

AGREEMENT
BETWEEN
THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER
AND
[INSERT CONTRACTOR'S NAME]
TO PROVIDE FACILITIES COMMISSIONING SERVICES
FOR
MISCELLANEOUS ASSIGNMENTS OF LIMITED SCOPE

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 Contractor's Name], a [Enter State] [Enter type of entity], which has its principal address at [Enter Contractor's Address] ("Contractor").

WHEREAS, MD Anderson desires to obtain certain services related to the commissioning of facility equipment or systems from Contractor as described in the Scope of Commissioning Services attached hereto as Rider 101 (the "Commissioning Services"), and Contractor desires to perform the Commissioning Services for MD Anderson; and

WHEREAS, Contractor represents that it has the knowledge, ability, skills and resources to perform the Commissioning Services required under this Agreement, and MD Anderson in reliance on such assurances is willing to contract with Contractor 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 initial term of this Agreement will be for a period of twenty-four months (24) 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 (the "Initial Term").
- 1.2 MD Anderson will have the right to renew this Agreement after the Initial Term for an additional twenty-four (24) month period up to a maximum of two (2) renewal periods, subject to the terms and conditions in this Agreement (each a "Renewal Period," and together with the Initial Term, the "Term"). A renewal will be effective if evidenced by a written renewal notice signed by MD Anderson and delivered to Contractor prior to the expiration of the Initial Term or the Renewal Period, as the case may be.
- 1.3 MD Anderson has the option to extend the term of this Agreement as necessary for Contractor to complete the services on any project or assignment approved by MD Anderson prior to the expiration of this Agreement.

Section 2. SCOPE OF SERVICES:

- 2.1 Contractor will perform the Commissioning Services for MD Anderson as described in the Scope of Commissioning Services attached hereto as Rider 101.

Section 3. CONSIDERATION AND INVOICING:

- 3.1 Contractor will be compensated in accordance with the Terms of Compensation attached hereto as Rider 102.
- 3.2 The total cost of Commissioning Services under this Agreement will not exceed \$4,000,000 (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 Contractor only for the Commissioning Services performed by Contractor 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 Contractor 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 Contractor a purchase order (“PO”) referencing this Agreement and the Commissioning Services to be performed prior to the commencement of any Commissioning Services hereunder.

Section 4. COORDINATION AND ACCEPTANCE OF COMMISSIONING SERVICES:

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

5.1 Contractor’s Duties and Representations:

- 5.1.A Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent Contractor’s performance of the Commissioning Services or MD Anderson’s use of the Commissioning Services.
- 5.1.B Contractor warrants, represents, covenants, and agrees that all of the Commissioning Services performed by Contractor 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 Contractor warrants, represents, covenants, and agrees that all Commissioning Services it performs under this Agreement will be accurate and free from any material defects or errors.

- 5.1.D Contractor warrants, represents, covenants, and agrees that all persons performing Commissioning Services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction (collectively “Governmental Authorities”).
- 5.1.E Contractor 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 Contractor has been duly authorized to act for and bind Contractor.
- 5.1.F Contractor warrants, represents, covenants, and agrees that neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations under this Agreement will result in the violation of any provision of Contractor’s organizational documents or conflict with any order or decree of any court or governmental instrumentality, and there are no pending, or to Contractor’s knowledge threatened, proceedings for the dissolution, liquidation, insolvency, or rehabilitation of Contractor.
- 5.1.G If this Agreement will exceed \$10,000.00 or if the Contractor anticipates or has a history of exceeding \$10,000.00 in sales to MD Anderson within a continuous twelve (12) month period, then Contractor’s execution of this Agreement will signify Contractor’s compliance with the provisions of Section 202 of Executive Order No. 11246 pertaining to Equal Employment Opportunities, effective September 24, 1965, as amended, and Section 503 of the Rehabilitation Act of 1973, as amended. If this Agreement is \$100,000.00 or more, then Contractor’s execution of this Agreement will signify Contractor’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 Contractor 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 Contractor 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 Contractor agrees to notify MD Anderson in writing within thirty (30) days of any changes in facts or circumstances that render any of Contractor’s representations and warranties under this section incorrect.
- 5.2 **Compliance with Laws, Regulations and Policies:** Contractor 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:** Contractor represents and warrants (“EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to MD Anderson under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, Rule §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with this EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to MD Anderson, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR accessibility Warranty. In the event that Contractor is unable to do so, then MD Anderson may terminate this Agreement and Contractor will refund to MD Anderson all amounts MD Anderson has paid under this Agreement within thirty (30) days after the termination date.

Section 6. COVENANTS

- 6.1 **Confidentiality:** Contractor will not at any time, except as required to perform the Commissioning 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 Contractor 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 Contractor's possession at the time of disclosure by MD Anderson, (ii) is or later becomes part of the public domain through no fault of Contractor, (iii) is received from a third party having no obligations of confidentiality to MD Anderson, (iv) is independently developed by Contractor without use of the Confidential Information, or (v) is required by law to be disclosed, provided that (a) Contractor 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) Contractor 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, Contractor shall furnish only that portion of the Confidential Information which is legally required to be disclosed in the opinion of Contractor'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 Contractor. Within ten (10) business days after the termination of this Agreement or the request of MD Anderson, Contractor will return or destroy all Confidential Information, 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 Contractor 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*. Contractor will be deemed to have knowledge of this law and the means of protecting Contractor's legitimate interests.
- 6.3 **Publicity:** Contractor will not state or imply that MD Anderson endorses any of Contractor'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 Contractor will cooperate fully in meeting any obligations imposed upon MD Anderson or Contractor by any Governmental Authority with respect to the Commissioning 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. 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, and those that restrict the use of alcohol on MD Anderson's campus. In the course of performing the Commissioning Services under this Agreement, Contractor 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 Contractor has access to "education records" under this Agreement, MD Anderson hereby designates Contractor as a "school official" as each of these terms are defined under FERPA. Contractor 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, Contractor 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 Contractor 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 Commissioning 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 Contractor'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 Contractor's Commercial General Liability Insurance is written on a claims-made basis, Contractor 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 Contractor 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 Commissioning Services by Contractor 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 Contractor'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 Contractor. 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) Contractor 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) Contractor 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 Commissioning Services by Contractor 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 Contractor'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. Contractor's or subcontractor's insurance will be kept in force until all Commissioning 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 Contractor, whether patentable or not, in the course of performing the Commissioning 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, Contractor shall retain ownership of all Intellectual Property owned by Contractor and developed by it prior to the Effective Date and outside of the performance of any Commissioning Services for MD Anderson ("Contractor 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 Contractor 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 Contractor to perform the Commissioning 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 Contractor's records and books as such pertain to this Agreement. Contractor will include this provision in all contracts with permitted subcontractors. If needed for audit, Contractor will supply at its expense, original or independently certified copies of off-site records within two (2) weeks of written request.
- 6.7.B U. S. Government Access to Contractor Books, Documents, and Records
 - (i) If Contractor furnishes services under this Agreement in connection with matters for which the U. S. Government may make payment under Subchapter XVIII, Chapter 7, Title 42 of the United States Code, and the value or cost of such services is \$10,000 or more over a twelve-month period, then the provisions of this Section 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 Contractor completes furnishing all of the services described in Section 6.7.B(i) under this Agreement, Contractor will make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the United States Comptroller General, or any of their duly authorized representatives, this Agreement, and all of Contractor's books, documents and records that are necessary to certify the nature and extent of the costs for such services. Contractor and MD Anderson agree that this Section will comply with the provisions of 42 U.S.C. §1395x (v) (1) (I) and C.F.R. Title 42, Chapter IV, Subchapter B, Part 420, Subpart D, and in the event that this Section does not comply with such provisions, this Section will be automatically reformed to so comply and such reformation will be documented in writing and signed by both parties. If Contractor 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 Contractor 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:** Contractor 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 Contractor’s services as otherwise specified in this Agreement.
- 6.9 **Drug Testing Requirements:** Prior to commencing any Commissioning Services under this Agreement, Contractor will ensure that all Contractor 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. “Contractor Personnel” is any individual who is compensated by Contractor, or by a subcontractor engaged by Contractor, for providing a service directly to MD Anderson, whether or not that individual is present on MD Anderson premises. Contractor Personnel may include consultants, service vendor employees, construction workers, and temporary personnel needed for staff augmentation.
- 6.10 **Ethics Matters; No Financial Interest:** Contractor and its employees, agents, representatives and subcontractors have read and understood the following prior to performing Commissioning 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 Contractor 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. Contractor 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 Commissioning Services; Criminal Background Checks:** Each Contractor Personnel who is assigned to perform Commissioning Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all Contractor Personnel performing Commissioning Services under this Agreement. Prior to any Contractor Personnel commencing Commissioning Services, Contractor will have the following criminal background checks and screenings performed on the Contractor 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. Contractor will be provided The University of Texas Police at Houston (the “UTP-H”) Security Sensitive Investigations Criminal Background Manual (the “Manual”). Contractor 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. Contractor will determine on a case-by-case basis whether each Contractor Personnel assigned to perform Commissioning Services is qualified to do so. Contractor will not assign any Contractor Personnel to perform Commissioning 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, Contractor will provide MD Anderson a letter signed by an authorized officer of Contractor that certifies compliance with this Section. Contractor should send any questions regarding investigations to the UTP-H at UTPD-SSR@mdanderson.org.
- 6.12 **Direct Patient Care/Contact:** Contractor will ensure that all Contractor Personnel performing Commissioning 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 Commissioning Services at MD Anderson’s campus, and (2) such Contractor Personnel do not have active tuberculosis. Contractor will further ensure that all Contractor 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. Contractor 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 Contractor to submit a HUB subcontracting plan ("HSP") for the utilization of Historically Underutilized Businesses ("HUB"). Contractor has submitted an HSP, attached hereto as Rider 104, in accordance with MD Anderson's requirements, including but not limited to Sections 6.13.B to 6.13.D of this Agreement.

6.13.B Except as specifically provided in the HSP or with the prior written consent of MD Anderson, Contractor's duties and obligations under this Agreement and the fees due to Contractor 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 Contractor 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 Contractor 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, Contractor desires to change the HSP, Contractor must adhere to the following prior to executing such changes: before the proposed changes become effective (a) Contractor 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 Commissioning Services under this Agreement through a properly executed change order or other form of amendment, MD Anderson will determine if the additional Commissioning Services contains probable subcontracting opportunities not identified in MD Anderson's initial solicitation for the Commissioning Services provided under this Agreement. If MD Anderson determines additional probable subcontracting opportunities exist, Contractor will submit an amended HSP covering those opportunities. The amended HSP must comply with the requirements set out in Sections 6.13.B above before (a) this Agreement is amended to include the additional Commissioning Services; and (b) Contractor provides the additional Commissioning Services.

6.14 **Contractor Certification regarding Boycotting Israel:** Pursuant to Chapter 2270, *Texas Government Code*, Contractor certifies that Contractor (1) does not currently boycott Israel, and (b) will not boycott Israel during the Term of this Agreement. Contractor 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 **Contractor Certification regarding Business with Certain Countries and Organizations:** Pursuant to Chapter 2252, *Texas Government Code*, Contractor certifies that Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor 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, CONTRACTOR 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 CONTRACTOR OR ITS SUBCONTRACTORS OF THE WORK OR (II) BY MD ANDERSON OF ANY WORK THAT IS SUPPLIED, DESIGNED OR PROVIDED TO MD ANDERSON BY CONTRACTOR 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) CONTRACTOR’S FULL COMPLIANCE WITH MD ANDERSON’S SPECIFIC WRITTEN DESIGN REQUIREMENTS OR SPECIFICATIONS OR WRITTEN INSTRUCTIONS ON CONTRACTOR’S METHOD OF PERFORMANCE, BUT ONLY IF SUCH INSTRUCTIONS ARE INCONSISTENT WITH THE METHOD OF PERFORMANCE OR WITH THE GOODS THAT CONTRACTOR CUSTOMARILY PROVIDES TO ITS OTHER CUSTOMERS, OR (II) USE BY MD ANDERSON OF CONTRACTOR’S WORK IN CONNECTION OR IN COMBINATION WITH EQUIPMENT OR PROCESSES NOT PROVIDED BY CONTRACTOR OTHER THAN EQUIPMENT OR PROCESSES FOR WHICH THE WORK IS INTENDED TO BE USED.

- 7.2 If Contractor is prevented from performing any portion of the Commissioning Services or should MD Anderson be prevented or estopped from use or application of any Commissioning Services designed or provided by Contractor 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 Commissioning Services not performed, or of which the Commissioning Services may not be used, as a result thereof, and Contractor shall, at its own cost, either:
- 7.2.A obtain the necessary license to allow Contractor and MD Anderson, as applicable, to use such third-party rights to the extent necessary to allow performance of the Commissioning Services in complete compliance with this Agreement and to allow MD Anderson to use the Commissioning Services in the manner contemplated by this Agreement; or
- 7.2.B re-design and re-perform such Commissioning Services to enable complete performance of the Commissioning Services in accordance with this Agreement without infringing any such third-party rights and without affecting the utility and functionality of the Commissioning 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 Commissioning 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:** Contractor is an independent contractor for purposes of this Agreement. No employer-employee, partnership, or joint venture relationship is created by this Agreement or by Contractor’s service to MD Anderson. Except as specifically required under the terms of this Agreement, Contractor 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 Contractor. Any attempt to transfer or assign any rights or privileges

under this Agreement without having first obtained written consent from the other party will be null and void and will entitle the other party to immediately terminate this Agreement. Notwithstanding anything to the contrary herein, any assignment of this Agreement or the subcontracting of any Commissioning Services to be performed hereunder shall not relieve Contractor 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. Contractor will use its commercially reasonable best efforts to mitigate the impact of any such event or occurrence so that MD Anderson may continue to provide healthcare services during such period.
- 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 Contractor 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.

CONTRACTOR:

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 Contractor intends to deliver written notice to MD Anderson pursuant to Section 2251.054 of the Texas Government Code, then Contractor shall send that notice to MD Anderson as follows:

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

Or such other person or address as may be given in writing by MD Anderson to Contractor 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 Contractor's federal or state income taxes, franchise taxes, or taxes on Contractor's Personnel, including personal income tax and social security taxes associated therewith. Contractor 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 Contractor. 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 Commissioning Services performed prior to the Termination Date.
- 8.10.B Under no circumstances will Contractor 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 Contractor to attempt to resolve any claim for breach of contract made by Contractor.
- 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 Contractor, 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 Commissioning Services described in this Agreement Contractor 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:** Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, Texas Tax Code or that Contractor 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 Contractor 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, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment 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, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 8.22 **Texas Family Code Child Support Certification:** Pursuant to Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 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, Contractor acknowledges that additional Texas institutions of higher education may elect to enter into a contract with Contractor for the Commissioning Services set forth in this Agreement, on the same terms and conditions recited herein, by entering into a separate contract with Contractor, 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 Commissioning Services stated in this Agreement reflects only Commissioning 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 Contractor.

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 Contractor 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 those of the documents listed below, the provisions of the documents listed below will take precedence. | |
|--|--|
| Rider 101. Scope of Services Attachment 1. Request for Proposal Form Attachment 2. Proposal Form Attachment 3. Additional Services Proposal Form Attachment 4. Statement of Services Rendered Form Attachment 5. Notice to Proceed Form | Rider 106. Premises Rules |
| Rider 102. Terms of Compensation Attachment 1. Schedule of Billing Rates | Rider 107. Travel Policy |
| Rider 104-A. Policy on Utilization of Historically Underutilized Businesses | Rider 116. Invoice Payment Requirements |
| Letter of HUB Commitment | Rider 117. Institutional Policies on Fraud, Hospital Compliance, and Non-Retaliation |
| Rider 105. Contractor's Affirmations & Warranties | |

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 Contractor'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 and Chief Facilities Officer

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

Date: _____

Date: _____

Dear Vendor: Please review this agreement and all attached Exhibits.

REVIEW

This proposed Agreement and all "X" Exhibits, including any attachments thereto have been reviewed and:

() are acceptable

() are acceptable as noted

Signature: _____ Date: _____

Printed Name: _____

Vendor's Name: _____

(This box is used for solicitation responses only.)

RIDER 101 - SCOPE OF SERVICES
FACILITY COMMISSIONING SERVICES
FOR
MISCELLANEOUS ASSIGNMENT
OF
LIMITED SCOPE

1. OBJECTIVE

- 1.1. The University of Texas MD Anderson Cancer Center (“MD Anderson” or “Owner”) requires facility commissioning services (“Commissioning Services”) for projects or assignments related to the construction or renovation of MD Anderson’s facilities, re-commissioning of existing systems that support its facilities, or facility system assessments. The types of facilities for which Commissioning Services may be needed include inpatient care facilities, ambulatory treatment (i.e. outpatient care) facilities, general office facilities, research laboratories, central plant, or combinations thereof.
- 1.2. MD Anderson will contract directly with a Commissioning Services provider (“Service Provider” or “Commissioning Authority”) as an extension of Owner’s designated staff, to perform technical reviews of project design documents, observe completion of construction, verify equipment and system start-up by MD Anderson’s Construction Contractor, observe pre-functional tests and functional performance tests of individual systems and integrated systems against requirements of the Project Contract Documents, track deficiencies, and recommend solutions. Service Provider will have authority only as delegated by Owner and will have no authority to alter design or installation procedures. In general, Construction Contractor will have responsibility for the overall commissioning process.
- 1.3. Service Provider’s Role
 - 1.3.1. When acting as MD Anderson’s representative on a Project, Service Provider may be involved from a project’s design phase through the warranty phase. The primary role of the Service Provider during the design phase will be to review design intent to meet MD Anderson’s needs, develop project specific commissioning specifications referencing MD Anderson’s master construction specifications, and review design documents to ensure the design meets MD Anderson’s objectives.
 - 1.3.2. During construction and through the warranty period, Service Provider, with input from Construction Contractor, will write and coordinate execution of a Commissioning Plan, which includes observing and documenting each system’s performance to ensure that systems function in accordance with the Construction Contract Documents. Service Provider is not responsible for the design or for construction scheduling, cost estimating, or construction management, but may assist with resolving scheduling conflicts, problem solving on technical issues, or resolving non-conformance issues or deficiencies. MD Anderson’s Construction Contract Documents require the Construction Contractor to

organize, schedule, and conduct system start-up, to perform pre-functional tests, and to perform all system functional performance tests and integrated system tests.

- 1.3.3. Service Provider will ensure that sufficient staffing will be available for and appropriate to the complexity of scope, investigation, planning, design, sequencing, construction and close-out throughout the duration of Service Provider's Assignment

2. DEFINITIONS

- 2.1. **Architect/Engineer ("A/E")** – Architect/Engineer (A/E) means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001, and/or a firm contracted by MD Anderson, either directly through a design-build contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Construction Contract.
- 2.2. **Commissioning** – As used herein, “Commissioning” means a systematic process confirming that building components and systems have been installed, properly started, and consistently operated according to criteria set forth in the Construction Contract Documents, that all systems are complete and functioning in accordance with the project Design Intent Document at the onset of Substantial Completion, and that the Construction contractor has provided MD Anderson's facility staff with adequate system documentation and training prior to MD Anderson's acceptance of the Project or a portion thereof.
- 2.3. **Commissioning Plan** – Commissioning Plan shall have the meaning set forth in MD Anderson's Master Construction Specification Section 01 91 00, General Commissioning Requirements, a copy of which is attached hereto.
- 2.4. **Construction Contract Documents** – Construction Contract Documents are those documents identified as a component of the agreement (Contract) between Owner and Construction Contractor. They may include, but are not limited to, Drawings; Specifications; General Conditions and Owner's Special Conditions; and all pre-solicitation submittal deadline addenda.
- 2.5. **Construction Contractor** – Construction Contractor means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Construction Work, regardless of the type of construction contract used, so that the term as used herein includes a construction manager-at-risk or a design-build contractor as well as a general or prime contractor.
- 2.6. **Construction Work** – Construction Work means the administration, procurement, materials, equipment, construction and all services necessary for Construction Contractor, and/or its agents, to fulfill Construction Contractor's obligations under the Construction Contract.
- 2.7. **Deliverable** – Deliverable shall mean the specific output(s) created as the result of the Work performed during the course of a Work Assignment.

- 2.8. **Design Intent Document** – Design Intent Document shall mean the document furnished by the A/E that describes the complete architectural and engineering design intent for the Project including design guiding principles, assumptions, issues, recommendations, and narrative assessment of the architectural and infrastructure systems .
- 2.9. **Drawings** - Drawings mean that product of A/E which graphically depicts the Construction Work.
- 2.10. **Equipment Matrix** – Equipment Matrix shall have the meaning set forth in MD Anderson’s Master Construction Specification Section 01 91 00, General Commissioning Requirements, a copy of which is attached hereto.
- 2.11. **MD Anderson’s Design Guidelines** – MD Anderson’s Design Guidelines include *Master Construction Specifications, Design Guideline Elements* and other supplemental resources such as *Interior Finishes Standards, Installation Details* and *HVAC Control Contract Document Requirements*, are all combined under the heading of the MD Anderson’s (Owner’s) Design Guidelines. They are to be used in the development of contract documents for all MD Anderson Cancer Center design and construction projects and can be found at the following site: [MD Anderson's Design Guidelines](#).
- 2.12. **Project** – *Project* means all activities necessary for realization MD Anderson’s desired outcome of the construction including all ancillary and related work. This includes design, contract award(s), execution of the Construction Work itself, work by Owner’s forces and/or other contractors and fulfillment of all Construction Contract and warranty obligations.
- 2.13. **Service Provider** – Service Provider, when used in this document or any attachment hereto, shall mean Contractor as defined in the Agreement.
- 2.14. **Specifications** – Specifications mean the written product of A/E that establishes the quality and/or performance of products utilized in the Construction Work and processes to be used, including testing and verification for producing the Construction Work.
3. DETERMINATION OF WORK ASSIGNMENT SCOPE AND COMPENSATION TO BE PAID
- 3.1. **Work Assignment Scope.** The specific scope of services for each Work Assignment shall be determined in advance and in writing between MD Anderson and Service Provider.
- 3.2. **Request for Proposal (“RFP”).** MD Anderson will prepare an RFP identifying the Work Assignment by describing, in general, the intended scope and character of the Work Assignment, the schedule for completing the Work Assignment, the services to be provided by Contractor, and the MD Anderson representative who will be overseeing the Work Assignment (“**Work Assignment Representative**”).
- 3.3. **Proposal.** In response to an RFP, Service Provider shall provide MD Anderson with a written Proposal. The Proposal shall include the following:
- 3.3.1. A narrative description of Service Provider’s understanding of the required scope of services;

- 3.3.2. A detailed statement of the services to be provided and the Deliverables to be produced by Service Provider;
- 3.3.3. A description of particular phases in which the services are to be performed, if applicable;
- 3.3.4. A Fee Proposal detailing:
 - 3.3.4.1. the total proposed fee for providing the Commissioning Services, expressed as a “not-to-exceed” amount;
 - 3.3.4.2. the total proposed not-to-exceed amount for providing any Additional Services, and
 - 3.3.4.3. the total estimated amount for Reimbursable Expenses;
- 3.3.5. A proposed date to commence providing the Commissioning Services;
- 3.3.6. A list of all subcontractors, persons and firms that Service Provider proposes to use in the performance of its Work Assignment;
- 3.3.7. A schedule of hourly billing rates for any subcontractors that Service Provider proposes to use in the performance of Service Provider’s Work Assignment;
- 3.3.8. A HUB Subcontracting Plan, if required;
- 3.3.9. Any qualifications or conditions applicable to the Proposal; and
- 3.3.10. A summary statement of the amount of all previous Work Assignments initiated under this Agreement as of the date of the Proposal.
- 3.4. **HUB Requirements.** For any Proposal for which the total proposed price is \$100,000 or more, Service Provider shall submit HUB Subcontracting Plan in accordance with MD Anderson’s Rider 104, Policy on Utilization of Historically Underutilized Businesses.
- 3.5. **Proposal Review:** MD Anderson and Service Provider shall review Service Provider’s Proposal and negotiate any changes, clarifications or modifications thereto. Service Provider shall submit a revised Proposal incorporating any changes, clarifications or modifications made in the review process. MD Anderson may accept, reject or seek modification of any Proposal.
- 3.6. **Notice to Proceed:** Upon acceptance of a Proposal by MD Anderson, MD Anderson will issue a written Purchase Order to Service Provider. Subsequent to or concurrent with the issuing of the Purchase Order, MD Anderson will issue a written Notice to Proceed, which will authorize Service Provider to begin rendering the services identified in the Proposal on the date specified in the Notice to Proceed. The Notice to Proceed will include the Purchase Order number specific to the Work Assignment.

4. TERMINATION OF WORK ASSIGNMENT

- 4.1. **Termination for Cause:** Any Work Assignment being implemented pursuant to the terms of the Agreement may be terminated by either party upon ten (10) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the terminating party and such failure is not fully cured prior to the expiration of the notice period. Upon termination for cause, MD Anderson will make no further payment to Service Provider. If a termination for cause under this section is later determined to have been improper, the termination shall automatically convert to a termination for convenience and Service Provider's recovery for termination shall be strictly limited to the compensation allowable under paragraph 4.3.
- 4.2. **Termination for Convenience:** Any Work Assignment being implemented pursuant to the terms of this Agreement may be terminated for convenience by MD Anderson in whole or in part, upon at least ten (10) days' written notice to Service Provider.
- 4.3. **Compensation:** In the event of termination not the fault of Service Provider, Service Provider shall be entitled to compensation for all Work satisfactorily performed prior to the termination date, together with approved Reimbursable Expenses then due, provided Service Provider delivers to MD Anderson statements, accounts, reports and other materials as required for payment along with all reports, documents and other materials prepared by Service Provider prior to termination.

5. GENERAL DESCRIPTION OF SERVICES

The following indicates services that Service Provider may be required to perform based on a specific Work Assignment RFP.

5.1. Design Phase

- 5.1.1. Develop and communicate an understanding of project requirements in conjunction with MD Anderson, Construction Contractor, and the project design team. For renovation projects, this will include becoming familiar with existing building and associated existing equipment and systems that may be impacted by the construction or renovation.
- 5.1.2. Review MD Anderson's Design Guidelines and the project facility program or pre-design report (if applicable) to develop familiarity with the Project scope.
- 5.1.3. Review and comment on design phase project deliverables, including Design Intent Document, drawings, control sequences and specifications for clarity, completeness, and compliance with MD Anderson's Design Guidelines at various stages of development (during schematic design, design development and construction document phases).
- 5.1.4. During the schematic design and design development phases, recommend alternative design approaches or value engineering items based on project design phase reviews that will provide equal or better performance at lower life cycle cost, including initial cost, utility costs, and operating and maintenance costs.
- 5.1.5. Provide input to the project team that will improve or reduce system maintenance and operating costs over the life of the equipment and systems.

- 5.1.6. Assist the project design team with preparation of project-specific commissioning specifications for all commissioned equipment based on MD Anderson's Design Guidelines.
- 5.1.7. Participate in design review meetings and technical work sessions with MD Anderson, the project design team, and Construction Contractor.

5.2. Construction Phase

- 5.2.1. Represent MD Anderson in review and approval of Contractor's commissioning activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation, clear and regular communications and consultations with all necessary parties, frequently updated timelines and schedules, and technical expertise.
- 5.2.2. With Construction Contractor's input, write the project-specific Commissioning Plan.
- 5.2.3. Participate in Construction Contractor's commissioning meetings, including pre-installation meetings and pre-commissioning meetings with subcontractors.
- 5.2.4. Review and comment on Construction Contractor's product and shop drawing submittals applicable to systems being commissioned for compliance with commissioning needs, concurrent with project design team and MD Anderson reviews.
- 5.2.5. Review and comment on test, adjust, and balance ("TAB") reports for compliance with ASHRAE 170 as well as USP 800 where applicable.
- 5.2.6. Before start-up, gather and review current control sequences and interlocks and work with Construction Contractor and the project design team until sufficient clarity has been obtained, in writing, to enable preparation of detailed test procedures.
- 5.2.7. With assistance from Construction Contractor, A/E and equipment manufacturers, write the functional performance and integrated system test procedures for equipment and systems.
- 5.2.8. Verify start-up and pre-functional testing of all systems as defined in the Commissioning Plan. Ensure equipment tags in field are accurate with the Equipment Matrix. Monitor and witness execution of functional performance tests, demonstration of other tests (such as ductwork and pipe pressure testing), integrated systems testing, and document results, follow-up, and signoffs. Functional performance tests are to include operating the system and components through each of the written sequences of operation, and other significant modes and sequences, including but not limited to start-up, shutdown, unoccupied mode, manual mode, staging, miscellaneous alarms, power failure, security alarm when impacted and interlocks with other systems or equipment.
- 5.2.9. Provide recommendations to resolve deficiencies noted during the commissioning process.
- 5.2.10. Perform site visits, as necessary, to observe component and system installations and document findings in an inspection report. Attend selected project construction meetings

to obtain information on construction progress. Review project construction meeting minutes for revisions/substitutions relating to the commissioning process.

- 5.2.11. Review requests for information and change orders for impact on the Commissioning Plan and Construction Contract Documents.
- 5.2.12. Analyze functional performance test trend logs and monitoring data to verify performance.
- 5.2.13. Maintain a master deficiency and resolution log and a separate record of tests. Provide written progress reports and test results with recommended actions to MD Anderson.
- 5.2.14. Review equipment warranties to ensure that MD Anderson's responsibilities are clearly defined.
- 5.2.15. Participate in training of MD Anderson's operating and maintenance personnel. Construction Contractor will have primary training responsibility.
- 5.2.16. Review operating and maintenance ("O&M") manuals for commissioned equipment and systems.
- 5.2.17. Review and assist in the preparation and organization of Construction Contractor's commissioning documentation, in the form of a "Commissioning and Close-out Manual." The Commissioning and Close-out Manual is to contain all documentation related to the commissioning process, including but not limited to: pre-functional checklists and test results, all related correspondence, functional performance test procedures and results; integrated systems test procedures and results, deficiency reports, data trends, punch lists, and signoffs.
- 5.2.18. Service Provider's project deliverables will be in the form of a Commissioning Report that will become part of the Construction Contractor's Commissioning and Close-out Manual. The Commissioning Report is to include written narratives and other documentation of Service Provider's deliverables during the commissioning process, such as written test procedures, test results and remedial recommendations, meeting records, deficiency records, etc. All deliverables must be provided to MD Anderson in electronic file format.

5.3. Warranty Period

- 5.3.1. Facilitate opposite season or deferred testing and deficiency corrections and provide the final testing documentation for the Commissioning and Close-out Manual and O&M manuals.
- 5.3.2. Upon MD Anderson's request and schedule, return to the site during the 12-month warranty period and review with MD Anderson's O&M personnel the current building operation and the condition of outstanding issues related to the original and seasonal commissioning. Identify problems or concerns that operating personnel may have with operating the building as originally intended and recommend solutions.

- 5.3.3. Provide suggestions for improvements and for recording suggested changes in the O&M manuals. Identify areas that may come under warranty or under the original construction contract.
- 5.3.4. Assist MD Anderson in developing reports and documents and requests for services to remedy outstanding problems.
- 5.3.5. Upon MD Anderson's request and schedule, return to the site at 6 months and 11 months for a post-occupancy evaluation of the current building operation.

5.4. Systems to be Commissioned

Depending on specific project scope and requirements, the following systems and assemblies will be commissioned:

- 5.4.1. Building automation system, including linkages to remote monitoring and control sites and any security-related control systems or interlocks.
- 5.4.2. Heating, ventilating and air conditioning systems including stairwell pressurization systems, smoke control systems, fire/smoke dampers.
- 5.4.3. Mechanical equipment alignment and vibration testing.
- 5.4.4. Lighting control systems.
- 5.4.5. Lightning protection.
- 5.4.6. Refrigeration systems.
- 5.4.7. Emergency power systems including generators and automatic transfer switches.
- 5.4.8. Uninterruptible power supply (UPS) systems.
- 5.4.9. Life safety systems (fire alarm, egress pressurization, fire detection and protection).
- 5.4.10. Room and building pressurization.
- 5.4.11. Chemical fume hood and biological safety cabinet airflow.
- 5.4.12. Normal power systems.
- 5.4.13. Domestic and process water pumping and mixing systems.
- 5.4.14. Equipment sound control systems and testing.
- 5.4.15. Network and telecommunication systems.
- 5.4.16. Communication systems including nurse call systems.
- 5.4.17. Security systems.
- 5.4.18. Irrigation systems.
- 5.4.19. Plumbing systems.
- 5.4.20. Conveying systems.
- 5.4.21. Medical air, gas and vacuum systems.
- 5.4.22. Building envelope.
- 5.4.23. Commercial solar sun/shading control systems (automated and manual).
- 5.4.24. Other unique systems as directed by MD Anderson.

Attachments

- Attachment 1 – MD Anderson Master Construction Specification Section 01 91 00, *General Commissioning Requirements*
- Attachment 2 – Request for Proposal Form
- Attachment 3 – Assignment Proposal Form
- Attachment 4 – Additional Services Proposal Form
- Attachment 5 – Notice to Proceed Form

RIDER 101

SCOPE OF SERVICES

ATTACHMENT 1:

SPECIFICATION SECTION 01 91 00

GENERAL COMMISSIONING REQUIREMENTS

SECTION 01 91 00 – GENERAL COMMISSIONING REQUIREMENTS

PART 1 – GENERAL

1.1. RELATED DOCUMENTS

- 1.1.1. The Contractor's attention is specifically directed, but not limited to, the Uniform General Conditions for University of Texas System Building Construction Contracts (UTUGCs) for other requirements.
- 1.1.2. Specifications throughout all Divisions of the Project Manual, which pertain to operable equipment and/or building systems, are directly applicable to this Section, and this Section is directly applicable to them.

1.2. SUMMARY

- 1.2.1. This Section establishes general and administrative requirements pertaining to commissioning of equipment, devices, and building systems installed on renovation and new construction projects delivered under various contracting methodologies. Technical requirements for commissioning of particular systems and components are established in the Contract Documents.
- 1.2.2. It is of primary concern that all operable systems installed in the Project perform in accordance with the Contract Documents and the specified Owner's operational needs. During Commissioning, the Contractor systematically demonstrates to the Owner that the operable systems are properly performing in strict accordance with the Contract Documents.
- 1.2.3. Commissioning requires cooperation and involvement of all parties throughout the construction process. The Contractor shall deliver a successful Commissioning process. Successful Commissioning requires that installation of all building systems complies with Contract Document requirements and that full operational check-out and necessary adjustments are performed prior to Substantial Completion, with the exception of deferred tests approved in advance by Owner.
- 1.2.4. Commissioning will encompass and coordinate traditionally separate functions of system documentation, Inspection, Prefunctional Checklists and start-up, control system calibration and point-to-point checkout, testing, adjusting, and balancing, Functional Performance Tests, Integrated System Tests, Contractor demonstration to the Owner, and training of Owner's personnel. This requires assembling all related documentation into one Commissioning Manual. Commissioning is intended to achieve the following specific objectives of the Contract Documents.
 - 1.2.4.1. Verify and document proper installation and design parameters of equipment, systems, and integrated systems.
 - 1.2.4.2. Ensure that operating and maintenance and Commissioning documentation requirements are complete.
 - 1.2.4.3. Provide Owner with functional buildings and systems that meet the Contract Document requirements at Substantial Completion.

1.3. DEFINITIONS

Capitalized terms used in this Section shall have the meanings as set forth in the Contract, the UTUGCs, or both, unless otherwise defined or modified below.

- 1.3.1. Commissioning: A systematic process confirming that building systems have been installed, properly started, and consistently operated in strict accordance with the Contract Documents, that all systems are complete and functioning in accordance with the Contract Documents at Substantial Completion, and that Contractor has provided Owner adequate system documentation and training. Commissioning includes Deferred Tests, as approved by Owner.
- 1.3.2. Commissioning Authority: Party employed on the Project, by Owner under a Separate Contract, to provide certain commissioning services as defined herein under Commissioning Authority's Role and Responsibilities. Commissioning Authority does not have authority to alter design or installation procedures without the written approval of Owner and the A/E.
- 1.3.3. Commissioning Plan: A document that provides the structure, schedule, and coordination plan for Commissioning during the construction phase and through the warranty period. The Commissioning Plan will describe the project and systems to be commissioned, Commissioning activities, procedures to follow throughout Commissioning, roles and responsibilities for each participant, and general description of testing and verification methods. The Commissioning Plan must satisfy all Test Requirements set forth in the Contract Documents.
 - 1.3.3.1 Download an electronic version of the Commissioning Plan Template for submittal purposes at the following website:

<https://www.mdanderson.org/content/dam/mdanderson/documents/about-md-anderson/about-us/doing-business/owner's-design-guidelines/supplemental-resources/Commissioning%20Plan%20Template.zip>
- 1.3.4. Commissioning Team: Working group made up of representative(s) from the A/E, Contractor, Test, Adjust, and Balance Firm, Building Automation System vendor, specialty manufacturers and suppliers, Owner, and Commissioning Authority. Contractor will provide ad-hoc representation of Subcontractors on the Commissioning Team as required for implementation of the Commissioning Plan.
- 1.3.5. Deferred Tests: Functional Performance or Integrated System Tests performed after Substantial Completion, with Owner's approval, due to seasonal requirements, site conditions, or both, that prohibit the test from being performed prior to Substantial Completion.
- 1.3.6. Deficiency: Condition of a component, piece of equipment, or system that is not in compliance with the Contract Documents.
- 1.3.7. Factory Testing: Testing of equipment at the factory, by factory personnel with an Owner's representative present, if deemed necessary by Owner.
- 1.3.8. Functional Performance Test: Test of dynamic function and operation of equipment and systems executed by Contractor. Systems are tested shall be various modes, such as during low cooling or heating loads, high loads, component failures, unoccupied, varying outside air temperatures, life safety conditions, power failure, etc. Systems are run through all specified sequences of operation. Components are verified to be responding in accordance with Contract Documents. Functional Performance Tests are executed after start-ups and Prefunctional Checklists are complete.
- 1.3.9. Functional Performance Test Procedures: Commissioning protocols and detailed test procedures and instructions in tabular and script-type format that fully describe system configuration and steps required to determine if the system is performing and functioning properly.
- 1.3.10. Integrated System Test: Test of dynamic function and operation of multiple systems. Integrated System Tests are conducted under various modes, such as fire alarm and emergency situations, life safety conditions, power failure, etc. Systems are integrally operated

through all specified sequences of operation. Components are verified to be responding in accordance with Contract Documents. Integrated System Tests are executed after Functional Performance Tests are complete and prior to Substantial Completion. Integrated System Tests provide verification that the integrated systems will properly function according to the Contract Documents.

- 1.3.11. Integrated System Test Procedures: Commissioning protocols and detailed test procedures and instructions in tabular and script-type format that fully describe system configurations and steps required to determine if the interacting systems are performing and functioning properly.
 - 1.3.12. Manual Test: Use of hand-held instruments, immediate control system readouts or direct observation to verify performance (contrasted to analyzing trend data to make the "observation").
 - 1.3.13. Non-Compliance Report (NCR): A tool used to document an item or condition that does not meet the Contract Documents.
 - 1.3.14. Prefunctional Checklist: A list of static inspections and material or component tests that verify proper installation of equipment (e.g., belt tension, oil levels, labels affixed, gages in place, sensors calibrated, etc.). The word Prefunctional refers to before Functional tests. Prefunctional Checklists must include the manufacturer's start-up checklist(s).
 - 1.3.15. Start-up: The activities where equipment is initially energized tested and operated. Start-up is completed prior to Functional Performance Tests.
 - 1.3.16. Test, Adjust, and Balance (TAB) Firm: The Owner may engage a Test, Adjust, and Balance Firm for the Project under a Separate Contract. When engaged for the Project, the TAB Firm shall be a part of the Commissioning Team and shall provide services as set forth in the Specifications.
 - 1.3.17. Test Requirements: Requirements specifying what systems, modes and functions, etc. must be tested. Test Requirements are not detailed test procedures. Test Requirements and acceptance criteria are specified in the Contract Documents.
 - 1.3.18. Training Plan: A detailed plan prepared by the Contractor, and reviewed by the Owner, that outlines the training activities, instructors, time durations, and system requirements in accordance with the Contract Documents and Commissioning Plan.
 - 1.3.19. Trending: Data collection of monitoring points using the Building Automation System or dataloggers.
- 1.4. COORDINATION

1.4.1. Commissioning Team:

1.4.1.1. Owner's Members

- 1.4.1.1.1. Representatives assigned by Owner's Designated Representative
- 1.4.1.1.2. Commissioning Authority, when engaged for the Project.
- 1.4.1.1.3. A/E.
- 1.4.1.1.4. TAB Firm, when engaged for the Project.

1.4.1.2. Contractor's Members:

- 1.4.1.2.1. Individuals, each having authority to act on behalf of the entity they represent, explicitly organized to implement all Commissioning activities through coordinated actions.
- 1.4.1.2.2. Representatives of Contractor, including but not limited to, project manager and commissioning coordinator, Subcontractors, installers, and equipment suppliers. Owner must approve Contractor's commissioning coordinator.

1.4.2. Scheduling:

- 1.4.2.1. Contractor shall integrate all Commissioning activities into the Baseline Schedule and the Work Progress Schedule. All parties will address scheduling problems and make necessary notifications in a timely manner to expedite all Commissioning activities.
- 1.4.2.2. Contractor shall provide the initial schedule of primary Commissioning activities at the pre-commissioning meeting. Prior to the first Start-up or Prefunctional Checklist test occurring, Contractor shall have incorporated and integrated all Commissioning activities into the Baseline Schedule and Work Progress Schedule with appropriately linked predecessors and successors.

1.5. ROLES AND RESPONSIBILITIES

- 1.5.1. Roles and responsibilities of Commissioning Team members are provided in this Section to clarify the commissioning process.

1.5.2. Owner's Role and Responsibilities:

- 1.5.2.1. Review Specifications containing Commissioning requirements.
- 1.5.2.2. Provide Owner's Test Requirements to Commissioning Team.
- 1.5.2.3. Approve the Commissioning Plan, Training Program and Contractor's schedule for completing all Commissioning activities.
- 1.5.2.4. Participate in Commissioning activities, including the following:
 - 1.5.2.4.1. Commissioning Team meetings.
 - 1.5.2.4.2. Review and approve Commissioning Plan, Training Plan, Prefunctional Checklists, Functional Performance Test Procedures, Functional Performance Tests, Integrated System Test Procedures, Integrated System Tests, Deferred Tests, Trending, Training Plan and other Commissioning documents.
 - 1.5.2.4.3. Attendance at Contractor's training sessions in operation and maintenance of systems and equipment.
 - 1.5.2.4.4. Observation of Contractor's demonstration of systems and equipment operation.
 - 1.5.2.4.5.

1.5.3. Commissioning Authority's Role and Responsibilities, when engaged for the project.

- 1.5.3.1. Prepare and submit the Commissioning Plan for Owner's approval.

- 1.5.3.2. Review, comment and approve on Contractor's schedule for Commissioning activities.
 - 1.5.3.3. Participate in Contractor-led Pre-Commissioning Meeting.
 - 1.5.3.4. Conduct and document Commissioning Team meetings.
 - 1.5.3.5. Perform site visits as necessary or in conjunction with Commissioning Team meetings to observe component and system installations. Attend selected Project progress meetings to obtain information on construction progress.
 - 1.5.3.6. Review and comment on Submittals and coordination drawings applicable to systems being commissioned.
 - 1.5.3.7. Review and comment on Contractor-prepared Prefunctional Checklist and other Contractor-prepared documents, including Operating and Maintenance Manuals and Training Plan.
 - 1.5.3.8. Prior to equipment Start-ups, review the control sequences and coordinate with the Contractor and A/E in order to prepare the Functional Performance Test and Integrated System Test procedures.
 - 1.5.3.9. Witness equipment Start-ups as executed by Contractor.
 - 1.5.3.10. Write Functional Performance Test Procedures and Integrated System Test Procedures for Contractor's execution of tests.
 - 1.5.3.11. Witness, verify, and document results of Functional Performance Tests and Integrated System Tests.
 - 1.5.3.12. Coordinate resolution of Deficiencies identified during Commissioning, Deferred Tests, and during the warranty period.
 - 1.5.3.13. Review Contractor's Training Plan.
 - 1.5.3.14. Compile Commissioning documentation for Contractor-prepared Commissioning and Closeout Manual including test documentation, Deficiency reports and solution results; non-compliance issue tracking; and recommendations on continuous commissioning, best practices, and preventive maintenance.
- 1.5.4. Architect/Engineer's Role and Responsibilities:
- 1.5.4.1. Attend Commissioning Team meetings.
 - 1.5.4.2. Review and Approve Commissioning Plan, Training Plan, Prefunctional Checklist, Functional Performance Test Procedures, Functional Performance Tests, Integrated System Test Procedures, Integrated System Tests, Deferred Tests, and other Commissioning documents.
 - 1.5.4.3. Review and Approve Contractor's Training Plan.
 - 1.5.4.4. Review and Approve Test, Adjust, and Balance plan as defined in Specification 23 05 90 and 23 05 93.
 - 1.5.4.5. Approve technical requirements for correction of Deficiencies identified during Commissioning, Deferred Tests, and during the warranty period.

1.5.4.6. Review Operating and Maintenance Manuals.

1.5.5. Contractor's Role and Responsibilities:

- 1.5.5.1 Produce for Owner, Commissioning Authority and A/E's approval, the Commissioning Plan, Prefunctional Checklist, Functional Performance Test Procedures, Integrated System Test Procedures, Equipment Matrix of all devices, systems and equipment supplied, and other Commissioning documents.
 - 1.5.5.1.1 Commissioning Authority will produce the Commissioning Plan, project-specific Functional Performance Test Procedures, and project-specific Integrated System Test Procedures.
 - 1.5.5.1.2 Contractor shall review and provide comments on documents produced by the Commissioning Authority, and shall accept the Commissioning Plan, Functional Performance Test Procedures, and Integrated System Test Procedures as approved by Owner.
- 1.5.5.2 As the Project progresses, add specific checklists, test procedures, schedules, recorded results, action lists, signoff sheets and other documents for the Commissioning and Close-out Manual. Administer updates to the Commissioning and Close-out Manual with the intent that all Commissioning Team members will have up-to-date documentation as the Commissioning progresses.
- 1.5.5.3 Provide an individual, subject to Owner's approval, experienced in construction and Commissioning of building systems to organize, schedule, conduct, and document the Commissioning Plan and the Commissioning process. The Contractor shall assign this individual to act as the Contractor's Commissioning Coordinator. The Contractor's Commissioning Coordinator may have additional duties such as MEP Coordinator, but not as Project Manager or Superintendent. Submit qualifications demonstrating the Commissioning Coordinator's technical expertise and experience to the Owner for approval. In the event that Contractor chooses to subcontract its Commissioning obligations, then Contractor must submit the subcontractor's qualifications and personnel to Owner for Owner's approval.
- 1.5.5.4 Furnish and install systems that meet all requirements of the Contract Documents. Perform construction inspections, Start-ups, Prefunctional Checklists, Functional Performance Tests, and Integrated System Tests in accordance with the Contract Documents and Commissioning Plan. Correct any Deficiencies identified during these processes.
- 1.5.5.5 Ensure that Commissioning activities are incorporated into the Baseline Schedule and the Work Progress Schedule.
- 1.5.5.6 Submit inspection and Start-up documentation to Owner in accordance with this Section – 01 91 00 General Commissioning Requirements, Section 01 45 00 – Project Quality Control, Section 01 77 00 – Project Close-out Procedures, Specifications, and the Commissioning Plan.
- 1.5.5.7 Furnish copies of all Submittals, manufacturers' literature, maintenance information, and any other information required for the Commissioning process. Contractor must submit to Owner installation and checkout materials actually shipped inside equipment and actual field checkout sheet forms used by factory or field technicians. Cross-reference Section 01 31 00 – Project Administration and Section 01 77 00 – Project Close-out Procedures (Operating and Maintenance Manuals) for additional required documentation.

- 1.5.5.8 Schedule and conduct pre-installation meetings and pre-commissioning meetings with Subcontractors and equipment suppliers related to Commissioning. Contractor must invite A/E and Owner to attend the pre-installation meetings and pre-commissioning meetings.
- 1.5.5.9 Provide qualified personnel, including Subcontractors as required, to fully perform the testing and operational demonstrations required by the Contract Documents and the Commissioning Plan, including any Deferred Tests or re-testing related to warranty work.
- 1.5.5.10 Correct Deficiencies identified during any stage of commissioning prior to proceeding, unless approved by Owner.
- 1.5.5.11 Provide training to Owner. Coordinate Subcontractor and vendor participation in training sessions.
- 1.5.5.12 Perform Deferred Tests and make necessary amendments to Operating and Maintenance Manuals and Record Documents for applicable issues identified during the Deferred Tests.
- 1.5.5.13 Contractor shall be responsible for the following activities, and may contract with a Building Automation System (BAS) vendor for these activities.
 - 1.5.5.13.1 Provide on-site technician skilled in software programming and hardware operation to exercise sequences of operation and to correct controls deficiencies identified during Commissioning. Contractor must provide Record Documents reflecting correction of controls deficiencies identified during Commissioning.
 - 1.5.5.13.2 Provide instrumentation, computer, software and communication resources necessary to demonstrate compliance with the Contract Documents and the Commissioning Plan during the Prefunctional Checklist activities, Functional Performance Tests and Integrated System Tests of Building Automation System equipment.
 - 1.5.5.13.3 Attend pre-commissioning meetings and Commissioning meetings including seasonal, post occupancy, or deferred Commissioning meetings and activities as deemed appropriate by Owner. Prepare BAS Training Plans with Commissioning Team and perform training as specified in Contract Documents and Commissioning Plan.
 - 1.5.5.13.4 Maintain comprehensive system calibration and checkout records. Submit records to Owner.
 - 1.5.5.13.5 Set up, capture, analyze, and report trend logs as requested by Owner to substantiate proper systems operation.
- 1.5.6 Test, Adjust, and Balance Firm's Role and Responsibilities, when engaged for the project:
 - 1.5.6.1 Attend pre-commissioning meetings and Commissioning Team meetings including seasonal, post occupancy, or deferred Commissioning meetings and activities as deemed appropriate Owner.
 - 1.5.6.2 Submit Test, Adjust, and Balance Plan and forms describing methodology for performance of Test, Adjust, and Balance procedures specific to this Project to Owner/Engineer of record for review.

- 1.5.6.3 Cooperate with Contractor and Contractor's Building Automation System vendor, if any, during Commissioning.
- 1.5.6.4 Re-balance as needed to correct any Deficiencies identified during Commissioning.
- 1.5.6.5 Review BAS graphics and performance tests for accuracy, note deficiencies.
- 1.5.6.6 Provide T A B data to Contractor and Commissioning Team before Contractor begins Functional Performance Tests.

1.6 EQUIPMENT DOCUMENTATION REQUIREMENTS

1.6.1 Equipment Matrix:

- 1.6.1.1 Contractor shall submit a complete listing of all equipment, devices, and systems, with certain information as herein noted, within twenty-one (21) days of issuance of the Notice to Proceed with Construction and at least seven (7) days prior to submission of the first Application for Payment. This listing shall be referred to as the Equipment Matrix. Download an electronic version of this spreadsheet in Microsoft Excel format to use as a template for submittal purposes at the following website:

<https://www.mdanderson.org/content/dam/mdanderson/documents/about-md-anderson/about-us/doing-business/owners-design-guidelines/supplemental-resources/Equipment%20Matrix%20Template.xlsx>

- 1.6.1.2 Contractor shall coordinate Contractor's response to this requirement with Contractor's preparation of the Baseline Schedule, Work Progress Schedule, Submittal Schedule, Schedule of Values, and list of all equipment. Refer to Section 01 32 00 – Project Planning and Scheduling and Section 01 31 00 – Project Administration.

- 1.6.1.2.1 To the extent practical, Contractor should minimize redundant efforts in favor of a single, organized approach to all documentation required for Project equipment, systems, and devices.

- 1.6.1.3 The Equipment Matrix shall be formatted as a spreadsheet per Owner's template, with capability for printing various selected data columns to meet documentation requirements at various stages of construction, and for different purposes as required by various Technical Sections. The Equipment Matrix shall be updated as the Project progresses and submitted periodically as requested by Owner. Provide Owner with an electronic version of the final approved Equipment Matrix at or before Project Close-out.

- 1.6.1.3.1 Contractor may elect to combine the Submittal Schedule and Equipment Matrix into one spreadsheet (with multiple tabbed sheets) that Contractor updates as the Project progresses.

- 1.6.1.4 The Equipment Matrix shall identify all operable devices and equipment grouped by the Construction Specification Institute (CSI) Master Format under the system they are primarily categorized under. When sorted by the column for system identification, the resulting printout must identify all system components, regardless of whether they are mechanical, electrical, or otherwise.

- 1.6.1.5 Contractor shall continue to update the Equipment Matrix for each device or system. Owner will assist the Contractor in collecting information on Owner-furnished and Contractor-installed equipment. The Equipment Matrix shall include the following column headings, as a minimum, for each device per specification 20 05 53:

- 1.6.1.5.1 Equipment Plan Designation: Equipment Naming Convention (equipment acronym and sequential number) from Contract Documents.
- 1.6.1.5.2 Specification Section number.
- 1.6.1.5.3 Building ID: Shall be obtained from Owner.
- 1.6.1.5.4 Location / Room Number: Owner's Wayfinding Codes from Owner's Space Management database referring to room number or building location. Shall be obtained from Owner.
- 1.6.1.5.5 Asset Short Description: The asset short description is to be a very short textual description. Type a brief, identifying description for the asset followed by a comma then the "Equipment Plan Designation". If multiple units, of same type, include equipment ID number from the Construction Documents. This field is limited to 80 characters. Example= Pump, Secondary Chilled Water, SCHWP-01-2B.
- 1.6.1.5.6 Asset Long Description: A more complete description of the asset to make it clearer to the Owner's maintenance group. Include any distinguishing details relevant to identifying the asset from other identical units (color, physical location within a room, and so on. Example: Horizontal split case pump located in North end of room.
- 1.6.1.5.7 System Level Asset: Type of system that the equipment serves. Shall be obtained from Owner. Example: Domestic Hot Water
- 1.6.1.5.8 Product submittal reference number(s).
- 1.6.1.5.9 Product submittal approval date.
- 1.6.1.5.10 Name of installing Subcontractor.
- 1.6.1.5.11 Installing Subcontractor contact information.
- 1.6.1.5.12 Equipment Manufacturer.
- 1.6.1.5.13 Equipment model number.
- 1.6.1.5.14 Equipment serial number.
- 1.6.1.5.15 Emergency Power: Note whether equipment is served from emergency power system.
- 1.6.1.5.16 Equipment manufacturer's representative (Vendor).
- 1.6.1.5.17 Equipment manufacturer's representative (Vendor) contact information.
- 1.6.1.5.18 Manufacturer's purchase order number.
- 1.6.1.5.19 Asset Cost: Equipment purchase price excluding all auxiliary costs.
- 1.6.1.5.20 Start-up Date: Date of initial equipment or device start-up by the Contractor.
- 1.6.1.5.21 Prefunctional Checklist completion date.
- 1.6.1.5.22 Functional Performance Test completion date.
- 1.6.1.5.23 Integrated Systems Test completion date.

1.6.1.5.24 Substantial Completion date.

1.6.1.5.25 Manufacturer's warranty start date.

1.6.1.5.26 Warranty End Date: The date on which the asset warranty ends. (Default is one year after the Substantial Completion Date unless a longer warranty period is requested or provided.)

1.6.1.6 Owner will furnish the following additional information; allow column headings for this data:

1.6.1.6.1 Asset Number

1.6.1.6.2 Parent ID

1.6.1.6.3 Asset Group Code

1.6.1.6.4 Cost Center

1.6.1.6.5 Critical Factor

1.6.1.6.6 Estimated Asset Life

1.6.1.6.7 Asset Status

1.6.1.6.8 Work Group

1.6.1.6.9 Work Area

PART 2- EXECUTION

2.1 COMMISSIONING PLAN

2.1.1 When a CxA has not been engaged for the project, Contractor shall submit draft Commissioning Plan to Owner and A/E for review within twenty-one (21) days of issuance of the Notice to Proceed with Construction or within ninety (90) days prior to initial installation of materials or equipment that will undergo Start-up and Functional Performance Tests, as directed by Owner.

2.1.2 Contractor shall allow in the Work Progress Schedule a minimum of twenty-one (21) days after the receipt by the Owner of the draft Commissioning Plan Submittal for the Owner to submit review comments to Contractor.

2.1.3 Contractor shall incorporate Owner's review comments and resubmit the revised Commissioning Plan to Owner within fourteen (14) days of receipt of the review comments.

2.1.4 Contractor shall allow in the Work Progress Schedule an additional fourteen (14) days for Owner's approval of the resubmitted Commissioning Plan that incorporates Owner's review comments.

2.1.5 PRE-COMMISSIONING MEETING

2.1.6 Upon obtaining Owner's approval of the Commissioning Plan, Contractor shall schedule, plan, and conduct a Pre-Commissioning Meeting with all parties involved in Commissioning. This meeting should include the major Subcontractors, specialty

manufacturers/suppliers, A/E, Test, Adjust, and Balance Firm, Commissioning Authority, and Owner's representatives as participants.

2.1.7 Contractor shall prepare for the Pre-Commissioning Meeting by creating drafts of the following documents with input from the Owner. Commissioning Authority, when engaged for the project, will prepare the Commissioning Plan, Functional Performance Test Procedures and Integrated System Test Procedures.

2.1.7.1 Approved Commissioning Plan including the Equipment Matrix and the Close-out and Documentation Matrix as defined in Section 01 77 00 – Project Close-out Procedures.

2.1.7.2 Baseline Schedule and Work Progress Schedule incorporating Commissioning activities.

2.1.7.3 Prefunctional Checklists.

2.1.7.4 Functional Performance Test Procedures.

2.1.7.5 Integrated System Test Procedures.

2.1.8 Contractor or Commissioning Authority when engaged for the project shall conduct the Pre-Commissioning Meeting and review all aspects of the Commissioning Plan. All documentation will be discussed and all test procedures and forms reviewed for approval with the Owner. Contractor shall prepare an outline noting responsibilities of the various parties involved in Commissioning for review at this meeting.

2.1.9 The Commissioning Plan shall be reviewed with all attendees and the scope of work discussed. Contractor should be prepared to distribute copies of the pertinent sections to the various Subcontractors involved in Commissioning.

2.1.10 Contractor shall present Commissioning target dates for the Project. These dates and durations shall be incorporated in the Baseline Schedule and the Work Progress Schedule in accordance with Section 01 32 00 – Project Planning and Scheduling.

2.2 REPORTING

2.2.1 Contractor shall provide status reports to Owner at frequencies directed by Owner.

2.2.2 Contractor shall communicate at least monthly with all members of the Commissioning Team, keeping them apprised of Commissioning progress and scheduling changes.

2.2.3 Contractor shall submit Non-Compliance and Deficiency reports to Owner within five (5) days of the date the Non-Compliance or Deficiency is first observed. This includes responses to items noted by the Commissioning Authority.

2.2.4 Contractor shall provide final Commissioning documentation to Owner in accordance with Section 01 77 00 – Project Close-out Procedures, which will become part of the Commissioning and Close-out Manual.

2.3 TEST EQUIPMENT

2.3.1 Contractor shall provide all specialized tools, test equipment and instruments required to execute start-up, checkout, and testing of equipment.

- 2.3.2 All specialized tools, test equipment and instruments required to execute start-up, checkout, and testing of equipment shall be of sufficient quality and accuracy to test and measure system performance within specified tolerances. A testing laboratory must have calibrated test equipment within the previous twelve (12) months. Calibration shall be NIST traceable. Contractor must calibrate test equipment and instruments according to manufacturer's recommended intervals and whenever the test equipment is dropped or damaged. Calibration tags must be affixed to the test equipment or certificates readily available.

2.4 PRE FUNCTIONAL CHECKLIST

- 2.4.1 Contractor shall provide a Prefunctional Checklist for each system to Owner, Commissioning Authority and A/E for review.
- 2.4.1.1 Contractor shall provide a draft version of each individual Prefunctional Checklist at a pre-installation meeting for the system. Based on discussions at a pre-installation meeting and subsequent as-constructed conditions, Contractor shall amend and revise each Prefunctional Checklist as appropriate prior to requesting system inspection from the Owner.
- 2.4.1.2 Contractor shall submit the final approved Prefunctional Checklist and all supporting documentation prior to requesting Start-up and Functional Performance Tests.
- 2.4.2 Contractor shall review the installation and Contract Documents for each system and shall provide written confirmation of the following if not included in the Prefunctional Checklist.
- 2.4.2.1 All required test reports and certifications have been submitted and accepted by Owner. Contractor must provide certification of acceptance from manufacturer's representative.
- 2.4.2.2 Evidence that A/E has approved all Submittals for each component device.
- 2.4.2.3 All valve charts, wiring diagrams, control schematics, electrical panel directories, etc. have been submitted and approved, and that all devices have been installed in accordance with the Contract Documents.
- 2.4.2.4 All tabulated data has been submitted for each system and for each device.
- 2.4.2.5 Each component device has been installed in accordance with applicable codes, the Contract Documents, and manufacturer's written recommendations.

2.5 INITIAL START-UP

- 2.5.1 Start-up of Independent Devices:
- 2.5.1.1 Prior to Start-up, Contractor shall not energize or activate, or allow to be energized or activated, any operable device until Contractor has verified to Contractor's own satisfaction that all Contract Document requirements for the operable device have been met and have been documented in the Prefunctional Checklists.
- 2.5.1.2 Contractor may energize or start-up independent devices for operational check-out and testing only after Contractor and manufacturer's representative or engineering technician (if required by the Contract Documents) have inspected and accepted the installation. The installation must not vary from provisions of the applicable Specifications and the manufacturer's written recommendations for Start-up.
- 2.5.1.3 When Start-up of equipment or systems have the potential to impact Owner's daily operations or when the Contract Documents require the Owner to witness Start-up,

Contractor must provide advance notice to Owner in accordance with the procedures outlined in the Contract Documents prior to Start-up. Contractor may not proceed with Start-up without the Owner's written approval.

2.5.2 Start-up of Building Systems:

2.5.2.1 Contractor shall not energize or activate any building system until the following conditions have been met:

2.5.2.1.1 Contractor has verified that all wiring and support components for equipment are complete and have been tested in accordance with the technical specifications and the manufacturer's written recommendations.

2.5.2.1.2 Contractor has verified that each component device has been checked for proper lubrication, vibration isolation, drive rotation, belt tension, control sequence, or other conditions that may cause damage.

2.5.2.1.3 Contractor has verified that all tests, meter readings, and specified electrical characteristics agree with those required by the equipment or system manufacturer and are in compliance with applicable Contract Documents.

2.5.2.1.4 Contractor has received approved building system final inspection reports. Refer to Section 01 45 00 – Project Quality Control.

2.5.2.1.5 Contractor has provided the Owner and A/E with a written fourteen (14) day notice of intent to start-up the system for operational check-out. The notification procedures outlined in the Contract Documents shall be utilized.

2.5.2.2 Contractor shall perform Start-up under supervision of the responsible manufacturer's representative in accordance with manufacturer's instructions and specification requirements.

2.5.2.3 Contractor shall coordinate and schedule system(s) Start-up in a timely manner so that each component or system can operate for a period of time that is sufficient to evaluate and adjust performance as necessary. All building systems shall be operational and must have been successfully inspected by Owner, through attendance and concurrence with results of the Prefunctional Checklists or as otherwise approved by Owner, prior to the Contractor proceeding with Functional Performance Tests.

2.5.2.4 Contractor shall clearly list outstanding items or initial Start-up and Prefunctional Checklists items not completed successfully. Contractor shall obtain from Subcontractor completed forms documenting any outstanding Deficiency within five (5) days of completion of tests.

2.5.2.5 Contractor shall review completed Deficiency forms to determine if outstanding items prevent execution of the Functional Performance Tests and shall issue any necessary responses to the Commissioning Team.

2.6 REQUEST FOR START-UP AND FUNCTIONAL PERFORMANCE TESTS

2.6.2 Contractor shall notify Owner to request: (1) initial energization or operation of equipment and systems; and (2) an inspection of any system or system component for readiness prior to Functional Performance Tests.

2.6.2.1 Request for Start-up. Contractor must certify that: (1) electrical and mechanical connections have been installed and are safe for initial Start-up; (2) Contractor has

complied with Owner's utilities outage notifications; and (3) Start-up will not harm Owner's daily routine operations.

2.6.2.2 Contractor shall complete the applicable Prefunctional Checklist(s) signed by Contractor and CxA if engaged for the project, evidencing Contractor's own thorough inspection of the system and completion of Start-up activities required by the Contract Documents and the Commissioning Plan. Contractor shall submit required supporting documentation, including but not limited to, factory start-up forms, operational testing data, and certifications.

2.6.2.3 Request for Functional Performance Test. Contractor must certify that the Contractor has verified that the installation, Start-up, Prefunctional Checklists, and initial operation of the system or component are in accordance with the Contract Documents and the Commissioning Plan including manufacturer's instructions, manufacturer's requirements for maintenance of warranty, and verification that the system is ready for Functional Performance Tests. Contractor must certify that the manufacturer's representative has verified that the installation, Start-up, and initial operation of the system or component are in accordance with the manufacturer's published recommendations.

2.6.2 Contractor must obtain Owner's approval prior to proceeding with the Start-up or Functional Performance Test. All construction inspections must be completed. Any and all Deficiencies and all items included in the Non-Compliance Report have been brought into compliance with the Contract Documents..

2.7 FUNCTIONAL PERFORMANCE TESTS

2.7.2 Objective and Scope:

2.7.2.1 The objective of a Functional Performance Test is to demonstrate that the entire individual system operates according to the Contract Documents.

2.7.2.2 Contractor shall operate each system through all modes of operation (occupied, unoccupied, warm-up, cool-down, etc.) for specified system responses. Contractor is required to demonstrate to Owner's satisfaction each operational sequence.

2.7.2 Development of Functional Performance Test Procedures:

2.7.2.1 The purpose of a Functional Performance Test is to verify and document compliance with the stated criteria of acceptance. Contractor or Commissioning Authority if engaged for the project shall develop specific script-type test procedures and associated test forms to verify and document proper operation of each piece of equipment and system.

2.7.2.2 Contractor or Commissioning Authority if engaged for the project shall prepare Functional Performance Test Procedure forms as part of the Commissioning Plan. Once approved by Owner, Contractor shall utilize the forms for all testing activities.

2.7.2.3 Functional Performance Test Procedure forms must include the following:

2.7.2.3.1 System and equipment or component name(s).

2.7.2.3.2 Equipment location and identification number as identified in the Equipment Matrix.

2.7.2.3.3 Unique test identification number and reference to unique Prefunctional Checklist identification numbers for the equipment.

- 2.7.2.3.4 Date and time of test.
 - 2.7.2.3.5 Project name.
 - 2.7.2.3.6 Participating parties.
 - 2.7.2.3.7 Specific sequence of operation or other specified parameters, including performance data being verified.
 - 2.7.2.3.8 Instructions for setting up a Functional Performance Test.
 - 2.7.2.3.9 Specific script-type, step-by-step procedures to perform a Functional Performance Test, in a clear, sequential and repeatable format that is customized for the system being tested.
 - 2.7.2.3.10 A Pass / Fail checkbox (or data entry box as appropriate) for clearly indicating whether or not proper performance of each part of a Functional Performance Test was achieved and space for actual readings.
 - 2.7.2.3.11 Section for comments.
 - 2.7.2.3.12 Signatures and date block for participant and Owner approvals.
- 2.7.2 Contractor shall operate, or cause to be operated, each system, device, or equipment item, both intermittently and continuously, for a duration period as indicated in the Specification(s) for each item and/or in accordance with the manufacturer's written recommendations, the Contract Documents and the Commissioning Plan.
- 2.7.2 Contractor shall operate each component device and each building system to the full extent of its capability, from minimum to maximum, and under automatic control and manual control.
- 2.7.2 Contractor and manufacturer's representatives shall supervise and coordinate adjustments and balancing of all devices and systems for proper operation prior to requesting a Functional Performance Test(s).
- 2.7.2.1 Where final balancing of a system is to be performed by Owner, such as final air balancing, Contractor shall provide all services indicated in the applicable Specifications and under this Section, including the following, prior to Owner's final balancing.
- 2.7.2.1.1 Operational verification of all component devices and the total system, including automatic controls when applicable. Operational verification includes verification that all motors, fans, dampers, and other operable devices are performing in compliance with Specifications throughout their operable range and that all devices are controlled as described in the specified sequence of operation.
 - 2.7.2.1.2 All tabulated data, motor amperage readings, valve tag verifications, and other data required by the Specifications.
- 2.7.2.2 Where final balancing of a system or particular components of a system are not specifically indicated to be performed by Owner, Contractor shall provide final balancing and adjustments for operation within specified tolerances prior to Functional Performance Test of such system.
- 2.7.2.3 Coordination and Scheduling. Members of the Commissioning Team, including Owner, may observe Functional Performance Tests of equipment components and systems. Contractor shall provide written notice to Owner at least ten (10) days prior to Functional

Performance Tests of equipment components and systems. Contractor shall notify Owner in advance of any changes to the Functional Performance Test schedule. Owner may require Contractor to reschedule Functional Performance Tests to ensure availability of Owner's representative(s).

2.7.2.4 Contractor conducts Functional Performance Tests after system Start-up and Pre-functional Checklists are satisfactorily completed and have been approved by Owner. Air balancing and water balancing shall be completed before Functional Performance Tests.

2.7.2.5 Contractor conducts Integrated System Tests after Functional Performance Tests are satisfactorily completed and have been approved by Owner.

2.8 INTEGRATED SYSTEM TESTS

2.8.1 Objective and Scope:

2.8.1.1 The objective of an Integrated System Test is to demonstrate that each system operates jointly with other systems according to the Contract Documents.

2.8.1.2 Contractor shall operate each system jointly with other systems, through selected modes of operation (fire alarm integration with HVAC, emergency power modes, equipment failures among related systems, etc.) for specified system responses. Contractor is required to demonstrate to Owner's satisfaction each operational sequence.

2.8.2 Development of Integrated System Test Procedures:

2.8.2.1 The purpose of an Integrated System Test is to verify and document compliance with the stated criteria of acceptance. Contractor or Commissioning Authority if engaged for the project shall develop specific script-type test procedures and associated test forms to verify and document proper operation of each piece of equipment and system, jointly and independently of other systems.

2.8.2.2 Contractor or Commissioning Authority if engaged for the project shall prepare Integrated System Test Procedure forms as part of the Commissioning Plan. Once approved by Commissioning Team., Contractor shall utilize the forms for all testing activities.

2.8.2.3 Integrated System Test Procedure forms must include the following.

2.8.2.3.1 System and equipment or component name(s).

2.8.2.3.2 System and equipment location and identification number as identified in the Equipment Matrix.

2.8.2.3.3 Unique test identification number and reference to unique Functional Performance Test identification numbers for the system and equipment.

2.8.2.3.4 Date and time of test.

2.8.2.3.5 Project name.

2.8.2.3.6 Participating parties.

2.8.2.3.7 Specific sequence of operation or other specified parameters, including performance data being verified.

2.8.2.3.8 Instructions for setting up an Integrated System Test.

- 2.8.2.3.9 Specific script-type, step-by-step procedures to perform an Integrated System Test, in a clear, sequential and repeatable format that is customized for the system being tested.
- 2.8.2.3.10 A Pass / Fail checkbox (or data entry box as appropriate) for clearly indicating whether or not proper performance of each part of an Integrated System Test was achieved and space for actual readings.
- 2.8.2.3.11 Section for comments.
- 2.8.2.3.12 Signatures and date block for participant and Owner approvals.
- 2.8.3 Contractor shall operate, or cause to be operated, each system, device, or equipment item, both intermittently and continuously, for a duration period as indicated in the Specifications for each item and in accordance with the manufacturer's written recommendations, the Contract Documents and the Commissioning Plan.
- 2.8.4 Coordination and Scheduling.
 - 2.8.4.1 Members of the Commissioning Team, including Owner may observe Integrated System Tests of equipment components and systems. Contractor shall provide written notice to Owner at least fourteen (14) days prior to Integrated System Tests of equipment components and systems. Contractor shall notify Owner and A/E in advance of any changes to the Integrated System Test schedule. Owner may require Contractor to reschedule Integrated System Tests to ensure availability of Owner's representative(s).
 - 2.8.4.2 Contractor conducts Integrated System Tests after Functional Performance Tests are satisfactorily completed and have been approved by Owner.

2.9 DOCUMENTATION AND NON-CONFORMANCE

2.9.1 Documentation:

- 2.9.1.1 Contractor shall witness and document the results of all Functional Performance Tests and Integrated Systems Tests using specific procedural forms developed for that purpose or an approved electronic database program. Prior to testing, Contractor shall submit these forms to the Owner and A/E for review and approval. Contractor will include the completed, filled-out forms in the Commissioning and Close-out Manual.

2.9.2 Non-Conformance:

- 2.9.2.1 Contractor shall record results of Functional Performance Tests and Integrated System Tests. Contractor or Commissioning Authority if engaged for the project shall report all Deficiencies and non-conformance issues to Commissioning Team.in accordance with the procedures outlined in the Commissioning Plan.
- 2.9.1.2 At the sole discretion of Owner, Owner may permit Contractor to make corrections of minor Deficiencies observed during a Functional Performance Test or during an Integrated System Test. However, the Contractor must document the Deficiency and resolution on the appropriate report form.
- 2.9.1.3 Contractor shall make every effort to expedite testing and minimize unnecessary delays, while not compromising the integrity of a Functional Performance Test or an Integrated Systems Test.
- 2.9.1.4 Contractor, A/E and Owner will attempt to resolve Deficiencies in the following manner.

- 2.9.1.4.1 When there is no dispute about a Deficiency and Contractor accepts responsibility for correction.
 - 2.9.1.4.1.1 Commissioning Authority if engaged for the project or Contractor documents the Deficiency and the corrective actions, and then proceeds to another test or sequence. A Deficiency report is submitted to Owner. Contractor corrects the Deficiency, completes the statement of correction form certifying that the equipment or system is ready for retesting, and sends the certification to Owner.
 - 2.9.1.4.1.2 Contractor reschedules test with Owner.
- 2.9.1.4.2 When there is a dispute about whether or not the test indicates a Deficiency or the Contractor's responsibility for correction of the apparent Deficiency.
 - 2.9.1.4.2.1 Commissioning Authority if engaged for the project or Contractor documents the apparent Deficiency. A Deficiency report is submitted to Owner, including the apparent Deficiency.
 - 2.9.1.4.2.2 Contractor facilitates resolution of the Deficiency and provides recommendations to the Owner. Contractor and Owner may bring other parties into the discussions as needed. Final technical interpretive authority is with the A/E. Final acceptance authority is with the Owner.
 - 2.9.1.4.2.3 Contractor documents the resolution process.
 - 2.9.1.4.2.4 If Owner and the A/E agree with Contractor's interpretation and proposed resolution, Contractor forwards response to Owner. Contractor reschedules test with Owner. Contractor must repeat this process until satisfactory performance and Owner's approval is obtained.

2.10 DEMONSTRATION AND OWNER TRAINING

- 2.10.1 Contractor, in coordination with Owner shall develop the Training Plan with project specific requirements for Owner Training, after reviewing the different systems to be installed and commissioned. The purpose of the Training Plan is to specifically communicate the required content and training durations required by the Owner based upon the type of equipment and the Owner's past experience.
- 2.10.2 Refer to Section 01 79 00 - Demonstration and Training for specific requirements.

2.11 DEFERRED TESTS

2.11.1 Deferred Tests:

- 2.11.1.1 Deferred Tests shall be identified in writing and shall be approved by Owner.
 - 2.11.1.1.1 Contractor shall complete Deferred Tests as part of this Contract during the Warranty Period. Contractor shall schedule this activity with Owner. Contractor shall perform tests and document and correct Deficiencies. Owner may observe the tests and review and approve test documentation and Deficiency corrections.
 - 2.11.1.1.2 Contractor shall incorporate final updates to the Commissioning and Close-out Manual.

- 2.11.1.1.3 If any check or test cannot be completed prior to Substantial Completion due to the building structure, required occupancy condition, or other condition, performance of such test may be delayed to later in the Warranty Period, upon approval of the Owner.
- 2.11.1.1.4 Commissioning of systems which provide Life Safety (passive or active) to the building and its occupants shall not be deferred unless occupancy is deferred.

2.12 COMMISSIONING DOCUMENTATION

- 2.12.1 Contractor shall compile and organize all Commissioning documentation into a Commissioning and Close-out Manual and deliver to the Owner as specified in Section 01 77 00 – Project Close-out Procedures.
- 2.12.2 The Commissioning and Close-out Manual submitted to Owner shall contain all Commissioning documentation, including, but not limited to:
 - 2.12.2.1 The Commissioning Plan.
 - 2.12.2.2 Final Baseline Schedule filtered to show only the Commissioning activities.
 - 2.12.2.3 Completed Equipment Matrix.
 - 2.12.2.4 Completed Prefunctional Checklists with all required attachments,
 - 2.12.2.5 Functional Performance Test Procedures and results.
 - 2.12.2.6 Integrated System Test Procedures and results.
 - 2.12.2.7 Training Plan and all supporting documentation. Refer to Section 01 79 00 – Demonstration and Training for specific requirements.
 - 2.12.2.8 Deficiency reports and solution results.
 - 2.12.2.9 Recommendations on continuous Commissioning, best practices, and preventive maintenance.
 - 2.12.2.10 Refer to Section 01 77 00 – Project Close-out Procedures for additional Close-out documentation to be included in the Commissioning and Close-out Manual.

END OF SECTION 01 91 00

Attachment No. 1 – Equipment Matrix

Download an Electronic Version of the Equipment Matrix template at the following Internet Address:

<https://www.mdanderson.org/content/dam/mdanderson/documents/about-md-anderson/about-us/doing-business/owner's-design-guidelines/supplemental-resources/Commissioning%20Plan%20Template.zip>

| | E | C | D | E | F | G | H | I | J | K | P | Q | R | S | T | U | V | W | X | Y | Z | AA | AB | | |
|----|-------------------------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----|----|--|--|
| 1 | CONTRACTOR: | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | MDA PROJECT NO.: | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | DATE SUBMITTED: | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | Template Version: 2.0 (06/05) | | | | | | | | | | | | | | | | | | | | | | | | |
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| 9 | Integrated System | | | | | | | | | | | | | | | | | | | | | | | | |
| 10 | System | | | | | | | | | | | | | | | | | | | | | | | | |
| 11 | Component | | | | | | | | | | | | | | | | | | | | | | | | |
| 12 | Unit | | | | | | | | | | | | | | | | | | | | | | | | |
| 13 | U.1 | | | | | | | | | | | | | | | | | | | | | | | | |
| 14 | U.2 | | | | | | | | | | | | | | | | | | | | | | | | |
| 15 | U.3 | | | | | | | | | | | | | | | | | | | | | | | | |
| 16 | Unit 3 | | | | | | | | | | | | | | | | | | | | | | | | |
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RIDER 101
SCOPE OF SERVICES

ATTACHMENT 2:
REQUEST FOR PROPOSAL FORM

REQUEST FOR PROPOSAL

Date: [Month d, yyyy]

To: [Service Provider]

Attn: [Service Provider's representative]

From: [Sender's Name]
 [Sender's Position Title], and
 Owner's Assignment Representative

Ref.: Request for Proposal
 MD Anderson Assignment Name: [Enter MD Anderson assignment name]
 MD Anderson Assignment Number [Enter MD Anderson assignment number]
 MD Anderson Agreement No. [Enter MD Anderson agreement no.]

Pursuant to the terms of the referenced MD Anderson Agreement, MD Anderson hereby requests a written Proposal for the assignment referenced above and further described below.

Assignment Location: Enter assignment location information

Scope of Work:

This Assignment shall include certain Commissioning Services more particularly described as follows:

[Provide general description of the Commissioning Services that are required for this particular assignment.]

Initial Schedule: The initial key milestone dates for this Assignment are as follows:

| Activity: | Date |
|--------------------|----------|
| Proposal Submitted | mm/dd/yy |
| Proposal Accepted | mm/dd/yy |
| Kickoff Meeting | mm/dd/yy |
| Services Start | mm/dd/yy |
| Services Complete | mm/dd/yy |

HUB Requirements: MD Anderson anticipates that the Total Fee associated with this Assignment will be less than \$100,000. Therefore, MD Anderson does not anticipate that a HUB Subcontracting Plan will be required for this Assignment. As set forth in Article ___ of the Agreement, in the event the proposed not-to-exceed Total Fee equals or exceeds \$100,000, the Proposal must include a HUB Subcontracting Plan (HSP) for the proposed not-to-exceed amount for the Total Fee.

OR

MD Anderson anticipates that the Total Fee associated with this Assignment will equal or exceed \$100,000 and has determined that subcontracting opportunities are probable in connection with this Assignment. As set forth in Article ___ of the Agreement, in the event the proposed not-to-exceed Total Fee equals or exceeds \$100,000, the Proposal must include a HUB Subcontracting Plan (HSP) for the proposed not-to-exceed amount for the Total Fee.

Additional Services: Within your Proposal, please expressly itemize and identify any services that you propose to provide as Additional Services. Your proposal is to include a description of each Additional Service to be provided and a detailed breakdown of the personnel, by Classification as listed in Attachment ___ to Exhibit ___ of the Agreement, who will be engaged in providing the Additional Service, the Hourly Rate for that Classification, an estimate of the number of work-hours that will be required in providing the Additional Service, and an extended line item amount. To the extent you propose to subcontract for the Additional Services, your proposal is to include a description of the service to be subcontracted and a detailed breakdown of the personnel, by work classification, who will be engaged in providing the subcontracted services, the hourly rate for that classification, an estimate of the number of work-hours that will be required in providing the subcontracted service, and an extended line item amount. Your Proposal is to include a summary not-to-exceed amount for each proposed Additional Service and the detailed breakdown is to be included as an attachment to your Proposal.

Reimbursable Expenses: Within your Proposal, please include a proposed not-to-exceed allowance for Reimbursable Expenses.

Please submit your Proposal, including a proposed baseline schedule, to me no later than the date included in the Initial Schedule that is set forth above.

Attachments: [list attachments as appropriate]

Copy: [include a destination or path to where an image of this Request for Proposal is to be uploaded.]

Editorial guidelines:

- *Blue text indicates information to be provided by the project manager when preparing to issue this Request for Proposal to the Service Provider.*
- *For the section on HUB Requirements, only one of the option paragraphs should be included. The paragraph to be used will vary from project to project. All unused paragraphs should be deleted along with all "OR"s.*

- *All text color should be changed to **black**.*
- *All editorial guidelines, including these paragraphs, should be deleted prior to sending this document to the Service Provider.*

RIDER 101
SCOPE OF SERVICES

ATTACHMENT 3:
ASSIGNMENT PROPOSAL FORM

RIDER 101 ATTACHMENT 3 – FORM OF PROPOSAL
FORM OF ASSIGNMENT PROPOSAL

Name of Agreement: Agreement for Providing Commissioning Services

MD Anderson Master Agreement Number: _____

MD Anderson Assignment Name: _____

MD Anderson Assignment Number: _____

Date Month d, yyyy

To: Owner's Assignment

Representative: _____

Street Address: _____

City, State, Zip: _____

From: Service Provider: _____

Street Address: _____

City, State, Zip: _____

Please refer to the Agreement with an Effective Date of _____ between MD Anderson Cancer Center ("MD Anderson") and the undersigned ("Service Provider") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which Service Provider is to perform certain services. The terms, which are defined in the Agreement, shall have the same meanings when used in this Assignment Proposal.

In response to MD Anderson's Request for Proposal, dated _____, _____, Service Provider proposes the following:

Commissioning Services:

[Using Rider 102 to the Agreement, identify the classifications for the workers to be involved in providing Commissioning Services for this Assignment and the not-to-exceed number of work-hours the workers in that classification will be involved in providing the services. Provide the not-to-exceed extended amount for each classification and the total not-to-exceed amount for Commissioning Services.]

| Worker Classification | Hourly Rate | Not-to-Exceed Hours | Not-to-Exceed Extended Amt. |
|-----------------------|-------------|---------------------|-----------------------------|
| | | | |
| | | | |
| Total: | | | |

Additional Services: Owner has requested the performance of the services described below which, in accord with the terms of the Agreement, are to be provided as Additional Services. A detailed breakdown for each Additional Service summarized below is included as an attachment to this Proposal.

| Description of Proposed Additional Service | Proposed Not-to-Exceed Amount |
|---|-------------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| Proposed Not-to-Exceed Amount for Additional Services | |

Reimbursable Expenses: Service Provider anticipates incurring certain Reimbursable Expenses in completing the work associated with this Assignment. The estimate for these expenses is as follows:

| Description of Reimbursable Expense | Proposed Not-to-Exceed Amount |
|---|-------------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| Proposed Not-to-Exceed Amount for Reimbursable Expenses | |

Proposed Schedule: Services Provider will perform the services as set forth in the Owner's Request for Proposal, except as follows.

Proposed Fee Summary:

| Not-to-Exceed Amount for: | Proposed Amount |
|--|-----------------|
| Commissioning Services Fee | |
| Additional Services Fee | |
| Reimbursable Expenses | |
| | |
| Total Not-to-Exceed Amount for this Assignment Proposal | |

Service Provider

By: _____

Name: _____

Title: _____

Date: _____

Commissioning Assignment Summary:

| | Commissioning Services | Additional Services | Reimbursable Expenses | Commissioning Assignment Total |
|--------------------|---------------------------|------------------------|--------------------------|--------------------------------------|
| This Proposal | | | | |
| Previous Proposals | | | | |
| Totals: | | | | |

RIDER 101
SCOPE OF SERVICES

ATTACHMENT 4:
ADDITIONAL SERVICES PROPOSAL FORM

ADDITIONAL SERVICES PROPOSAL

Name of Agreement: Agreement for Providing Commissioning Services

MD Anderson Agreement Number: _____

MD Anderson Purchase Order Number: _____

MD Anderson Assignment Name: _____

MD Anderson Assignment Number: _____

Date Month dd, yyyy

To: Owner's Assignment Representative: _____

Street Address: _____

City, State, Zip: _____

From: Service Provider: _____

Street Address: _____

City, State, Zip: _____

Please refer to the Agreement with an Effective Date of _____ between The University of Texas MD Anderson Cancer Center ("MD Anderson") and the undersigned ("Service Provider") as amended to the date hereof (such agreement as so modified and amended being hereafter called the "Agreement") pursuant to which Service Provider is to perform certain services. Capitalized terms used herein, which are defined in the Agreement, shall have the same meanings when used in this Additional Services Proposal.

Owner has requested the performance of the services described below which, in accord with the terms of the Agreement, Service Provider deems to be Additional Services. A detailed breakdown for each Additional Service summarized below is included as an attachment to this Additional Services Proposal.

| Description of Proposed Additional Service | Proposed Not-to-Exceed Amount |
|---|-------------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| Proposed Not-to-Exceed Amount for Additional Services | |

Subcontractor Costs: Services Provider proposes to engage Subcontractors, as described below, in order to deliver these proposed Additional Services and proposes that the costs associated with

these consultants not be included within the Additional Services fees set forth above. A detailed breakdown for each of these Subcontractor Costs is included as an attachment to this Additional Services Proposal.

| Description of Proposed Subcontractor Cost | Proposed Not-to-Exceed Amount |
|--|-------------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| Proposed Not-to-Exceed Amount for Subcontractors | |

Reimbursable Expenses: Service Provider anticipates incurring certain Reimbursable Expenses in completing the work associated with these proposed Additional Services. The estimate for these expenses is as follows:

| Description of Reimbursable Expense | Proposed Not-to-Exceed Amount |
|---|-------------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| Proposed Not-to-Exceed Amount for Reimbursable Expenses | |

Schedule: Services Provider will provide these services as set forth below.

| Milestone/Task Description | Proposed Completion Date |
|----------------------------|--------------------------|
| | |
| | |
| | |
| | |
| | |

Additional Services Proposal Fee Summary:

| Not-to-Exceed Amount for: | Proposed Amount |
|---|-----------------|
| Additional Services Fee | |
| Subcontractor Costs | |
| Reimbursable Expenses | |
| | |
| Total Not-to-Exceed Amount for these Additional Services | |

Service Provider

By: _____

Name: _____

Title: _____

Date: _____

Current Assignment Summary

| | |
|---------------------------------------|-----------|
| ORIGINAL PURCHASE ORDER AMOUNT: | \$ _____. |
| Previous Additions: | \$ _____. |
| Previous Deductions: | \$ _____. |
| NET BALANCE OF PURCHASE ORDER AMOUNT: | \$ _____. |
| THIS Addition/(Deduction): | \$ _____. |
| ADJUSTED PURCHASE ORDER AMOUNT: | \$ _____. |

RIDER 101
SCOPE OF SERVICES

ATTACHMENT 5:
NOTICE TO PROCEED FORM

NOTICE TO PROCEED

Date: Month dd, yyyy

To: Service Provider

Attn: [Enter Name of Service Provider's Assignment Representative]

From: [Enter name and position of Owner's Assignment Representative] and Owner's Assignment Representative

Ref.: Notice to Proceed

MD Anderson Assignment Name: [_____]

MD Anderson Assignment Number: [_____]

MD Anderson Agreement No. [_____] for Providing Commissioning Services

Service Provider's Assignment Proposal No.: [_____]

Pursuant to the terms of the referenced MD Anderson Agreement, MD Anderson hereby notifies, effective [Month dd, yyyy], [enter name of Service Provider as it appears in the Agreement] (Service Provider) to proceed with providing certain Commissioning Services as set forth in MD Anderson's Assignment RFP dated [Month dd, yyyy] and Service Provider's Assignment Proposal No. [_____].

Please be advised that the MD Anderson Purchase Order Number specific to this Assignment is _____.

Please do not hesitate to contact me if you have any questions concerning this authorization.

Copy: [Enter copy recipients or filing directions as appropriate.]

RIDER 102

TERMS OF COMPENSATION

Rider 102. Terms of Compensation

1. DEFINITIONS

Capitalized terms used throughout this document shall have the meanings ascribed in the Agreement or the Exhibits thereto, unless otherwise defined herein.

1.1. Reimbursable Expenses. "Reimbursable Expenses" shall mean actual out-of-pocket reasonable expenditures made by Service Provider and Service Provider's employees and Subcontractors incurred solely and directly in connection with Service Provider's performance of its services.

1.1.1. Reimbursable Expenses recoverable by Service Provider under this Agreement are limited to the following:

1.1.1.1. 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;

1.1.1.2. Expenses in connection with in-state travel, including reasonable travel and living expenses, for Service Provider's employees and Subcontractors when the Work 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 to the Agreement;

1.1.1.3. Fees paid for securing approval of authorities having jurisdiction over the Project;

1.1.1.4. 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 Subcontractors.

1.1.1.5. Communication expenses such as long-distance telephone, facsimile transmissions, express delivery charges and postage that are directly attributable to the Project;

1.1.1.6. Disbursements made by Service Provider under approved subcontracts if approved in advance and in writing by MD Anderson;

1.1.1.7. 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;

1.1.1.8. Expense of any additional insurance coverage or limits, requested by MD Anderson but excluding professional liability and errors and omissions insurance required under this Agreement, that exceed those normally carried by Service Provider and Service Provider's Subcontractors;

1.1.2. 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 Work Assignment. All tips must be included within the per diem allowances.

Rider 102. Terms of Compensation

- 1.2. Subcontractor Costs. "Subcontractor Costs" shall mean the compensation to be paid by MD Anderson to Service Provider as reimbursement for fees paid by Service Provider to a subcontractor (or subcontractors) that is (are) subcontracted by Service Provider to perform services related to a specific Assignment. Payments for Subcontractor Costs shall be made pursuant to the requirements set forth below.

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. Periodic Billing: For services rendered, Service Provider shall be compensated monthly on an hourly rate basis, unless MD Anderson and Service Provider expressly agree otherwise, upon MD Anderson's receipt and approval of an acceptable Statement of Services Rendered, as more specifically prescribed below.
- 2.1.4. Services Performed in Stages: When services are performed in stages or phases, Service Provider shall not proceed beyond any previously approved stage or phase of completion for a Work Assignment unless authorized by MD Anderson in writing, except at Service Provider's own financial risk.

2.2. Subcontractor Costs

- 2.2.1. Unless approved in advance by MD Anderson, Service Provider shall pay for all Subcontractor 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 Subcontractor Costs unless otherwise agreed to in writing. When Subcontractor Costs are approved by MD Anderson, Service Provider's fee, or mark up, associated with approved Subcontractor Costs shall be calculated as an amount not to exceed 0.10 times the amount that the Subcontractor actually bills Service Provider.

2.3. Reimbursable Expenses

- 2.3.1. Compensation for Reimbursable Expenses is in addition to compensation for services rendered. Service Provider and its employees and Subcontractors, 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

Rider 102. Terms of Compensation

by MD Anderson, Service Provider shall not invoice MD Anderson for any Reimbursable Expense that is not expressly listed in this Rider 102.

- 2.3.2. Service Provider is solely responsible for any expenses or costs, including expenditures of time, incurred by Service Provider and its employees and Subcontractors in the development of proposals. Such expenses or costs are not Reimbursable Expenses.

2.4. Requests for Payment

- 2.4.1. Monthly Statements: Unless MD Anderson and Service Provider expressly agree otherwise, for each Work Assignment implemented under this Agreement Service Provider shall submit a monthly statement of services rendered under this Agreement 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 /Work Assignment Name and Project/Work Assignment Number;
- 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 Work Assignment;
- Identification of billing period, by calendar month, to which the statement applies;
- Itemized description of services provided including the names, billing rates and amount of time per task expended by all persons who performed services on the Work Assignment during the billing period;
- Completion status of Work Assignment by percentage;
- Total amount of payment requested;
- Total amount of prior requests for payment and current Purchase Order Amount;
- Copy of all receipts or records of payment made in support of any Reimbursable Expenses or Subcontractor Costs for which Service Provider requests compensation.

- 2.4.2. Limited to MD Anderson's Purchase Order Amount: For each Work Assignment, 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.

- 2.4.3. Service Provider shall submit the statement of services rendered to the MD Anderson Work Assignment Representative for review and approval prior to formally submitting it for payment.

- 2.4.4. Formal Submittal of Statement of Services Rendered: Service Provider shall formally submit the statement of services rendered for payment, in accordance with Rider 116, Invoice Payment Requirements.

Rider 102. Terms of Compensation

- 2.4.5. Exceptions to Payment: 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:
- 2.4.5.1. Service Provider is in breach or default under this Agreement;
 - 2.4.5.2. The requested payment includes services not performed in accordance with this Agreement; provided, however, payment shall be made on the balance of the services that are performed in accordance with this Agreement;
 - 2.4.5.3. The total of Service Provider's requests for payment exceed MD Anderson's Purchase Order Amount;
 - 2.4.5.4. Service Provider has failed to make payments promptly to Subcontractors or other third parties used in connection with the services for which MD Anderson has made payment to Service Provider;
 - 2.4.5.5. Service Provider becomes insolvent, makes a general Work Assignment of its rights or obligations for the benefit of its creditors, or voluntarily or involuntarily files for protection under the bankruptcy laws;
 - 2.4.5.6. If MD Anderson, in its good faith judgment, determines that the balance of unpaid compensation for a specific Work Assignment is insufficient to complete the services required under this Agreement for that Work Assignment; or
 - 2.4.5.7. Service Provider has submitted a request for payment after having submitted its request for and having received final payment for Services rendered for a Work Assignment.
- 2.4.6. Partial Payment: 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.
- 2.4.7. Prompt Payment by MD Anderson: 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 Work Assignment Representative approves the Service Provider's request for payment. Payment shall be made within 30 days of the date Service Provider submits its request for payment bearing the approval of the MD Anderson Work Assignment Representative.
- 2.4.8. Prompt Payment by Service Provider: Service Provider shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.
- 2.4.9. Final Payment and Release: The acceptance by Service Provider or Service Provider's successors of final payment for any Work Assignment implemented 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 with

Rider 102. Terms of Compensation

respect to the Work Assignment, except those claims specifically identified in writing by Service Provider as unsettled at the time the final request for payment is submitted.

ATTACHMENTS:

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

RIDER 102
TERMS OF COMPENSATION

ATTACHMENT 1:
STATEMENT OF SERVICES RENDERED

Agreement for _____ Services

Statement of Services Rendered

MD Anderson's Assignment No.: _____ MD Anderson's Assignment Name: _____

MD Anderson Agreement No.: _____ MD Anderson Purchase Order No.: _____

Service Provider's Tax Identification No.: _____ Name of Service Provider's Representative: _____

Billing Period No.: _____ Billing Period Start Date: _____ Billing Period End Date: _____ Assignment/Project Percent Complete: ____%

| Category | Initial Purchase Order (PO) Amount | Net Cumulative Adjustments via Revised PO(s) | Current Purchase Order Amount | Cumulative Previous Payments | Previous Balance Due | Requested Payment Amount | Remaining Balance Due |
|------------------------------|------------------------------------|--|-------------------------------|------------------------------|----------------------|--------------------------|-----------------------|
| Commissioning Services Fee | | | \$ - | | \$ - | | \$ - |
| Additional Services (Fee(s)) | | | | | | | |
| Subcontractor Costs | | | \$ - | | \$ - | | \$ - |
| Reimbursable Expenses | | | \$ - | | \$ - | | \$ - |
| Totals: | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |

Percentage of Current Purchase Order Amount Paid to Date: #DIV/0! (Including Requested Payment Amount for this Statement.)

I certify that this Statement of Services Rendered is correct and payment is now due.

Signature Title Date

Attachments:

- (1) Itemized description of services provided including names, billing rates and amount of time per task expended by all persons who provided services during billing period.
- (2) Itemized description of services provided including names, billing rates and amount of time per task expended by all Subcontractors who provided services during billing period.
- (3) Itemized listing of Reimbursable Expenses, including copy(ies) of receipt(s) in support of each Reimbursable Expense invoiced.

FINAL PAYMENT CERTIFICATION AND LIEN WAIVER (To be completed upon submitting Final Statement of Services Rendered.)

Service Provider certifies that all persons, subcontractors and firms that supplied services to it in connection with this Assignment have been fully paid for their respective services or work items, or that they will be fully paid immediately upon receipt of this payment, and that there are no other outstanding debts, obligations or claims related to this Assignment for which MD Anderson may be liable or for which Service Provider will look to MD Anderson for additional payment. This payment constitutes full and final payment to Service Provider and its subcontractors for all services provided for this Assignment and MD Anderson is not obligated to make any more payments for services rendered for this Assignment.

In consideration of the payment herewith made, the undersigned does fully and finally release and hold harmless MD Anderson from any and all claims, liens or right to claim

Signature of Duly Authorized Representative of Service Provider Date

FINAL HUB PROGRESS ASSESSMENT REPORT (To be completed for Assignments/Projects for which a HUB Subcontracting Plan was required.)

The final HUB Subcontracting Plan Progress Assessment Report has been submitted.

Yes ____ No ____

RIDER 102

TERMS OF COMPENSATION

ATTACHMENT 2:

SCHEDULE OF BILLING RATES

(To be Provided from Successful Respondent/s after notification of award.)

RIDER 104-A

POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES

LETTER OF HUB COMMITMENT

(Provided with Respondent's RFQ Documents. Included as Exhibit post award.)

RIDER 105

CONTRACTOR'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**

these Premises Rules, MD Anderson will have the right to deny Contractor and its personnel access to MD Anderson's campus.

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.

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.

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

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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).

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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.

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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.

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**INSTITUTIONAL POLICIES ON FRAUD, HOSPITAL COMPLIANCE
AND NON-RETALIATION**

THE UNIVERSITY OF TEXAS
MDAnderson
~~Cancer Center~~
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