

AGREEMENT

BETWEEN

THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER

AND

[INSERT CONTRACTOR'S NAME]

TO PROVIDE FACILITY COMMISSIONING SERVICES

FOR

MISCELLANEOUS ASSIGNMENTS OF LIMITED SCOPE RELATED TO MAJOR PROJECTS

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

WHEREAS, MD Anderson desires to obtain certain services related to the commissioning of facility equipment, systems or both 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 thirty-six months (36) 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 twelve (12) 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.

Section 2. SCOPE OF SERVICES:

- 2.1 Contractor will perform the Commissioning Services for MD Anderson as described in the Scope of Commissioning Services for Major Projects 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 the 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. PROJECT COORDINATOR AND ACCEPTANCE OF WORK:

- 4.1 All Commissioning Services performed under this Agreement will be subject to the review, coordination, and approval of a Project Coordinator. Unless and until a successor is appointed by MD Anderson, the Project Coordinator 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 U.S.C. §4212). **Without limiting the foregoing, MD Anderson and Contractor shall abide by the requirements of 41 C.F.R. 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 (a) ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin; and (b) 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, regulations and policies.
- 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 (i) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (ii) 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:

6.2.A 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.

6.2.B Pursuant to Section 552.372 of the *Texas Government Code*, Contractor must:

- (i) preserve all contracting information (ref. Section 552.003(7), *Texas Government Code*) related to this Agreement as provided by the records retention requirements applicable to MD Anderson for the duration of this Agreement;
- (ii) promptly provide to the MD Anderson any contracting information related to this Agreement that is in the custody or possession of Contractor on request of MD Anderson; and
- (iii) on completion of this Agreement, either:
 - (a) provide at no cost to MD Anderson all contracting information related to this Agreement that is in the custody or possession of Contractor, or
 - (b) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to MD Anderson.

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 Brand Core team for prior written approval at the following email address: brandcoreteam@mdanderson.org, or to such other person or contact as indicated by MD Anderson in writing.

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, Sustainability and Emergency Management ("EHSSEM") 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:

- (a) Employers Liability – Each Accident \$1,000,000
- (b) Employers Liability – Each Employee \$1,000,000
- (c) Employers Liability – Policy Limit \$1,000,000
- (d) 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:

- (a) Each Occurrence Limit \$1,000,000
- (b) Damage to Rented Premises \$ 300,000
- (c) Personal & Advertising Injury \$1,000,000
- (d) General Aggregate \$2,000,000
- (e) 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;

(iv) **[OPTIONAL PROVISION: To be used if this Agreement poses potential risks related to data privacy, network or information security. Please contact Legal Services or Information Security for further input.]** Cyber Liability Insurance with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:

- (a) Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of MD Anderson data, whether by Contractor or any subcontractor or cloud service provider used by Contractor;

- (b) Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management/public relations consulting, legal services of a privacy attorney, credit monitoring, and identity fraud resolution services for affected individuals;
- (c) Expenses related to regulatory compliance, government investigations, fines, fees assessments, and penalties;
- (d) Liability for technological products and services;
- (e) PCI fines, fees, penalties, and assessments;
- (f) Cyber extortion payment and response costs;
- (g) First and Third-Party Business Interruption Loss resulting from a network security failure;
- (h) Liability for technological products and services;
- (i) Costs of restoring, updating, or replacing data; and
- (j) Liability losses connected to network security, privacy, and media liability.

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: (a) Contractor has the authority and right to grant to MD Anderson the license to the Software as set forth in this Agreement; and (b) 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 its 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 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 (i) comply with all applicable standards of The Joint Commission (the "Joint Commission"), and any successor organization; (ii) implement and monitor a quality assurance process that complies with Joint Commission standards; (iii) comply with applicable

Joint Commission privileging standards for licensed independent practitioners; (iv) upon request, provide assurance to MD Anderson of a licensed independent practitioner's privileging file; and (v) 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: (i) Amphetamines, (ii) Cocaine, (iii) Opiates (2000 ng/ml), (iv) PCP, and (v) 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: (i) Positive Identification Check - Social Security Number Trace, Maiden and Alias Name Search; (ii) Criminal Record Search - County, Statewide, and Nationwide Level (past 15 years); (iii) Employment Verification (all previous employers for past 15 years); and (iv) Sex Offender Registry Search. 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 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 (i) a tuberculosis screening was completed within ninety (90) calendar days prior to starting Commissioning Services at MD Anderson's campus, and (ii) 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 6.14.B to 6.14.D of this Agreement.
- 6.13.B Except as specifically provided in the HSP or with the prior written consent of MD Anderson, 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 D, §§20.285(g)(5), 20.585, and 20.586, *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 D §20.285, *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 Section 6.14.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 2271, *Texas Government Code*, Contractor certifies that Contractor (i) does not currently boycott Israel, and (ii) 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 COMMISSIONING SERVICES OR (ii) BY MD ANDERSON OF ANY COMMISSIONING SERVICES THAT ARE 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 (a) 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 (b) USE BY MD ANDERSON OF CONTRACTOR’S COMMISSIONING SERVICES IN CONNECTION OR IN COMBINATION WITH EQUIPMENT OR PROCESSES NOT PROVIDED BY CONTRACTOR OTHER THAN EQUIPMENT OR PROCESSES FOR WHICH THE COMMISSIONING SERVICES 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, 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 (i) upon hand delivery, (ii) on the scheduled date of delivery by a nationally recognized overnight courier service, or (iii) 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 M. D. Anderson Cancer Center
 Supply Chain Management – Unit 1680
 P.O. Box 301407
 Houston, Texas 77230-1407

AND

Delivery Address: (In person or Via Courier)
 The University of Texas M. D. Anderson Cancer Center
 Supply Chain Management
 7007 Bertner Avenue
 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
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. Notwithstanding anything to the contrary herein, MD Anderson may terminate this Agreement immediately upon notice to Contractor due to MD Anderson institutional direction, policy, standard, or other communication related to the COVID-19 virus requiring cancellation of the activities or services contemplated herein. Should MD Anderson terminate this Agreement pursuant to the immediately preceding sentence, Contractor shall only be entitled to reimbursement for reasonable expenses actually incurred in connection with this Agreement as of the date of such termination, and Contractor shall otherwise reimburse MD Anderson for all amounts paid hereunder. 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, *Texas Education Code*) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, *Texas 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.

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Section 9. EXHIBITS:

<p>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.</p>	
<p>Rider 101. Scope of Services – Facility Commissioning Services for Miscellaneous Assignments of Limited Scope Related to Major Projects 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</p>	<p>Rider 106. Premises Rules</p>
<p>Rider 102. Terms of Compensation Attachment 1. Schedule of Billing Rates</p>	<p>Rider 107. Travel Policy</p>
<p>Rider 104. Policy on Utilization of Historically Underutilized Businesses</p>	<p>Rider 116. Invoice Payment Requirements</p>
<p>Letter of HUB Commitment</p>	<p>Rider 117. Institutional Policies on Fraud, Hospital Compliance, and Non-Retaliation</p>
<p>Rider 105. Contractor’s Affirmations & Warranties</p>	

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.

(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 Riders.

REVIEW

This proposed Agreement and all "X" attachments have been reviewed and: are acceptable
 are acceptable as noted

Signature: _____ Date: _____

Printed Name: _____

Vendor's Name: _____

(This box is used for RFP responses only.)