related reports will be made immediately available to M.D. Anderson upon request. This paragraph does not apply to contractors deemed by MD Anderson to not have direct patient care/contact.
- F. Contractor will be solely responsible for ensuring that all of its agents, employees, personnel, permitted subcontractors, or representatives abide by the provisions set forth in this Rider 106.
- G. The University of Texas Police Department ("UTPD") & Security Equipment:

The UTPD is the law enforcement agency of record for all property and premises owned, leased, or otherwise under the control of MD Anderson. The UTPD will be notified in matters relating to the following:
 - 1. Reporting of criminal incidents, including those occurring to or involving Contractor property and personnel if the incident occurs on MD Anderson campus;
 - 2. The investigation of crimes, including those involving Contractor's property and personnel, if the incident occurs on MD Anderson campus; and
 - 3. Reporting of security problems.
- H. Contractor will not retain the services of outside guard or law enforcement services in connection with work on MD Anderson's campus without the specific prior written approval of the Chief of the UTPD.
- I. Contractor will not install or operate any system intended to electronically control access and/or detect and report intrusion, hold-up or duress on any MD Anderson property, any MD Anderson leased premises or any premises otherwise under the control of MD Anderson. Where such systems are required due to the nature of the Contractor's operation, the UTPD will be responsible for approval, design and installation. Once approved by UTPD, the system's cost will be Contractor's responsibility.

RIDER 106
PREMISES RULES

- J. Installation by Contractor of any security system is subject to the review and approval of UTPD. If Contractor desires to install an electronic security system in accordance with the terms of this Agreement, Contractor will contact the UTPD - Crime Prevention Component of UTPD at (713) 792-2890 and request that UTPD establish design criteria for the application. Contractor will provide written evidence of the estimated cost of the electronic security system to the Technical Services Component of UTPD located at 7777 Knight Road and, if the electronic security system is approved by UTPD, the Technical Services Component of UTPD will coordinate the installation of the approved system. Upon written approval of the UTPD Chief, Contractor may use a commercial installation company to install the electronic security system under the coordination of the UTPD.
- K. All security related systems must be monitored and controlled by the UTPD and UTPD must be the primary monitoring station. If Contractor utilizes the services of a commercial alarm company or a proprietary alarm monitoring station, the system may report to such location after first transmitting the alarm to the UTPD.
- L. Contractor is responsible for the performance of the persons Contractor assigns to provide services for MD Anderson on MD Anderson's campus. Contractor will not knowingly assign individuals to provide services on MD Anderson's campus who have a history of violent, unacceptable, or grossly negligent behavior or who have a felony conviction. Prior to supplying labor services under this Agreement, MD Anderson may require Contractor to provide a list identifying the individuals that may be assigned to MD Anderson along with a letter signed by an appropriate officer of Contractor that affirms compliance with this Rider. Contractor will revise such letter each time there is a change in Contractor's personnel assigned to MD Anderson's campus, but in any case, annually on the anniversary date of this Agreement.
- M. Contractor will ensure that all individuals assigned by Contractor to perform services on MD Anderson's campus will display in plain view a photo identification badge provided by MD Anderson while on MD Anderson's campus.
- N. Contractor will retain resumes of all Contractor's employees assigned to this project. Contractor will ensure the proper maintenance of these documents for a minimum of one (1) year after contract completion. Contractor will maintain all documentation, including the results of any background checks, during the term of this Agreement.
- O. MD Anderson will have the right to reject any individual(s) that Contractor offers to assign to MD Anderson's account for any reason. In addition, if Contractor and/or its personnel fail to abide by these Premises Rules, MD Anderson will have the right to deny Contractor and its personnel access to MD Anderson's campus.
- P. MD Anderson will not be obligated to pay for labor hours supplied by any individual(s) upon whom a background check and records check is not completed or who fails to meet the standards described in this Rider.

Rider 107 – Travel Policy

RIDER 107 TRAVEL POLICY

All travel and expense costs will be calculated as follows:

1. Contractor must use regular coach air transportation (state rate or corporate rate, whichever is lower) for travel in excess of two hundred (200) miles, unless otherwise agreed in advance by MD Anderson. In order to maximize discounted airfares, Contractor, with the cooperation of MD Anderson, will schedule on-site visits far enough in advance to take advantage of most advance-purchase offers. In the event meetings or on-site visits are cancelled by MD Anderson, Contractor may charge for any advance-purchase cancellation penalties imposed by the airline.
2. Corporate or state rate discounts (whichever is higher) will be used for hotel accommodations.
3. Maximum billable amount per person per day for meals will be \$36.00. Departing from MD Anderson prior to 12:01 p.m. negates any billing for meals for that day. Meal expenses are reimbursable for Contractor personnel who travel fifty (50) miles or more, and stay overnight.
4. Rental cars will be the least expensive, air-conditioned, automatic transmission, mid-size car available to Contractor under corporate rate programs. Full coverage collision insurance may be used for rental cars, but personal protection plans will not be reimbursed.
5. Ground transportation, parking costs and tolls may be invoiced at cost.
6. Personal automobile mileage charges will be computed based upon actual miles to and from the appropriate Contractor office to and from the applicable MD Anderson facility. Mileage charges will be invoiced at the standard mileage rate recognized by the State of Texas at the time of invoicing.
7. Miscellaneous expenses (i.e., tips, transfers, etc.) will be invoiced in an amount not to exceed \$5.00 per person per day, if deemed reasonable.

All travel or miscellaneous expenses must receive prior written approval by the Project Coordinator. Contractor will not be reimbursed for expenses that do not receive this prior written approval.

All travel or miscellaneous expenses must be submitted with an original receipt. All approved expenses will be reimbursed at “actual cost” only. Contractor will not be reimbursed for expenses that are not accompanied by original receipts.

Rider 116 – Invoice Payment requirements

RIDER 116

INVOICE PAYMENT REQUIREMENTS

Section 1. CONTRACT VALUE

Absent prior written authorization, invoices for amounts in excess of the Cap Amount will not be paid and will be returned unpaid.

Section 2. INVOICE ROUTING; FORMAT; TIMELINESS

2.1. Invoice Submission Location: MD Anderson cannot retrieve invoices through Contractor's website and can only accept invoices through the following format (listed in order of preference):

Submittal Format	Submittal Address
EDI	Qualifying Contractors contact: Accounts Payable 713.745.9439
E-mail (one invoice per e-mail in PDF form)	mdaccap@mdanderson.org
United States Postal Service	Accounts Payable – Unit 1699 P.O. Box 301401 Houston, TX 77230-1401
Carrier (UPS, Fed Ex, etc.)	The University of Texas MD Anderson Cancer Center Accounts Payable 7007 Bertner Ave – Unit 1699 Houston, TX 77030

2.2. Electronic Invoice: An electronic invoice shall be provided in a secure, non-alterable electronic format (Adobe *.pdf is acceptable) e-mailed directly to mdaccap@mdanderson.org with the Contractor name and invoice number in the e-mail Subject line. Do not send or copy the MD Anderson Accounts Payable representative. MD Anderson will accept only one invoice per e-mail and all invoices must include a valid MD Anderson Purchase Order Number. Invoices without a Purchase Order Number or an incorrect Purchase Order Number will be returned unpaid to the Contractor.

2.3. Effective Invoice Period: Contractor will submit invoices within sixty (60) calendar days after delivery of the goods or complete performance of the services invoiced. MD Anderson will not be obligated to pay invoices that are not received within sixty (60) calendar days after delivery of the goods or complete performance of the services, unless acceptable delays are identified and approved in writing by MD Anderson prior to the delay.

2.4. Third Party Invoicing: MD Anderson does not accept invoicing from third parties acting on behalf of the vendor.

Section 3. ACCURATE BILLING

3.1. Invoice Requirements: Each invoice must include:

- Billing related to only one valid MD Anderson Purchase Order.
- Invoice should be an original version and without manual or written changes.
- Valid MD Anderson Purchase Order Number clearly stated on the face of the invoice.
- Contractor's legal name and "remit to" address, telephone and fax numbers.
- A uniquely assigned invoice number.
- An invoice date.
- The MD Anderson "bill to" address listed in Section 2.1 for the United States Postal Service submittal format.
- A description of the goods or services purchased with the line item purchase price.
- The correct invoice amount (invoices that contain an incorrect amount or a disputed amount will need to be revised and resubmitted).
- For goods, the manufacturer's part number, item description, quantity shipped, and unit price.
- A line item for all freight, shipping and handling costs related to the invoice (not billed separately).

RIDER 116

INVOICE PAYMENT REQUIREMENTS

- Line items matching MD Anderson Purchase Order line items (invoice lines must exactly match, or be less than, MD Anderson Purchase Order line items).

Each invoice must be a standard typed original invoice on Contractor letterhead. MD Anderson will not make payments based on statements, quotations, service contracts, shipping/packing slips, calculator tapes, work orders, pro-forma statements, Letter of Intent, Memorandum of Understanding or other non-invoice documents.

3.2. Deductions: MD Anderson may reduce payment to Contractor for sales tax (for more information refer to Section 8.9 of the Agreement).

3.3. Credit Memoranda: Credit memoranda submitted to MD Anderson must include the Invoice Requirements set out in Section 3.1 of this Rider 116, as well as the following:

- The phrase “Credit Memo” in clear and apparent text.
- A uniquely assigned Credit Memo number.
- A description of the goods or services credited.
- A valid Purchase Order Number against which MD Anderson may credit the Credit Memo amount.

Section 4. ACH PAYMENT DISBURSEMENT METHOD

4.1. Preferred Payment Method – Automated Clearing House (ACH): MD Anderson’s preferred process for settling financial obligations is to utilize the National Automated Clearing House Association (NACHA) standard Cash Concentration and Disbursement (CCD) format. This industry standard process is utilized and recognized by most payees as the most efficient, safe and timely way to transfer funds. Our goal is that every payment made by MD Anderson is made via electronic funds transfers, unless legally prohibited. This service may be set up by contacting MD Anderson’s Treasury Services and Operations office at 713-745-9580 or by e-mail: TreasuryServices@mdanderson.org.

Upon payment initiation, your company will receive the remittance information by e-mail with an attached Adobe Acrobat PDF file containing information detailing the payment date, invoice number, dollar amount, etc. Questions regarding this matter can be directed to MD Anderson’s Treasury Services and Operations office at 713.745.9580 or by e-mail: TreasuryServices@mdanderson.org.

4.2. Check Disbursement: MD Anderson initiates payment disbursements on Tuesdays and Thursdays with typical funds availability the following business day.

4.3. Accounts Payable Invoice Approval Process:

4.3.A Goods: MD Anderson requires a 3-way match for payment on Purchase Orders for goods. The 3-way match includes a MD Anderson Purchase Order, a MD Anderson Materials Management Receipt, and a Contractor Invoice.

4.3.B Services: MD Anderson requires a 2-way match for payment on Purchase Orders for services. The 2-way match includes a MD Anderson Purchase Order and a Contractor Invoice. In addition, complete performance of services must be verified by an appropriate MD Anderson representative before an invoice for such services will be paid unless otherwise stated in the Agreement.

Section 5. SUPPLIER INQUIRY OPTIONS

5.1. Payment Inquiry: Contractor may research invoice status by contacting the MD Anderson Accounts Payable Department through the following methods (a MD Anderson Purchase Order Number and/ or Contractor Invoice Number is required):

- E-Mail (questions only): mdaccAPIquiry@mdanderson.org
- Telephone: 713.745.9439
- Vendor Self Service (VSS) System: VSS is a secure, web-based system that allows Contractors to research detailed information regarding invoice status and MD Anderson payments online. To register for this service visit <http://mdanderson.org/suppliers> or call 713.745.7997.

5.2. Reconciliation of Payment: MD Anderson notifies Contractor that invoices have been paid by payment stub for standard check payments and e-mail for ACH payments.

RIDER 116
INVOICE PAYMENT REQUIREMENTS

Section 6. MATERIALS MANAGEMENT

6.1. Freight: MD Anderson does not accept Collect On Demand (COD) shipping.

6.2. Receiving/Logistics/Dock: All deliveries must reference a valid MD Anderson Purchase Order Number or risk being turned away. Purchase Orders for goods not delivered to a MD Anderson receiving dock risk payment delays, unless otherwise stated in the Agreement.

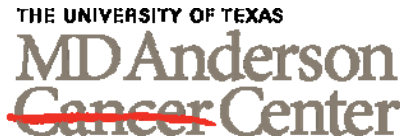
MD Anderson Receiving Docks	
MD Anderson Hospital 1515 Holcombe Blvd. Houston TX 77030-4009	Basic Sciences Research Building 6767 Bertner Houston, TX 77030-2603
Houston Main Bldg./ Ambulatory Clinical Bldg./ Mays Cancer Prevention Bldg. 1155 Pressler Street Houston, TX 77030-3721	Faculty Center Building 1400 Holcombe Blvd. Houston, TX 77030-4008
Smith Research Bldg. 7777 Knight Road Houston, TX 77054-3005	South Campus Research Bldg. II 7435 Fannin Street. Houston, TX 77054-1901
Proton Therapy Bldg. 1840 Old Spanish Trail Houston, TX 77054-2002	

Section 7. GOVERNING LAWS

7.1. W-9: MD Anderson requires Contractor to have a valid W-9 on file with MD Anderson prior to all disbursements. Contractor may download the W-9 form from MD Anderson's website by accessing the Supply Chain Management Internet site at: <http://mdanderson.org/suppliers> then clicking on "Contract Information."

7.2. Prompt Payment Act: All funds held by MD Anderson are subject to the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*. Chapter 2251 of the *Texas Government Code* governs (i) when a payment by MD Anderson is overdue, and (ii) the rate of interest that accrues on such overdue payments.

Rider 117 – Institutional Policies on Fraud, Hospital Compliance, and Non-Retaliation



RIDER 117

Institutional Policies

In accordance with the education requirements set forth in Section 6032 of the Deficit Reduction Act of 2005 (Act), MD Anderson has implemented, and Contractor agrees to abide by, the following policies, as may be subsequently amended, that are available at: <http://www.mdanderson.org/about-us/doing-business/vendors-and-suppliers/index.html>.

1. Fraud, Waste, and Abuse Policy
2. Hospital Compliance Plan
3. Non-Retaliation Policy

Service Provider's Execution of Offer