

This HOTEL MANAGEMENT AGREEMENT (the "Agreement"), effective [Insert Date], (the "Effective Date"), is made and entered into by and between The Board of Regents of The University of Texas System, for and on behalf of The University of Texas M. D. Anderson Cancer Center ("Owner"), and [INSERT NAME] , a _____ ("Management Company"). In consideration of the Recitals below and the mutual covenants and benefits under this Agreement, Owner and Management Company agree as follows:

RECITALS

- A. Owner owns a hospitality center known as the Jesse H. Jones Rotary House International (hereinafter the "Rotary House"), containing guest rooms, conference rooms, restaurants, dining room, and other facilities located at 1600 Holcombe Boulevard, Houston, Texas 77030.
- B. Management Company provides management and other services for hotels throughout the United States of comparable size and complexity to Owner's Rotary House.

ARTICLE I

DEFINITION OF TERMS

1.01 Defined Terms. As used in this Agreement, the following words and phrases have the meanings ascribed to them below:

A. "Accounting Period": The [Insert number] () week periods used by the Management Company in its accounting. An Accounting Period may occasionally contain [insert number] () weeks to conform Management Company's accounting system to the calendar.

B. "Affiliate": As to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, directly or indirectly, of the power: (i) to vote more than fifty percent (50%) of the voting stock of such Person; or (ii) to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting stock, by contract or otherwise.

C. "Agreement": This Management Agreement, with all exhibits attached hereto, and all written amendments. The parties understand that the Facility is financed with the proceeds of bonds, the interest on which is excludible from gross income for federal income tax purposes, (the "Bonds") which are issued in compliance with applicable requirements of Sections 103, and 141 to 150 of the Internal Revenue Code, and Rev. Proc. 97-13, 1997-5 I.R.B. 18 (as modified by Rev. Proc. 2001-39, 2001-28 I.R.B. 38) (the "Tax Requirements"). In connection therewith, the parties acknowledge that Owner has made certain covenants to the

Bondholders intended to assure that the Bonds remain in compliance with the Tax Requirements. The parties understand that this Agreement, and other agreements that may be entered into by Management Company acting under the authority granted to it under this Agreement, are instrumental to Owner satisfying those covenants. The parties intend that this Agreement shall be interpreted in light of such covenants. The Management Company understands and agrees that all service, use and operating agreements for the Facility shall, in consultation with and direction from the Owner, be negotiated and entered into so as to comply with the Tax Requirements. Owner and Management Company further intend that this Agreement constitutes, and this Agreement shall constitute, a "Qualified Management Agreement" in compliance with the Tax Requirements, and shall be interpreted in accordance with such requirements.

D. "Budget": The Operating, Capital Expenditure and replacement budgets for the Rotary House as described in Section 5.01.

E. "Capital Expenditure": The costs included in the repair or replacement of FF&E or the Rotary House in accordance with Article X and normally depreciated or amortized under generally accepted accounting principles.

F. "Expense": The ordinary costs incurred by Management Company in the operation of the Rotary House, but excluding all Owner's Direct Costs.

G. "Fiscal Year": The annual accounting period beginning on the _____
() Accounting Period of each year (about _____ of each year) and ending on the _____
() Accounting Period of the following year (about _____ of each year).

H. "FF&E": All fixtures, furnishings and equipment of every type and description located in and used in connection with the operation of the Rotary House.

I. "General Account": The account into which all Gross Revenues and Owner's advances are deposited and from which all Expenses and the Management Fee are paid.

J. "Gross Revenues": All revenues, receipts, and proceeds received by the Management Company on behalf of Owner from the operation of the Rotary House, such as income from room rentals, manual and vending food and beverage sales, concession license and lease fees. Gross Revenues shall not include interest on working capital, reserves, or any other funds of Owner, discounts for prompt or cash payments; any taxes or similar governmental impositions collected from patrons or guests or included as part of the sales price of any goods or services; proceeds from the sale of any Rotary House FF&E; or insurance proceeds not attributable to business interruption insurance.

K. "Incentive Fee": The fee earned by and paid to the Management Company pursuant to Section 7.02.

L. "Inventory": Those items of personal property included within the classification of "Inventory" under the Uniform System, such as merchandise intended for sale,

stationery, mechanical supplies, food and beverage provisions in Rotary House storerooms, pantries and kitchens, and other expended supplies.

M. "Key Personnel": The General Manager, Director of Operations, the Food and Beverage Director, the Comptroller, the Building Engineer, and the Executive Housekeeper of the Rotary House, or equivalent positions, all of whom are employees of Management Company.

N. "Management Fee": The fee earned by and paid to the Management Company pursuant to Section 7.01 for the services rendered hereunder.

O. "Operating Supplies": The supply items included within the classification of "Property and Equipment" under the Uniform System, such as linen, china, glassware, silver and uniforms.

P. "Owner's Direct Cost": All costs normally paid directly by Owner, such as major Capital Expenditure costs, depreciation, amortization, debt service, insurance costs, audits and taxes and not included as Expenses.

Q. "Owner's Profits": The amount of Gross Revenues in excess of Expenses and the Management Fee after deducting Owner's Direct Costs.

R. "Rotary House": The guest rooms, convenience store, conference rooms, restaurants, dining room and other facilities, and all FF&E therein as more fully described in Exhibit A, Space Use, attached hereto and incorporated herein by reference.

S. "Person": An individual (and the heirs, executors, administrators, or other legal representatives of an individual), a partnership, a corporation, limited liability company, a government or any department or agency thereof, a trustee, a trust and any unincorporated organization.

T. "Reserve Account": An account established at a designated bank into which are deposited funds to pay for routine Capital Expenditures.

U. "Uniform System": The Uniform System of Accounts for Hotels, 10th Revised Edition, published by the Hotel Association of New York City, Inc.

V. "Working Capital": The funds reasonably necessary for the day-to-day operation of the Rotary House, including, without limitation, amounts sufficient for the maintenance of change and petty cash funds, operating bank accounts, receivables, payrolls, prepaid expenses and funds required to maintain the Inventory, less accounts payable and accrued current liabilities.

1.02 Other Definitions. In this Agreement, personal pronouns shall include the feminine, masculine and neuter gender, the singular number includes the plural, and the

word "person" includes a corporation, partnership, firm or association, wherever the content so requires. "Herein," "hereunder," and equivalent words refer to this Agreement in its entirety and not solely to the particular section in which any such word is used.

ARTICLE II

APPOINTMENT OF MANAGEMENT COMPANY

2.01 Appointment. Owner hereby appoints and engages Management Company to perform certain services, functions, obligations and duties relating to the management and operation of the Rotary House. Management Company accepts said appointment and engagement. In general, it is the parties' mutual intent to ensure that the Rotary House is managed and maintained at a first-class level of hospitality-related and fiscal responsibility to the benefit of Owner's patients and Owner alike.

2.02 Exclusive Management Right. Owner shall recognize Management Company's exclusive authority and duty to operate the Rotary House, subject to the provisions of this Agreement. Subject to the review and approval authority of Owner, and except as otherwise provided for herein, Management Company shall have discretion and control, free from interference, in all matters relating to management and operation of the Rotary House, including, without limitation, charges for rooms and commercial space, credit policies, promotion and publicity, food and beverage services, employment policies, granting of concessions or leasing of shops and agencies within the Rotary House, procurement of Inventory, supplies and services, promotion and publicity and, generally, all activities necessary for operation of the Rotary House. Any Management Company policies related to environmental health and safety or emergency response will be subject to approval by Owner. In the event of conflict between the institutional policies of Owner and Management Company, Owner's policies will govern.

2.03 Term. This Agreement shall govern the relationship of the parties, commencing on the Effective Date. The term of this Agreement shall be ten years, commencing on the Effective Date, unless terminated by either party in accordance with the provisions of this Agreement or by mutual written agreement of both parties. Any provisions that by their nature extend beyond the end of the term will remain effective.

2.04 Transition. No later than ninety (90) days prior to the end of the term, the parties will enter into a written reasonable transition plan pursuant to which Management Company will work with Owner's project team on the transition of the management of the Rotary House to Owner or to the new manager. Management Company will permit representatives of Owner or the new manager access to the Rotary House as reasonably necessary for a smooth transition; provided that Management Company shall have the right to require that such representatives be accompanied by Management Company while on site, and Management Company shall not be required to provide access to any of Management Company's proprietary information.

2.05 Property/Equipment Return. Promptly following termination of this Agreement, Management Company shall return to Owner such equipment, office space, and utilities in good condition, ordinary wear and tear excepted. Ordinary wear and tear shall have the meaning commonly attributed to such term as well as mean losses or damage to chinaware, glassware, flatware, trays, utensils, and other smallwares which may result from breakage, theft, over-use, or negligent misuse.

ARTICLE III MANAGEMENT FUNCTION AND DUTIES

3.01 General Standard. Management Company shall diligently manage the operation of the Rotary House. Such efforts and practices shall be applied so as to ensure that the Rotary House is operated and maintained as a first-class facility comparable to similarly sized and constructed patient housing centers and ancillary restaurants operated in similar market areas, at a service level equal to a four star hotel under the Mobil Star Rating System, as set forth in greater detail in Exhibit B; Detailed Services. This standard of performance and operation shall apply to all functions and duties of Management Company.

3.02 Staff. Management Company shall maintain a sufficient number of employees at the Rotary House with competence and skills to assure quality operation of the Rotary House.

3.03 Promotion and Marketing. Management Company and Owner shall establish and implement such policies of advertising, promotion, and marketing as Management Company and Owner shall deem necessary to publicize the Rotary House to Owner's patients and their guests and to promote the use and occupancy thereof. All major promotional policies and materials shall be approved in writing and in advance by Owner. As required from time to time, Management Company shall share with Owner appropriate marketing strategies and information pertaining to Rotary House and shall assist Owner in developing marketing materials. The parties acknowledge that promotion and marketing will likely be minimal due to the primary purpose of serving the patients of Owner and their families.

Management Company agrees that it will not publicize this Agreement or disclose, confirm or deny any details thereof to third parties, or use any photographs or video recordings of the facility or of Owner's employees, patients, or guests of the facility or use the name of Owner's facilities in connection with any sales promotion or publicity event without the explicit prior written approval of Owner.

3.04 Support Services. Management Company shall negotiate appropriate agreements for services necessary to support the operation of the Rotary House. Any agreement for which anticipated payments exceed \$5000 must be approved by Owner. All such agreements shall comply with all applicable provisions of local, state and federal laws.

3.05 Purchasing Goods and Services. Except as provided herein, Management

Company shall purchase all goods and services necessary for the efficient operating of the Rotary House. Management Company shall endeavor to obtain best value for such goods and services. Such purchases shall be an Expense to Owner. Management Company may contract with companies that are Affiliates (or companies in which Management Company has an ownership interest if such interest is not sufficient to make such a company an Affiliate) to provide goods and/or services to the Rotary House so long as the prices and/or terms for such goods and/or services are competitive. Additionally, Management Company may contract for the purchase of goods and services for the Rotary House with third parties that have other contractual relationships with Management Company and its Affiliates, so long as the prices and terms are competitive. In determining, pursuant to the foregoing, whether such prices and/or terms are competitive, they will be compared to the prices and/or terms which would be available from reputable and qualified parties for goods and/or services of similar quality, and the goods and/or services which are being purchased shall be grouped in reasonable categories, rather than being compared item by item. Owner is exempt from Texas Sales and Use Tax in accordance with Tex. Tax Code §151.309 and 34 Tex. Admin. Code §3.322(c)(5). Owner hereby appoints Management Company as its “authorized agent” per 34 Tex. Admin. Code §3.322(g)(2) for the purchase of inventory, equipment, supplies and services used at Owner’s Premises. Management Company is authorized to sign the Texas Sales and Use Tax Exemption Certificates and provide the same to vendors for purchases contemplated herein, in accordance with 34 Tex. Admin. Code §3.322(g)(2). With respect to any purchases of goods or services pursuant to the foregoing qualification or pursuant to other group purchasing organization, any allowances, credits, rebates, commissions and discounts received with respect to any such purchases will be accounted to the credit of the Rotary House. Owner shall have the right to audit Management Company's records and books relevant to the purchasing of all goods and services relating the Rotary House.

3.06 Information Technology Service Support. Management Company shall identify and utilize all automation and information technology systems necessary to enable the facility to function as any other hotel within its particular brand(s). Except as otherwise agreed between the parties, Owner will provide and manage all traditional information technology services and equipment as set forth below. Management Company will use the following automation, electronic, information and/or software systems provided by Owner, for which Owner will provide access and, if appropriate, licenses:

- Voice switch & Voice mail
- Property Management Systems, including reservation system (including server)
- PoS (Point of Sale)
- Owner Patient Education
- Wireless (Wifi) Support
- PCI Compliance
- BAS (Building Automation System)
- RHI external website (which will not be a part of or linked from the website of Management Company or any hotels managed or owned by Management Company)

- Internet Services Carrier (Bandwidth)
- Printers and associated supplies
- Fire Panels & UTPD Alarm Systems connectivity
- Management Company imaged computers compatible with MDACC

Management Company must obtain the written approval of Owner prior to the use of any Management Company proprietary software or third-party software to be installed in the Rotary House by or for Management Company. If requested by Owner, Management Company will request and use commercially reasonable efforts to obtain extensions of any software or information system licensing agreement for a period (not to exceed ninety (90) days) following termination of this agreement. If the software or information system is owned by Management Company or any of its affiliates, then Management Company (if requested by Owner) will be under the absolute obligation to provide an extension of such software and information system for a period (not to exceed ninety (90) days) following termination of this agreement and, in any event, for the entirety of the transition period. In connection with any such extension, Owner shall be required to execute Management Company's standard grace period license agreement, provided, however that no license fees shall be payable by Owner to Management Company during such grace period.

3.07 Security. Management Company shall provide limited, passive security services in the Rotary House in accordance with policies and procedures established by Owner and shall coordinate with a representative designated by the parties. Management Company security personnel will be responsible for maintaining key control procedures, patrols of the property, liaison with University of Texas Police Department ("UTPD") as well as local police and fire agencies, employee communication devices, incoming packages, lost and found items, safe deposit boxes, employee escorts, locking and unlocking doors or areas, employee call off notifications, security and fire alarm systems, two way radios, the CCTV system, and exterior flags and flagpoles. Management Company's Security personnel will also assist in maintaining the integrity of the entrances and exits of the property. All electronic security (video, alarms, card access, etc.) is supplied by and supported by the UTPD. Management Company may not install any electronic security software or equipment in the Rotary House without the prior written approval of Owner. Management Company shall immediately notify Owner of any disturbance or other security matter that comes to Management Company's attention. Owner will provide active security services in the Rotary House in conjunction with The University of Texas Police Department. Management Company will fully cooperate with all UTPD and other law enforcement and security investigations and will fully disclose, without undue delay or reservation, (except as may be necessary to comply with any applicable laws, including privacy laws), any and all internal records, documents, statements, evidence, electronic files or other information that have been requested by UTPD and are reasonably necessary to aid in the course of a criminal investigation.

3.08 Information Security. All Management Company policies and procedures shall be in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Patient Safety and Quality Improvement Act of 2005 (PSQIA). All matters regarding

patient and guest identities, records and other personal information shall be considered confidential and directed to Owner's representative within the Patient Guest Relations Department.

3.09 Reservations. Management Company shall ensure all guests are patients or patient guests of the Owner, or Owners' guests, unless otherwise approved by Owner. Reservations and room availability shall be managed by the Management Company in conjunction with the Owner's representatives, primarily Owner's office of Patient Guest Relations. Patient Guest Relations will have access to the reservation system as directed by Owner in order to provide services to Owner's patients.

3.10 Rates and Credit; Guests. Subject to the prior review and approval by Owner, Management Company shall establish and implement policies for the amount of charges, rates, fees and prices for rooms, services, food, beverages and entertainment at the Rotary House, together with policies for the granting and withholding of credit to patrons and users of the Rotary House. Subject to the prior review and approval by Owner and consistent with Owner's Direct Bill Policy, Management Company shall establish and implement policies regarding the persons who may use the Rotary House and when they may use the Rotary House, it being the intent that the Rotary House will be predominantly reserved for use by the patients of Owner and their families.

3.11 Licenses and Permits. In its own name, Management Company shall maintain, as an Expense, such licenses, permits and certificates from public authorities and commissions as may be necessary to operate the Rotary House as a full service facility, including, without limitation: business licenses, food and beverage service and sale licenses, and licenses for the dispensing and sale of alcoholic beverages. Owner shall cooperate with Management Company in obtaining licenses and permits. Upon termination of the Agreement, Management Company shall (to the extent permitted by law or applicable franchise agreements) assign to Owner or to the new manager all operating licenses, franchises and permits for the Rotary House which have been issued in Management Company's name.

3.12 Concessions. Management Company shall prepare and negotiate agreements, all for final approval by Owner, for the use of concessions, including without limitation coin-operating laundry and vending machines, and commercial space located in the Rotary House. All concession and commercial space agreements negotiated by Management Company shall specify that all books and records pertaining to such concessions and commercial space shall be made available for Owner's review upon Owner's reasonable request.

3.13 Taxes. Upon receipt by Management Company of any real and personal property tax bills and assessments for the Rotary House, Management Company shall promptly submit the same to Owner for Owner's review and payment. The amount of taxes shall be Owner's Direct Cost.

3.14 Compliance with Law. Management Company shall, as an Expense, arrange for compliance with all local, state and federal statutes, laws, rules and regulations applicable to the

Rotary House. Any extraordinary costs associated with such compliance shall be Owner's Direct Cost. Management Company shall, immediately upon discovery, report to Owner any hazardous conditions at the Rotary House, together with any conditions that may cause Owner, Management Company or the Rotary House to be in violation of any statute, law, rule, regulation or any insurance company requirement which applies to the Rotary House. Management Company shall promptly take remedial action as may be necessary or appropriate to prevent or correct any such hazardous condition or violation. Management Company shall give Owner prompt notice of all legal claims, suits or proceedings of which it has knowledge filed against or arising from or related to the ownership or operation of the Rotary House.

3.14.1 Legal Obligations. Management Company is aware of, is fully informed about, and in full compliance with its obligations under all applicable laws, rules, and regulations. Owner and Management Company will cooperate fully in meeting any obligations imposed upon Owner or Management Company by federal, state, and other regulatory bodies with respect to the goods and/or services to be provided under the terms of this Agreement as such obligations currently exist or may be altered from time to time in the future. Management Company agrees to cause its employees, representatives, agents, and subcontractors to become aware of, fully informed about, and in full compliance with all applicable Owner rules and policies, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions. Management Company will operate and maintain the Rotary House in strict compliance with fire and life safety requirements applicable to the Owner's buildings. Owner will inspect, monitor and evaluate Management Company's compliance with fire and life safety requirements, and Management Company will implement written recommendations made by Owner relating to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access issues arising from any such inspection, monitoring or evaluation.

3.14.2 Clery Act Responsibilities. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f), as amended from time to time (the "Clery Act") imposes a legal duty on Owner to disclose to its campus community and to the U.S. Department of Education timely and annual information about certain incidents that occur on its campus and at certain off-campus, non-campus, and public property locations. These incidents include: (i) murder; (ii) sex offenses, forcible or nonforcible; (iii) robbery; (iv) aggravated assault; (v) burglary; (vi) motor vehicle theft; (vii) manslaughter; (viii) arson; (ix) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; (x) all incidents described in the foregoing clauses (i) through (viii) in which the victim is intentionally selected because of his/her actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability; and (xi) larceny-theft, simple assault, intimidation, destruction, damage, or vandalism of property, and other crimes involving bodily injury to any person, in which the victim is intentionally selected because of his/her actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability. Management Company agrees to assist Owner in fulfilling these duties by

providing to Owner information about all such crimes that become known to it and that occur at the Rotary House or adjacent to it. Landlord will report this information to Owner's designated UTPD liaison immediately upon learning of this information.

3.15 Complaints. Management Company shall establish and implement policies and procedure to handle the complaints of all guests or users of any of the services or facilities of the Rotary House, including the compensation for or replacement of lost, stolen, or damaged personal property.

3.16 Collection Actions. Management Company shall recommend to Owner legal actions or proceedings when necessary or appropriate to collect charges, rent or other income owed to the Rotary House, or to oust or dispossess guests or other persons using Rotary House space, or to cancel or terminate any agreement due to the breach of a party. Management Company shall have no authority to institute any such legal action or proceeding without the specific prior written approval of Owner. Unless otherwise agreed in writing, Owner shall have exclusive control and direction of any such legal actions or proceedings.

3.17 Consumption of Supplies and Inventories. Management Company shall use, consume and replace the Operating Supplies and Inventory in the ordinary course of operation of the Rotary House as an Expense.

3.18 Revenue and Expenses. Management Company shall diligently collect and deposit Gross Revenues and disburse and pay all Expenses from Gross Revenues and advances provided by Owner.

3.19 Information Generally. Management Company shall keep Owner fully informed at all times with respect to conditions and circumstances affecting the operation of the Rotary House; including prevailing market and sales conditions and the status of competition. Management Company shall extend to Owner its cooperation and assistance in allowing free access to the Rotary House and in enabling Owner to determine and evaluate the status of operations at the Rotary House. Management Company shall meet and confer with Owner regularly to review the operations thereof.

3.20 Gift Shop and Patient Guest Programs. Owner shall retain exclusive control over the management of the Gift Shop and Patient Guest Programs/ , each of which is located on the Rotary House premises, and other units/offices as Owner may from time to time designate. Management Company shall be responsible for maintenance and repairs of the Gift Shop and Patient Guest Programs, as set forth in Section 10.07 below.

3.21 Patient and Guest Entertainment Programs. Owner shall retain exclusive control over all patient and guest entertainment programs. The scheduling of events, locations and required services shall be in conjunction with Management Company and Owner's representative, Patient/Guest Relations.

3.22 Salon and Patient/Guest Exercise Room. Management Company shall have exclusive control over the management of the beauty salon and patient/guest exercise room, which is located on the Rotary House premises. Management Company shall be responsible for maintenance and repairs of the beauty salon and patient/guest exercise room and such expenses shall be treated as Expenses.

3.23 Parking Garage and Valet Services. Owner shall provide access to the parking garage(s) serving the Rotary House and valet services, which will be located on the Rotary House premises. Owner shall be responsible for maintenance and repairs of the parking garage.

3.24 In-room Communications and Entertainment Systems. Owner shall provide telephone services and internet access to the guest and will provide patient education programs that will be integrated into the in-room cable television to be provided by Management Company. Management Company will provide in-room cable television, in-room movie selections (which will not include “adult entertainment”) and other electronic entertainment options may be provided at a charge to the guest, given Owner approval. Owner shall be responsible for the solicitation, maintenance and repairs of these services offered in the Rotary House and the charges for same shall be Expenses of the Rotary House.

3.25 Business Center. Management Company shall operate and maintain the Business Center available to the guests. Owner will provide, operate and maintain all computer, communication, and network equipment for the Business Center. All operational costs, repair and maintenance and the costs shall be treated as Expenses of the Rotary House.

3.26 Laundry Services. Management Company shall operate on-site laundry facilities for terrycloth linens. Flat sheets and other laundry services shall be contracted within the goods and services purchasing requirements contained herein. Management Company shall be responsible for maintenance and repairs of laundry facilities on the Rotary House premises and the charges for same shall be Expenses of the Rotary House. Owner may provide certain limited capacity laundry services if agreed between the parties.

3.27 Trash Services. Management Company shall seek disposal services for trash collection within the goods and services purchasing requirements contained herein. Management Company shall utilize radiation alarms and other detection devices in order to ensure safe disposal of waste products. Sharps containers located within guest rooms must be disposed of in compliance with typical biohazard disposal practices and all legal requirements. Any contract for these services must require the vendor to comply with these and other standard safety and health requirements and practices.

3.28 Conference Spaces. Owner shall retain exclusive control over scheduling and sales of conference spaces that are located on the Rotary House premises. Management Company may request utilization of these spaces with approval of Owner’s representative, Conference Support Services. Management Company shall have the right to offer and provide catering services and collect revenues associated with such in compliance with the collection practices noted herein. Management Company shall be responsible for maintenance and repairs

of the Conference Spaces, which shall be treated as Expenses.

3.29 Food and Beverage Facilities. Management Company shall provide all staffing, goods and services as required to operate the existing and any future food and beverage facilities in an efficient and service oriented fashion. The current facilities are as follows:

3.29.1 The Oaks Restaurant. Open for breakfast, lunch and dinner, offers a full buffet for breakfast and lunch, as well as an extensive a la carte menu to suit the tastes of any palate. This facility will accommodate any special dietary needs of guests.

3.29.2 The Oaks Lounge. A casual setting for cocktails and light snacks. It features an open-space lounge overlooking the atrium.

3.29.3 Sliderville. Offers hot items for breakfast and lunch.

3.29.4 Cilantro's Mexican Grill and Basil's Pasta Bar. Located in the same space as Sliderville and also offers a variety of grocery type items.

3.29.5 Rotary Café. Offers a variety of branded coffee, beverages, frozen drinks and freshly baked pastries, cookies and branded ice cream daily.

3.29.6 Fresco's. Offers a large salad bar with a variety of toppings along with sushi, spring rolls, soft yogurt, and frozen novelties. It also offers branded personal pizzas, breadsticks and hot wings.

3.29.7 Room Service. Operations include a la carte offerings delivered directly to guest rooms.

3.30 Transportation Management Company shall as an Expense operate Owner-provided vans and/or other appropriate vehicles to transport Owner's patients and guests to and from the Rotary House and Owner's hospital facilities in the Houston Medical Center area. Maintenance and repair of vehicles shall conform to the general maintenance and repair practices of the facility and all such costs associated with the above shall be treated as an Expense.

3.31 Monitor Quality. Management Company shall establish and implement procedures to continually monitor the quality of services, including an inspection system covering all services to be performed and a method for identifying and correcting deficiencies. Owner will participate in this assessment process on a regular basis, and a written report of findings, corrective action planned and taken will be provided to Owner. The areas of operations which shall be specifically monitored for quality include housekeeping, maintenance, food service operations, beverage service operations, and guest relations.

ARTICLE IV EMPLOYEES

4.01 Hiring Supervision, and Training. Management Company shall recruit, hire, relocate, promote, train, direct and discharge a staff of employees adequate to operate and maintain the Rotary House at the qualitative standard of operation required under this Agreement. Such staff shall be employees of Management Company, and Management Company shall fix their compensation and establish and implement policies relating to staff employment. Additionally, Management Company shall:

A. Ensure that Rotary House's General Manager shall have at least five (5) years previous experience as an employee of Management Company and that such General Manager is knowledgeable and competent to implement and enforce Management Company's policies and procedures; and

B. Provide Owner the opportunity to interview and approve all executive staff personnel prior to extending employment offers.

4.02 Key Personnel. It having been agreed by Owner and Management Company that the individuals assigned to the Key Personnel positions as of the Effective Date are necessary for the successful performance of this Agreement, the Management Company agrees that whenever for any reason, one or more of the aforementioned individuals are unavailable for performance under this Agreement, the Management Company shall replace such individual(s) with (an) individual(s) of substantially equal abilities and qualifications. In this regard, Management Company shall submit to Owner, in duplicate, a resume providing the full name, title, qualifications, and experience, for all such successor personnel prior to assignment of such personnel to perform work under the Agreement, so that Owner may decide whether such successor personnel meet the qualifications of the position, or whether they are qualified to perform work assigned, and advise the Management Company accordingly. Owner shall have final approval over the appointment of successor Key Personnel, such approval not to be unreasonably withheld. Successor Key Personnel must be current employees of the Management Company for a period of no less than one (1) year with a proven satisfactory performance history with Management Company, and/or have at least three (3) years' experience in hotel/hospitality management.

4.03 Personnel Policies; Compliance with Law. Management Company shall determine and implement all personnel policies and practices relating to the Rotary House, including the following: (i) policies and practices relating to terms and conditions of employment, screening, selection, training, supervision, compensation, bonuses, severance, pension plans and other employee benefits, discipline, dismissal, and replacement; and (ii) policies and practices relating to the exercise by any Rotary House personnel of rights under any applicable labor laws in relation to the operation. Management Company specifically agrees that all personnel decisions concerning employees shall be made without regard to race, color, religion, age, national origin, sex, sexual orientation, gender identity/expression, disability, veteran status, genetic information, or any other basis protected by institutional policy or by federal, state, or local laws, unless such distinction is required by law. Management Company shall ensure that all applicable local, state and federal laws, statutes, ordinances and regulations concerning employment are observed with respect to its

employees.

4.04 Payroll and Related Expenses. Management Company shall be responsible for paying all salaries, wages, expenses and fringe benefits of its employees. Management Company shall further prepare, report and pay all social security, employment and unemployment taxes and contributions as may be required by statute. Management Company shall have the right to provide its employees, who are eligible therefor and are not covered by any collective bargaining or similar arrangements, with benefits of (i) incentive plans, (ii) pension, profit sharing or other employee retirement, and/or (iii) disability, health or welfare or other benefit plan or plans now or hereafter offered by the Management Company. All such compensation and benefits must be reasonable as compared to similar type facilities and must comply with all applicable provisions of the Budget. All of the foregoing payments shall be deemed Expenses under this Agreement.

4.05 Employee Amenities. Management Company and Owner shall determine which employees, if any, shall reside at the Rotary House on a permanent or extended basis. Management Company shall be permitted to provide, subject to availability, reasonable free accommodations and amenities to its employees and representatives living at or visiting the Rotary House in connection with management functions.

4.06 Relocation Expenses. It is understood and agreed that no Expense will be incurred in connection with the relocation of any Management Company employees.

4.07 Performance Evaluation. Management Company shall perform periodic performance evaluations at appropriate intervals for each employee of Management Company assigned to the Rotary House. Owner shall have the right to review and comment upon such evaluation at Owner's request.

ARTICLE V

BUDGET AND FINANCIAL REPORTS; ACTIONS UPON TERMINATION

5.01 Budgets Preparation.

A. Not later than ____ () months prior to the beginning of each Fiscal Year, Management Company shall prepare and submit to Owner a comprehensive operating budget ("Operating Budget"). Such Operating Budget shall reflect by Accounting Period and for the Fiscal Year, in the degree of detail specified by the Uniform System for statements on an accrual basis, the projected Gross Revenues, Expenses and the Management Fee in all categories of receipt and disbursement. Management Company shall also submit to Owner, at the same time each year, a five (5) year Capital Expenditure budget and a replacement budget. Any changes in the Budgets requested by Owner shall be communicated to Management Company before the commencement of the Fiscal Year covered thereby.

B. The Operating Budget shall include, but not be limited to, as Expenses:

- the pass through of labor, including salaries, wages, taxes, payroll administration, benefits as accrued, retirement plans and the cost of administering such plans and services, and including training costs as a separate line item.
- the pass through of charges for the prorata portion of worker's compensation and general liability insurance applicable to the operation of the Rotary House based on the average manual rates for such insurance in the area of the Rotary House and other insurance maintained pursuant to the agreement; ; cost of licenses, permits; on-site information systems, software license and maintenance fees; manager bonuses (if any); cost of drug testing; proprietary materials, flowers, decorations, minor equipment, repair maintenance of Management Company- supplied equipment and other services related to the Rotary House.

C. Each proposed Operating Budget must be prepared giving due consideration to all relevant factors, including, without limitation, existing market and economic conditions, and operation of the Rotary House in a manner that is consistent with the Owner's room rate plan and strategy. By presenting a budget to the Owner, the Management Company represents that (i) the proposed Budget is an informed and realistic estimate of income and expenses and (ii) the proposed Budget is reasonable and can be carried out to fruition. Due to the historical predictability of all expense categories it is assumed that budgets will not fluctuate to any great degree.

5.02 Approval of Proposed Budget Owner and Management Company shall meet within fifteen (15) days after Owner's receipt of the proposed Budgets for any Fiscal Year. Within fifteen (15) days after such meeting, Owner shall deliver to the Management Company Owner's written objections to the proposed Budget. If Owner fails to deliver to Management Company its written approval or disapproval of a proposed Budget within such 15-day period, then such proposed Budget shall be deemed disapproved in all respects, until Owner delivers to Management Company its approval or any objections in writing. At such time as Owner delivers its objections to such proposed Budget, such disapproval shall specifically include the items disapproved. During the fifteen (15) day period following Management Company's receipt of Owner's items of disapproval, Owner and Management Company will meet to discuss the disapproved items. Within five (5) days after such meeting, Management Company shall submit to Owner a revised proposed Budget, as applicable, incorporating such revisions as agreed between Owner and Management Company. If the parties do not agree upon such revisions, then the parties shall engage in the procedure described in the "Budget Dispute Resolution Procedure" section below to resolve such dispute. All Budget line items will be fully documented. Owner will not unreasonably withhold approval of the Budgets.

5.03 Budget Dispute Resolution Procedure. If the parties, despite their good faith efforts, are unable to reach final agreement on the proposed Budget for a Fiscal Year by July of the current Fiscal Year, the parties shall invoke “Dispute Resolution Procedures” as follows: (i) the parties shall within five (5) days meet and confer about the disagreement; and (ii) if the parties do not resolve their differences at this meeting, within ten (10) days, senior management of the parties, shall meet and confer. Until such time as the parties are able to resolve a dispute related to a proposed Budget, the proposed Budget shall govern the areas of operations not in dispute and the prior year’s approved Budget shall govern the areas in dispute.

5.04 Permitted Variations from Budget. Management Company shall use commercially reasonable efforts to operate within, and in a manner consistent with, each approved Budget. Owner acknowledges that certain Expenses described in the Operating Budget (but not the Capital Expenditure Budget) for any Fiscal Year will vary based on the occupancy of the Rotary House. Accordingly, to the extent that the occupancy of the Rotary House for any Fiscal Year exceeds or falls below the occupancy projected in the approved Operating Budget for such Fiscal Year, the Operating Budget shall be deemed to include corresponding increases or decreases in such Variable Expenses, as applicable, so long as with respect to increases in expenses, Management Company reasonably believes and Owner reasonably agrees that such increase will increase net operating income over that budgeted. The term “Variable Expenses” shall mean Expenses covered by an approved Operating Budget that reasonably fluctuate as a direct result of business volumes, including food and beverage expenses, other merchandise expenses, operating supply expenses, and energy costs.

5.05 Books and Records. Management Company shall keep full, complete and accurate books of accounts, front office records, guest information and other records to be prepared to reflect the operation of the Rotary House and the results of operations of the Rotary House. All books of account and records shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) and with the Uniform System. All books and records shall be reported in a format consistent with the hotel/hospitality industry and including such additional information and as may be reasonably required by Owner for compatibility with Owner’s fiscal reporting requirements. All of the financial books and records pertaining to the Rotary House, including books of account, front office records, and guest records and information, shall be the property of the Owner, and shall be available with 24 hours advance notice at all working hours for inspection and copying by Owner and its representatives; provided, however, that (i) guest information may be used by Management Company for any of its business purposes so long as such information is not used in a manner which would violate this Agreement or subject Owner to any liability for the use or disclosure of such information, (ii) files pertaining solely to Management Company’s intellectual property and Management Company’s personnel shall be Management Company’s property (except that Owner shall have the right to review such employee records in connection with an audit, a financing or a purchase of the Rotary House, but only to the extent of the following: employee contracts, employment applications and information pertaining thereto, initial hire date, current salary, wage and benefits, and employment positions and any other information that Owner is permitted by law to review for any reasonable purpose). Upon termination of this Agreement, all of such books of account and

financial records (excluding confidential files relating to Management Company's intellectual property) shall be turned over forthwith to Owner so as to ensure the orderly continuance of the operation of the Rotary House, but all of such information shall be retained by Owner and made available to Management Company at the Rotary House, at all reasonable times, for inspection, audit, examination, and copying (at Management Company's expense) for the period of time required by regulations of the Internal Revenue Service, but in any event no less than three (3) years subsequent to the date of termination.

5.06 Statements. Within thirty (30) days after the close of each Accounting Period, Management Company shall prepare and submit to Owner a statement of operations of the Rotary House reflecting for the preceding Account Period and cumulatively for the Fiscal Year, all financial activities pertaining to the Rotary House. Such statement of operations shall include the amount of Gross Revenues, Expenses, Management Fee, Capital Expenditures and reconciliation thereof, an analysis of statistics, bank accounts and accounts receivable. In the event Gross Revenues are insufficient to pay Expenses and the Management Fee, Management Company shall invoice Owner, and Owner shall submit the amount of the invoice within thirty (30) days after the invoice date. Owner shall pay interest on any amount unpaid when due at the rate set forth in Section 2251.025 of the Texas Government Code.

5.06.1 Annual Certified Financial Statements. Within one hundred and twenty (120) days after the end of each Fiscal Year, the Management Company shall cause to be prepared and delivered to Owner, as an Expense, certified financial statements for the preceding Fiscal Year. Owner shall supply to Management Company, within twenty (20) days after written request from Management Company to do so, any information in Owner's possession (and not in Management Company's possession) necessary for Management Company to cause the certified financial statements to be prepared and delivered. Until Owner delivers such information to Management Company, Management Company shall be obligated to prepare and deliver the certified financial statements with only such information as is reasonably available to Management Company, provided that if the independent accountant is unable to certify to such financial statements because of the need for information in Owner's possession which has not been supplied to Management Company, Management Company shall nevertheless cause such financial statements to be prepared and delivered with qualifications by the independent accountant as to such missing information.

5.07 Audit. At any time during the term of this Agreement and for a period of four (4) years thereafter, Owner or a duly authorized audit representative of Owner or the State of Texas, at its expense and at reasonable times, shall have the right to audit Management Company's records and books relevant to all services provided under this Agreement. The Owner shall also be entitled to conduct spot audits or examinations of same at the Rotary House without prior notice from time to time, when such notice could impact the purposes of the audit. Management Company shall cooperate fully with Owner and Owner's representatives in connection with any audit or examination conducted pursuant to this Section and shall make

available such books and records at the Rotary House. Any audit conducted or directed by Owner pursuant to this Section shall be at Owner's sole cost and shall not be deemed an Expense, provided however, in the event such an audit by Owner reveals any errors (overpayments or shortages), Management Company shall promptly refund Owner any payments due. Should such audit reveal errors totaling an amount equal to the greater of \$5,000 or 5% of income before debt service, Management Company shall reimburse Owner the reasonable cost of such audit.

5.08 Destruction of Records. Management Company shall not destroy any books and records, except in accordance with Owner's records retention policy, which may be amended by Owner from time to time in its discretion upon prior written notice to Management Company.

5.09 Internal Control Structures. Management Company shall maintain an internal control structure designed to provide assurance that the Rotary House and its assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with Management Company's authority, and that financial records are reliable for the purposes of preparing financial statements. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures. Management Company will use GAAP in this area.

5.10 Financial Matters. Management Company shall keep Owner informed and advised of all material financial and other matters concerning the Rotary House and the operation thereof and give due consideration to suggestions which Owner's designees or representatives, may offer with respect thereto from time to time.

5.11 Termination Matters. Upon the expiration or termination of this Agreement ("Termination"), the following shall be applicable:

A. Management Company shall, within ninety (90) days after Termination, prepare and deliver to Owner a final accounting statement with respect to the Rotary House, which shall include those items required to be included in the Accounting Period statements contemplated by Section 5.06 hereof, along with a statement of any sums due from Owner to Management Company pursuant hereto, dated as of the date of Termination. Within thirty (30) days of the receipt by Owner of such final accounting statement, the parties will make whatever cash adjustments are necessary pursuant to such final statement. The cost of preparing such final accounting statement shall be an Expense, unless the Termination occurs as a result of an event of default by either party, in which case the defaulting party shall pay such cost. Management Company and Owner acknowledge that there may be certain adjustments for which the information will not be available at the time of the final accounting and the parties agree to readjust such amounts and make the necessary cash adjustments when such information becomes available; provided, however, that all accounts shall be deemed final as of the first (1st)

anniversary of the effective date of termination.

B. Upon delivery to Owner of the final accounting statement, Management Company shall release and transfer to Owner any of Owner's funds which are held or controlled by Management Company with respect to the Rotary House with the exception of amounts owed to Management Company as reflected in the final accounting statement or otherwise required to be retained by the Agreement.

C. Management Company shall make available to Owner such books and records of the Rotary House (including those from prior years, subject to Management Company's reasonable records retention policies) as will be needed by Owner to prepare the accounting statements, in accordance with the Uniform System, for the Rotary House for the year in which the Termination occurs and for any subsequent year.

ARTICLE VI COLLECTION AND DISBURSEMENT OF FUNDS

6.01 General Account. Management Company and Owner shall open a General Account in the name of Owner or the Rotary House at a bank mutually agreed upon by the parties. Two designated employees of Management Company, who are bonded and who have been approved in writing by Owner, shall have signature authority on such account. Management Company shall deposit within twenty-one (21) days of the close of each Accounting Period all Gross Revenues in such General Account. All Gross Revenues collected by Management Company received from any source and all other funds in the General Account are the sole property of the Owner and are held in trust by Management Company for the Owner for application as provided herein. Management Company shall pay all expenses, and all disbursements authorized by this Agreement, including the Management Fee, from such General Account. No other funds of Owner or Management Company shall be deposited to or commingled with funds on deposit in the General Account, except as specifically authorized under this Agreement.

6.02 Owner's Advances. Within ten (10) days of the request of Management Company, and in accordance with approved Budgets, Owner shall advance sufficient funds through the General Account as are reasonably required as Working Capital to meet the operating needs of the Rotary House. Management Company shall not request Owner to make any such advances unless the cash in General Account is inadequate to meet such needs.

6.03 Reserve Account. Management Company and Owner agree that there shall be a Reserve Account maintained on the Owner's books in the name of Owner or the Rotary House. The purpose of such Reserve Account shall be to accumulate funds to pay for routine Capital Expenditures. The parties agree to transfer from Gross Revenues into the Reserve Account the following monies (the "Reserve Transfer Amount"), which shall be deemed an Expense: five percent (5%) of Gross Revenues for each Fiscal Year of operation, with such percentages to be reviewed annually by the parties. Amounts remaining in the Reserve Account at the end of each Fiscal Year shall be carried forward to the subsequent Fiscal Year. Proceeds from the sale of

any FF&E no longer deemed necessary by Management Company and Owner shall be transferred to Owner for posting to the Reserve Account and may be credited against amounts otherwise required to be transferred under this Section. The amounts posted to the Reserve Account shall be available to Management Company for the purpose specified herein. Management Company may set off Capital Expenditures incurred against the Reserve Transfer Amount and transfer the difference; in the event that Capital Expenditures incurred exceed the Reserve Transfer Amount, Management Company shall invoice Owner for the difference, which the Owner shall pay within twenty (20) days after the date of invoice.

6.04 Other Accounts. Management Company and Owner may also establish, upon mutual agreement, such other bank accounts as may be required for the efficient operation of the Rotary House. As of the Effective Date, a liquor account has been established.

6.05 Ownership of Accounts. The accounts provided for under this Agreement, and all funds therein, shall be the property of Owner, subject to the payment of routing Capital Expenditures, Expenses and disbursements, including Management Fee.

6.06 Owner Responsibility for Expenses. Except as otherwise provided under this Agreement, including but not limited to the Management Company's Indemnification obligations under Section 8.03, Management Company shall not be required to make any payment of Expenses or other disbursements for the account of Owner, except out of the funds in the foregoing accounts. Any debts and liabilities incurred by Management Company as a result of its operation and management of the Rotary House and incurred in accordance with this Agreement shall be paid by Owner to the extent that funds are not available in the foregoing accounts, within twenty (20) days after the date of invoice requesting such payment.

6.07 Client Settlement. Every four (4) weeks client settlement shall be adjusted for changes in working capital as follows: Sales plus or minus change in working capital = cash available for expenses, less expenses = net client settlement.

ARTICLE VII MANAGEMENT COMPANY COMPENSATION

For services rendered, Management Company shall be paid in accordance with the fee schedules described below:

7.01 Base Management Fee: Beginning on September 20, 2013, and continuing through September 20, 2015 the Base Management Fee will be _____ *[insert amount]* per annum. On September 20, 2015, the Base Management Fee will be increased **TWO PERCENT (2.0%)** per annum. Thereafter, the Base Management Fee will be increased as of the first day of Management Company's first Accounting Period in each year by **TWO PERCENT (2.0%)**.

7.02 Incentive Fees: An additional amount not to exceed twenty percent (20%) of the

Base Management Fees shall be paid on an annual basis based on Management Company's success in the following two categories:

A. Quality Audit. An independent hotel consulting firm, acceptable to both parties, will annually perform a total quality audit of all management aspects of the Rotary House. The audit fee will be treated as an Expense. The audit will consist of an all-inclusive overview of all departments of the Rotary House and will be performed unannounced. The quality audit score will be determined by _____, attached hereto as Exhibit C; Total Quality Audit Form. **[To be added later, as agreed between parties.]**

The Quality Audit portion of the Incentive Fee will be calculated and paid on an annual basis as follows:

<u>Audit Score</u>	<u>Percentage of Annual Base Management Fee</u>
9.0 to 10	5%
8.0 to 9.0	4.75%
7.0 to 8.0	4.5%
Less than 7.0	0%

B. Guest Satisfaction Index. Management Company will be paid a portion of the Incentive Fee based on its achievement of providing quality service to guests of the Rotary House, which shall be measured using the Guest Satisfaction Index (GSI). The Guest Satisfaction Index will be determined by averaging the results of the Guest Satisfaction Form, attached hereto as Exhibit D; Guest Satisfaction Form. **[To be added later, as agreed between parties.]**

The Guest Satisfaction Form contains a number of questions, each being rated from "Excellent," with a point value of ten (10) to "Poor," with a point value of one (1). The Rotary House's guest will rate each question by the quality rating. The rating system will provide an average per form. The total forms will be averaged to arrive at the GSI (GSI Average). Management Company and Owner agree that they each will encourage guests to complete and submit the Guest Satisfaction Form.

It has been established by Owner that receipt of Guest Satisfaction Forms from a minimum of ten percent (10%) of the actual total of guest registrations provides for a valid sample for measurement under the GSI, but in no event will the additional compensation to be paid under this Section be decreased if less than a ten percent (10%) response is attained. Management Company and Owner further agree that if receipt of the Guest Satisfaction Form is

continually less than ten percent (10%) of the total of guest registrations they may, by mutual agreement, establish an additional and/or alternate method for determining the GSI.

The Guest Satisfaction Form will be deposited by guests in a lock box located at the Rotary House's Front Desk. A designated representative of Owner will be responsible for the removal of the Guest Satisfaction Forms in the presence of a Management Company representative, at which time the number of forms received will be logged. Owner shall provide Management Company on a monthly basis a summary/analysis of all forms received in that period which will indicate the GSI Average and which will be accompanied by a copy of the forms.

The GSI Average portion of the Incentive Fee will be calculated and paid on a quarterly basis as follows:

<u>GSI Average</u>	<u>Percentage of Annual Base Management Fee</u>
9.5 to 10	3.75%
9.0 to 9.5	3.5625%
8.5 to 9.0	3.375%
8.0 to 8.5	0%

[Must be approved by Owner's bond counsel]

ARTICLE VIII

INSURANCE

8.01 Owners Insurance.

A. Owner shall procure and maintain, as Owner Direct Cost, a minimum of the following insurance: Property insurance on the Rotary House (including contents not to include personal property of the Management Company as described in 8.02 A) against loss or damage by fire, explosion, lightning and all other risks covered under a standard all- risk property insurance policy at full replacement cost.

B. All policies of insurance required under this Section shall be carried in the name of Owner and the Management Company as an additional insured as their respective interests may require. Any losses thereunder shall be payable to the parties as their respective interests may appear. Certificates of insurance evidencing the insurance required under this Section shall be delivered by Owner to Management Company.

8.02 Operational Insurance. Management Company shall provide and maintain in effect, as an Expense, during the time of this Agreement, the minimum insurance coverage, with companies authorized to do business in the State of Texas and having an A.M. Best Rating of A-:VII or better and in amounts (unless otherwise specified), as Owner may require:

A. Business Personal Property Policy written on an ISO causes of loss – special form, or some equivalent policy covering furniture and fixtures; machinery and equipment; Management Company’s stock and any other personal property owned by Management Company; Management Company’s use interest in improvements and betterments (i.e., fixtures, alterations, installations or additions to the Rotary House occupied but not owned by the Management Company which are acquired or made at the expense of the Management Company but are not legally removable by the Management Company; leased personal property for which the named insured has a contractual responsibility to insure; and personal property of others that is in Management Company’s care, custody or control that is located within the Rotary House. Management Company may, at its option, purchase business income, business interruption, extra expense or similar coverage as part of this business property insurance, and in no event shall Owner be liable for any business interruption or other consequential loss sustained by Management Company, whether or not it is insured, even if such loss is caused by negligence of Owner, its employees, officers, directors, or agents.

B. Equipment installation floater - Coverage shall be equal to the estimated completed project value on a form at least as broad as that provided by the ISO special causes of loss form. Coverage shall include materials, fixtures, supplies, and machinery and equipment to be used in the construction; include property to be used in connection with the construction while stored at other locations, and on property intended for use in the construction while in transit. Installation floater shall include full coverage for collapse, including collapse from design error. Owner, contractors and subcontractors shall be named as insureds under the policy. A waiver of subrogation between owner and contractor shall apply to the extent that damage is covered by insurance

C. Worker’s Compensation Insurance with statutory limits, and Employer’s Liability Insurance with limits of not less than \$1,000,000:

Employer's Liability – Each Accident	\$1,000,000
Employer's Liability – Each Employee	\$1,000,000
Employer's Liability – Policy Limit	\$1,000,000

Workers’ Compensation policy must include (a) under 3.A. on the information page the state in which work is to be performed, and (b) a waiver of subrogation in favor of Owner and The Board of Regents of The University of Texas System. Such insurance shall cover liability arising out of the Management Company’s employment of workers and anyone for whom the Management Company may be liable for workers’ compensation claims. Workers’ compensation insurance is required, and

no "alternative" forms of insurance shall be permitted

- D. Commercial General Liability Insurance with limits of not less than:
- | | |
|---|-------------|
| Each Occurrence Limit | \$1,000,000 |
| Damage to Rented Premises | \$ 300,000 |
| Medical Expenses (any one person) | \$ 10,000 |
| 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 cover the liability assumed under the indemnification provision of this Agreement, fully insuring Management Company's (or subcontractor's) liability for bodily injury (including death) and property damage.

- E. Liquor Liability Insurance, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage arising from the acts or omissions of Management Company or its employees, representatives, agents, or subcontractors in the performance of this agreement.
- F. Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit per accident for Bodily Injury and Property Damage;
- G. Umbrella/Excess Liability Insurance with limits of not less than \$4,000,000 per occurrence and aggregate with a deductible of no more than \$25,000, and (i) shall be excess over and be no less broad than and "following form" of all coverages described above. Inception and expiration dates will be the same as the underlying policies. Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall provide a duty to defend for any insured.
- H. Third Party Employee Crime Insurance to protect the assets and property of Owner with limits of not less than \$500,000 per claim. Management Company's insurance shall be primary to any insurance carried by UT System or any of its Institutions.

8.03 Waiver and Indemnification. Management Company shall be solely responsible for all services it provides, and Owner and Owner's officers, employees and agents shall have no liability for any services provided by Management Company or by the subcontractors of Management Company, except to the extent such liability is incident to, arises out of or in connection with the gross negligence, willful misconduct, or other tortious act or omission of Owner. Management Company shall indemnify and hold harmless the Owner, and Owner's officers, employees and agents (hereinafter referred to as the "Indemnified Parties") from and

against any and all claims, demands, causes of action and proceedings of whatever kind or nature which may be brought or instituted on account of or in any way incident to, arising out of, or in connection with the provision of services under this Agreement by Management Company, its agents, employees, or subcontractors (hereinafter collectively referred to as "Claims") and all losses, costs, penalties, damages and expenses, including but not limited to attorneys' fees and other costs of defending against, investigating and settling the Claims; provided, however, that the foregoing indemnity shall not apply to the extent incident to, arising out of, or in connection with the gross negligence, willful misconduct, or other tortious act or omission of the Indemnified Parties. Management Company shall assume on behalf of the Indemnified Parties and conduct with reasonable diligence and in good faith the defense of all Claims against the Indemnified Parties, whether or not Management Company is joined therein; provided, however, without relieving Management Company of its obligations under this Section, the Indemnified Parties, at their election may participate in the defense of any or all of the claims through the Attorney General of Texas or with attorneys or representatives of their own choosing. The obligations of the parties under this Section shall survive the expiration of the term or the earlier termination of this Agreement.

ARTICLE IX INVENTORIES AND FIXED ASSET SUPPLIES

9.01 Purchase and Maintenance. Inventory and Operating Supplies shall be purchased according to Management Company policies with funds from the General Account.

9.02 Ownership. All Inventory items and Operating Supplies shall be and remain the property of Owner.

9.03 Post Termination. Management Company shall have the option, to be exercised within thirty (30) days after termination, to purchase, at their then fair market value, items of the Rotary House's Inventories and Operating Supplies, if any, as may be marked with any of Management Company's trademarks, logos and any other similar intellectual property. Any such Inventories and Operating Supplies and any other items bearing any of Management Company's intellectual property shall, as of the date of such Termination, be removed from the Rotary House.

ARTICLE X REPAIRS, REPLACEMENTS AND IMPROVEMENTS

10.01 Maintenance and Routine Repair. Management Company shall maintain the Rotary House in a state of good repair and condition. Management Company shall ensure that a Chief Engineer is employed full time to oversee the Rotary House. Owner must review and approve the selection of any person or entity with whom Management Company subcontracts to perform maintenance and repair services. Management Company shall provide routine maintenance and repairs to the Rotary House and the FF&E located therein as shall be occasioned by normal wear and tear, by any statutory or governmental rule or requirement, or by the requirement of any insurance company insuring the Owner's interest in the Rotary House.

Owner shall have advance notice of, and the right to approve any undertaking involving maintenance and repair costs in excess of Five Thousand and No/100 Dollars (\$5000.00), and Owner's approval shall not be unreasonably withheld. The cost of all such maintenance and repairs shall be deemed an Expense.

10.02 Replacements. Management Company shall provide routine replacements to the Rotary House FF&E and routine repairs to the Rotary House which are normally capitalized under generally accepted accounting principles, such as exterior and interior repainting, resurfacing of building walls, floors, doors, cabinets and millwork, roofs and parking areas, replacing folding walls, as may be occasioned by normal wear and tear, by any statutory or governmental rule or requirement, or by the requirement of any insurance company insuring Owner's interest in the Rotary House. Owner shall have advance notice of, and the right to approve any Capital Expenditure involving costs in excess Five Thousand and No/100 Dollars (\$5000.00), and Owner's approval shall not be unreasonably withheld. Payment for such replacements and repairs shall be made from the Reserve Account, described in Section 6.03. Owner shall, as Owner's Direct Cost, pay for major Capital Expenditures. In the event any Capital Expenditure exceeds the balance in the Reserve Account, Owner, as Owner's Direct Cost, shall be responsible to pay such Capital Expenditures.

10.03 Alterations, Additions and Improvements. Management Company shall recommend to Owner, through the Capital Expenditure Budget, such alterations, additions and improvements to the Rotary House and its structural, mechanical, electrical, plumbing, communications and vertical transportation system components, as are necessary and appropriate to the continued safe, orderly and efficient operation of the Rotary House. Within the limitations of such a Capital Expenditure budget and subject to the limitations in sections 10.01 and 10.02, Management Company shall provide such alterations, additions and improvements to the Rotary House to be reimbursed by Owner as invoiced, unless Owner reserves such undertaking to itself.

10.04 Emergency Repairs. Notwithstanding the provisions of Section 10.03, Management Company may provide repairs of an emergency nature up to the amount of \$5000 without the necessity of securing prior approval of Owner, if the circumstances do not reasonably allow Management Company to first seek such approval; provided that Management Company must notify Owner as soon as reasonably possible thereafter.

10.05 Liens. With respect to any maintenance, repair and replacement provided by Management Company under the foregoing sections, Management Company shall make prompt payment of the costs incurred from the General or Reserve Accounts or upon invoicing to Owner. Management Company shall not have the right to subject Owner's property to any lien. If any liens or claims for labor or materials supplied or claimed to be supplied to the Rotary House shall be filed, Management Company shall obtain the release or discharge of such lien(s) promptly.

10.06 Ownership. All repairs, replacements alterations, additions, and improvements made under the foregoing sections shall be the property of Owner.

10.07 Exceptions. Management Company shall be responsible for maintenance and repairs of the Gift Shop, conference rooms, Patient/Guest programs, and Patient/Guest Exercise Room, each of which is located on the Rotary House premises. Management Company's expenditures for maintaining and repairing the Gift Shop, conference rooms, Patient/Guest Programs, and Patient/Guest Exercise Room will be treated as an Expense.

ARTICLE XI DEFAULT AND REMEDIES

11.01 In the event of a material failure by Management Company to perform any of its obligations or covenants in accordance with the terms of this Agreement ("default"), Owner may terminate this Agreement upon thirty (30) days' written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of Owner. A material failure may include, but is not limited to, the failure of the Management Company to pay Expenses in a timely manner (subject to any funding obligations of Owner as provided in Section 6.02 and 6.06 hereof), failure of the Management Company to deposit Gross Revenues in a timely manner, misuse of the General Account on the part of the Management Company, insolvency of the Management Company, or failure of the Management Company to pay its debts in a timely manner. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the thirty (30) day period, the Management Company shall not be considered in default if it shall within such thirty (30) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default within the time established by the Owner. In the event this Agreement expires or is terminated, (i) all undisputed Expenses incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Section 6.02 and to the extent such funds are not sufficient, Owner shall pay all such undisputed Expenses, (ii) subject to Section 11.04 hereof, Owner shall promptly pay Management Company all undisputed fees earned to the date of expiration or termination, and (iii) without any further action on the part of Management Company or the Owner, the Owner shall, or shall cause another management company retained by it, to accept the assignment of Management Company's rights, and assume and perform all of Management Company's obligations made in accordance with this Agreement, arising after the date of expiration or termination of this Agreement, under any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the Rotary House which have been executed by Management Company hereunder, except (A) to the extent that any such license, agreement, commitment or contract was executed by Management Company in violation of any of the restrictions or other obligations applicable to Management Company and its right to execute such licenses, agreements, commitments or contracts contained in this Agreement and (B) for any such license, agreement, commitment or contract to which the consent of the other party thereto is required for such assignment and assumption unless such consent is obtained (in the case of any such consent, Management Company will use commercially reasonable efforts to obtain such consent and the Owner will cooperate in any reasonable manner with Management Company).

11.02 Termination under Section 11.01 hereof will not relieve Management Company

from (i) liability for any default or breach under this Agreement or any other act or omission; or (ii) any obligation which by its express terms is to survive the expiration or sooner termination of this Agreement.

11.03 If Management Company fails to cure any default within the time period provided in Section 11.01 hereof after receiving written notice of the default, Owner will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Management Company under this Agreement, any and all reasonable expenses incurred in connection with Owner's curative actions.

ARTICLE XII MISCELLANEOUS

12.01 Assignment and Subcontracting. Except as specifically provided in Exhibit G; Policy on Historically Underutilized Businesses, attached and incorporated for all purposes, Management Company's interest in this Agreement (including Management Company's duties and obligations under this Agreement, and the fees due to Management Company 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 Owner; and (b) be a breach of this Agreement for which Management Company will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Texas Government Code*, and 34 TAC Chapter 20, §§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by Owner.

12.02 Representations and Warranties. Each party covenants that all action required on its part has been taken to authorize and empower it to enter into and perform this Agreement and that it has the full right to perform its obligation hereunder. Each party further represents that there are no prior or existing contractual commitments that would prevent it from entering into this Agreement or conducting the operations and carrying out the duties and obligations provided for hereunder.

12.03 Utilities. Steam and chilled water will be furnished to the Rotary House through the Thermal Energy Cooperative (TECO) of which Owner is a member. Costs for these services will be considered an Expense.

12.04 Relationship of the Parties. Management Company shall purchase food and supplies in Management Company's name and shall pay the invoices. Owner may supervise Management Company's daily operation of the food service operations, including working conditions for food service employees and safety, sanitation and maintenance of the Rotary House premises.

12.05 Notices. All notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be delivered either by hand, with receipt given, or sent by certified or registered mail, postage prepaid and return receipt requested. Notice to Owner shall be effective if addressed to:

To Owner:

Chief Operating Officer
The University of Texas
MD Anderson Cancer Center
1515 Holcombe Blvd., Box 043
Houston, Texas 77030

With copies to:

Chief Legal Officer
Legal Services
The University of Texas
MD Anderson Cancer Center
1515 Holcombe Blvd., Box 537
Houston, Texas 77030

Kenneth I. Shine, M.D.
Executive Vice Chancellor
for Health Affairs
The University of Texas System
601 Colorado Street
Austin, Texas 78701

To Management
Company:

[INSERT INFORMATION]

With copy to:

[INSERT INFORMATION]

The name and address to which notices shall be sent may be changed from time to time by either party by written notice sent as specified above. A notice which is properly mailed shall be deemed to have been given on the fifth (5th) calendar day after the date of its posting.

12.06 Waiver. No failure by either party to insist upon the strict performance by the other of any term, condition, covenant or provision of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach of such term, condition, covenant or provision. No waiver of any breach shall effect or alter this Agreement, but each and every term, condition, covenant or provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach.

12.07 Partial Invalidity. If any provision hereof shall be determined or declared invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated.

12.08 Construction Rules. The captions and headings in this Agreement are for purposes of convenience and reference only, and the words contained therein shall have no substantive effect

and shall in no way be held to explain, modify, or amplify the meaning of the sections and provisions of this Agreement to which they pertain.

12.09 Governing Law. Harris County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

12.10 Trademarks and Trade Names. Neither party shall use the name, logo or mark of the other on signs, brochures, pamphlets, audiovisual recordings or other promotional material, without the prior written approval of such other party. Notwithstanding the foregoing, either party may indicate in any written or audiovisual materials that the Rotary House is being managed by the Management Company.

12.11 Infringement Indemnity. Management Company shall pay for any royalties, license fees and patent or invention rights or copyrights or trade and service marks and defend and indemnify Owner from all lawsuits or claims for the infringement of any patent or invention rights or copyrights or trade or service marks involved in the services furnished pursuant to this Agreement. Management Company shall hold harmless and save Owner and its officers, agents, and employees harmless from liability of any kind, including costs and expenses for, or on account of any patented or unpatented invention, process, article or appliance furnished and/or used in the performance of this Agreement.

12.12 Confidentiality. Management Company shall not, except as necessary in the performance of this Agreement or as required by state or federal laws or as authorized in writing by Owner, supply, disclose, or otherwise permit access to at any time any information concerning or in any way related to Owner's information or other matters pertaining to Owner's business which Management Company may in any way acquire by reason of performance of this Agreement.

12.13 Conflict of Interest. Management Company covenants to owner that no relationship, whether by relative, business associate, capital funding agreement, or any other such kinship is known to exist between any officer or employee of Management Company and any member of the Board of Regents or any officer or employee of The University of Texas System or The University of Texas MD Anderson Cancer Center. If such a relationship becomes known to Management Company, full disclosure shall be made to the Owner's Chief Legal Officer prior to acceptance of this Agreement for appropriate administrative review and approval.

12.13.1 Management Company affirms that it received no offer, made no offer nor intends to offer 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.

12.14 Fidelity Bond. Management Company shall provide and maintain in effect during the term of this Agreement a fidelity bond in the amount of \$1,000,000 (One million and No/100 Dollars.) Said bond shall cover only employees of Management Company and shall be deemed an Expense to Owner. Notwithstanding the maintenance of the above-described fidelity bond, Management Company shall be responsible for and shall promptly reimburse Owner for the value of any shortfall in cash or pilferage of property belonging to Owner. Such reimbursement shall be

returned to Management Company to the extent that a claim for such loss is paid to Owner under the above fidelity bond.

12.15 Performance Bond. The Management Company shall execute in accordance with the provisions of Sections 2253.001 et seq. and 2252.061 et seq., Texas Gov't Code, to Owner a Performance Bond in the amount of \$100,000 (One Hundred Thousand Dollars and No/100), conditioned upon the faithful performance of the Agreement. Said bond shall be solely for the protection of the State of Texas, and shall be deemed an Expense to Owner.

A. The Performance Bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in the State of Texas, reasonably acceptable to Owner, and on forms approved by the Attorney General of Texas. Owner will consider acceptable any corporate surety qualified to do business in Texas which has a rating of at least B from Best's Key Guide, or, if the surety company does not have a rating in Best's Key Rating Guide owing to the short length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration, or must be an approved surety company listed in the current United States Department of Treasury circular 570, "Companies holding certificates of authority as acceptable sureties on federal bonds and acceptable ensuring companies." If any surety upon any bond furnished in connection with the Agreement becomes insolvent, or otherwise not authorized to do business in the State, Management Company shall promptly furnish equivalent security to protect the interests of the State of Texas.

B. The Performance Bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond) authorizing the agent who signs the bond to commit the company to the terms of the limit, if any, in the total amount for which the agent is empowered to issue a single bond.

12.16 Use of Owner Name. Without the prior written consent of Owner, Management Company may not use in anyway any photograph of any Owner facility or employee or any trademark, service mark, or name of Owner or The University of Texas System, including but not limited to: The University of Texas MD Anderson Cancer Center, Anderson, MD Anderson, and the MD Anderson logo. Requests to license Owner's or The University of Texas System's trademarks must be sent to

Director, Trademark Licensing
The University of Texas at Austin
P.O. Box 7399
Austin, Texas 78713
512-475-7923
512-232-7080 fax

trademarks@athletics.utexas.edu

or

craig.westemeier@athletics.utexas.edu

With a copy to:

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

12.17 Open Records. This Agreement and all information, documentation and other material submitted by Management Company in response to any solicitations or under any resulting purchase order thereof may be subject to public disclosure under Chapter 552, *Texas Government Code*. Management Company is hereby notified that Owner strictly adheres to this statute and the interpretations thereof rendered by the courts and the Texas Attorney General. Management Company will be deemed to have knowledge of this law and the means of protecting Management Company's legitimate interests.

12.18 Compliance with Employment Laws. If this Agreement will exceed \$10,000.00 or if the Management Company anticipates or has a history of exceeding \$10,000.00 in sales to Owner within a continuous twelve (12) month period, then Management Company's signature on this document will signify Management Company's compliance with the provisions of Section 202 of Executive Order No. 11246 pertaining to Equal Employment Opportunities, effective September 24, 1965; as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 O.K. 4212).

12.19 Tax Certification. If Management Company is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), Management Company certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that it is exempt from the payment of such taxes, or that it is an out-of-state entity that is not subject to those taxes, whichever is applicable.

12.20 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Management Company agrees that any payments owing to Management Company under this Agreement may be applied directly toward any debt or delinquency that Management Company owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.

12.21 Texas Family Code Child Support Certification. Pursuant to Section 231.006, *Texas Family Code*, Management Company 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.

12.22 Force Majeure. In the event of a significant adverse effect upon the continuing operation of the Rotary House caused by any act of God, act of war, civil disturbance, governmental action, including the revocation of any license or permit necessary for the operation of the Rotary House where such revocation is not due to the action or inaction of Management Company, either party shall be entitled to terminate this Agreement upon ninety (90) days written notice to the other.

12.23 Loss of Funding. Performance by Owner under this Agreement may be dependent

upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner will issue written notice to Management Company and Owner may terminate this Agreement without further duty or obligation under this Agreement. Management Company acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner.

12.24 Dispute Resolution.

A. To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used, as further described in this Agreement, by Owner and Management Company to attempt to resolve any claim for breach of contract made by Management Company:

(i) Management Company's claims for breach of this Agreement pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Management Company will submit written notice, as required by subchapter B of Chapter 2260, to Owner in accordance with the notice provisions in this Agreement. Management Company's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Owner allegedly breached, the amount of damages Management Company seeks, and the method used to calculate the damages. Compliance by Management Company with subchapter B of Chapter 2260 is a required prerequisite to Management Company's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of Owner, or such other officer of Owner as may be designated from time to time by Owner by written notice thereof to Management Company in accordance with the notice provisions in this Agreement, will examine Management Company's claim and any counterclaim and negotiate with Management Company in an effort to resolve such claims.

(ii) If the parties are unable to resolve their disputes under subparagraph (A) of this Section, the contested case process provided in subchapter C of Chapter 2260 is Management Company's sole and exclusive process for seeking a remedy for any and all of Management Company's claims for breach of this Agreement by Owner.

(iii) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by Owner nor any other conduct, action or inaction of any representative of Owner relating to this Agreement constitutes or is intended to constitute a waiver of Owner's or the state's sovereign immunity to suit and (ii) Owner has not waived its right to seek redress in the courts.

B. The submission, processing and resolution of Management Company's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.

C. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Management Company, in whole or in part. Owner and Management Company agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

12.25 Conformance with and Subordination to Law.

A. Owner is an agency of the State of Texas and under the Constitution and laws of the State of Texas possesses certain rights and privileges and only has such authority as is granted to it under the Constitution and laws of the State of Texas. Notwithstanding any provision hereof, nothing herein is intended to be, nor will it be construed to be, a waiver of the sovereign immunity of the State of Texas or a prospective waiver or restriction of any of the rights, remedies, claims, and privileges of the State of Texas. Moreover, notwithstanding the generality or specificity of any provision hereof, the provisions of this agreement as they pertain to Owner are enforceable only to the extent authorized by the Constitution and laws of the State of Texas.

B. Owner will not be required to perform any act or to refrain from any act that would violate any applicable law.

C. The parties recognize that this Agreement is subject to, and agree to comply with, all applicable local, state, and federal laws, statutes, rules and regulations. Any provision of any law, statute, rule or regulation that invalidates any provision of this Agreement, that is inconsistent with any provision of this Agreement, or that would cause one or both of the parties hereto to be in violation of law will be deemed to have superseded the terms of this Agreement. The parties, however, will use their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of the law and negotiate in good faith toward amendment of this Agreement in such respect.

12.26 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes all prior understandings and writings heretofore made, and any other agreements as to the subject matter hereof not incorporated herein are void and of no effect.

12.27 Amendment. This Agreement may not be amended except by means of a written document signed by the duly authorized representatives of the parties.

12.28 Effectiveness. This Agreement will be effective as of the Effective Date.

12.29 Historically Underutilized Business Subcontracting Plan. Management Company agrees to use good faith efforts to subcontract the work in accordance with Exhibit G; Policy on Historically Underutilized Businesses("HSP") . Management Company agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to Owner in the format required by Texas Procurement and Support Services Division of the Texas

Comptroller of Public Accounts or any successor agency (collectively, “TPSS”). Submission of compliance reports will be required as a condition for payment under this Agreement. If Owner determines that Management Company has failed to subcontract as set out in the HSP, Owner will notify Management Company of any deficiencies and give Management Company an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Management Company. If Owner determines that Management Company failed to implement the HSP in good faith, Owner, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. Owner may also revoke this Agreement for breach and make a claim against Management Company.

A. Changes to the HSP. If at any time during the term of this Agreement, Management Company desires to change the HSP, before the proposed changes become effective (a) Management Company must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by Owner; and (c) if Owner approves changes to the HSP, this Agreement must be amended in accordance with Section 12.27 to replace the HSP with the revised subcontracting plan.

B. Expansion of the Work. If Owner expands the scope of the work through a change order or any other amendment, Owner will determine if the additional work contains probable subcontracting opportunities *not* identified in the initial solicitation for the work. If Owner determines additional probable subcontracting opportunities exist, Management Company will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional work; or (b) Management Company may perform the additional work. If Management Company subcontracts any of the additional subcontracting opportunities identified by Owner without prior authorization and without complying with 34 TAC Section 20.14, Management Company will be deemed to be in default of this Agreement under Article XI and will be subject to any remedial actions provided by Texas law including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. Owner may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.

12.30 Access by Individuals with Disabilities. Management Company represents and warrants (“EIR Accessibility Warranty”) that the electronic and information resources and all associated information, documentation, and support that it provides to Owner under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1 TAC Chapter 213 and Title 1 TAC Section 206.70 (as authorized by Chapter 2054, Subchapter M, *Texas Government Code*). To the extent Management Company becomes aware that the EIRs, or any portion of the EIRs, do not comply with the EIR Accessibility Warranty, then Management Company represents and warrants that it will, at no cost to Owner, 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 Management Company is unable to do so, then Owner may terminate this Agreement and Management Company will refund to Owner all amounts Owner has paid under this Agreement within thirty (30) days after the termination date.

12.31 Responsibility for Individuals Performing work; Criminal Background Checks. Each individual who is assigned to perform the work under this Agreement will be an employee of Management Company, or an employee of a subcontractor engaged by Management Company. Management Company is responsible for the performance of all individuals performing the work

under this Agreement. Prior to commencing the work, Management Company will (1) provide Owner with a list (“List”) of all individuals who may be assigned to perform the work, and (2) have an appropriate criminal background screening performed on all the individuals (the costs of which shall be an Expense hereunder). Management Company will determine on a case-by-case basis whether each individual assigned to perform the work is qualified to provide the services. Management Company will not knowingly assign any individual to provide services on Owner’s campus who has a history of criminal conduct unacceptable for a healthcare facility, including violent or sexual offenses. Management Company will update the List each time there is a change in the individuals assigned to perform the work.

Prior to commencing performance of the work under this Agreement, Management Company will provide Owner a letter signed by an authorized representative of Management Company certifying compliance with this Section. Management Company will provide Owner an updated certification letter each time there is a change in the individuals assigned to perform the work.

12.32 Undocumented Workers. The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“Immigration Act”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“I-9 Form”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Management Company is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual’s national origin or citizenship status. If Management Company employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, Owner may terminate this Agreement in accordance with Article XI. Management Company represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

12.33 No Endorsements. Notwithstanding any other term or condition of this Agreement to the contrary, no sponsorship recognition material or recognition of Management Company of any other any kind, may state or imply that Owner endorses a particular company, organization or any other entity, including Management Company, or any other entity’s goods or services, including Management Company’s goods or services.

12.34 Limited Access; Space License.

A. Owner may permit Management Company to utilize office space (“Office Space”) within the Rotary House as set forth in Exhibit A; Space Use. The location of the Office Space will be designated by Owner and may change from time to time. Owner will provide the Office Space in accordance with the space license contained in this Section.

B. Owner licenses the Office Space in its current, “as is” condition to Management Company for use by Management Company and its employees, representatives, agents, and subcontractors in the performance of its obligations under this Agreement and for no other purpose. This is a non-exclusive license to use the Office

Space. Owner may enter the Office Space at any time for any reason. No unlawful activities will be permitted in the use of the Office Space. Management Company will comply, and cause all of its employees, representatives, agents, and subcontractors to comply, with all applicable laws and Owner rules and policies in connection with the use of the Office Space.

C. Management Company will not modify or alter the Office Space or any other Owner facilities. Management Company and its employees, representatives, agents, and subcontractors will not harm the Office Space or make any use of the Office Space that is offensive as determined by Owner. Management Company represents, warrants, and agrees that it will maintain neat and orderly conditions (reasonably satisfactory to Owner) in the Office Space and adjacent areas at all times

D. Upon expiration or termination of this Agreement for any reason, Management Company will remove any Management Company owned equipment and other effects, repair any damage caused by Management Company performing the removal, and peaceably deliver up the Office Space in clean condition and in good order, repair and condition, ordinary wear and tear excepted. Any property of Management Company not removed within thirty (30) days following the termination will be deemed abandoned by Management Company and Owner may dispose of the property in any manner it chooses, with no liability or reimbursement obligation to Management Company.

E. Management Company will not suffer any mechanic's lien to be filed against the Office Space or the adjoining facilities by reason of any work, labor, services, or materials performed at or furnished to the Office Space for Management Company. Nothing in this Agreement will be construed as the consent of Owner to subject Owner's estate in the Office Space or adjoining facilities to any lien.

F. OWNER WILL NOT BE RESPONSIBLE FOR INTERRUPTIONS IN UTILITY OR TELECOMMUNICATIONS SERVICE TO THE SPACE. HOWEVER, OWNER WILL EXERCISE REASONABLE DILIGENCE IN PURSUING THE RESTORATION OF INTERRUPTED UTILITY SERVICE.

Having agreed to the foregoing terms and conditions, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized officers as of the date(s) written below.

THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER

(INSERT VENDOR NAME)

By: _____
Dwain Morris
Vice President and CFO

By: _____
(Insert Name and Title)

Date: _____

Date: _____

Approved as to Content:

By: _____
Spencer Moore
Vice President and Chief Facilities Officer

Date: _____

Approved as to Form:

By: _____
Chad Mavity
Senior Legal Officer

Date: _____

LIST OF EXHIBITS:

The documents marked below are attached to and fully incorporated into this Agreement as substantive parts of this Agreement.

Exhibit A - Space Use

Exhibit B - Detailed Services

Exhibit C – Total Quality Audit Form [**To be added later, as agreed between parties.**]

Exhibit D - Guest Satisfaction Form [**To be added later, as agreed between parties.**]

Exhibit E – Not Used

Exhibit F – Respondent's Execution of Offer

Exhibit G – Rider 104: Policy on Utilization of Historically Underutilized Businesses

Exhibit H – Rider 105; Vendor Affirmations

Exhibit I – Rider 106; Premises Rules

Exhibit J – Rider 107; Travel Policy

Exhibit K – Rider 111; Business Associate Agreement

Exhibit L – Rider 114; Network Connections

Exhibit M – Rider 116; Invoice Payment Requirements

Exhibit N – Rider 117; Compliance with Institutional Policies

**EXHIBIT A –
SPACE USE**

**EXHIBIT B –
DETAILED SERVICES**

EXHIBIT B

DETAILED SERVICES

1. Operational Responsibilities

The selected supplier will accept operational responsibility for the following, except as set forth otherwise in the Agreement:

- Front Desk services: Be responsible for guest registration and check out procedures.
- Reservations: Coordination of reservations through Patient Guest Relations/clinics/MD Anderson Travel and other Owner-approved patient/guest pathways for reservation. Revenue management for guest rooms.
- Guest Services/Concierge: Be responsible for all guest service needs, including restaurant reservations, taxi dispatch. Coordination of events with local Rotary Clubs and Patient Guest Relations.
- Telephone/PBX: Be responsible for all incoming telephone calls for guests, employees, etc.
- Housekeeping: Be responsible for all cleaning services for guest rooms and public areas.
 - Cleaning floors, walls, the exterior of hoods, ducts, vents, and other equipment and fixtures used by Management Company in food storage and preparation areas.
 - Collecting and properly packing all refuse from such areas and placing the packed refuse at site(s) on Rotary House premises designated by Owner.
 - Cleaning public space and meeting rooms, to be performed as needed.
 - Cleaning administrative space including space occupied by Owner staff in such a manner as to maintain such spaces in compliance, at all times, with federal, state and local occupational health and safety laws and regulations and the applicable fire codes.
 - Cleaning all rest rooms as needed and space utilized for support services, including engineering services and storage areas in such a manner as to maintain such spaces in compliance, at all times, with Federal, State, and local occupational health and safety laws and regulations and the applicable fire codes.
 - Cleaning lobbies, loading docks, and walkways in and around the Rotary House premises, to be performed as needed.
- Laundry: Be responsible for all laundry services for guests, housekeeping, and food services.
- Engineering: Be responsible for all facility maintenance.
- Food and Beverage: Be responsible for all food production and service in all food and beverage outlets in the hotel.
- Sales & Marketing: Be responsible for all sales and revenue management and includes management of all marketing aspects including, design of all collateral, and website development.
- Conference Services: Coordinate services with Owner's Conference Support Services for set-up, break-down, and cleaning schedules.
- Event Planning: Be responsible for all planning aspects of conferences to include food services, conference services, parking, and security.
- Audio Visual: Coordinate audio visual services with and through Owner's Conference Support Services.

- Grounds & Landscaping: Owner's responsibility
- Conservation: Active participation in energy and resource conservation as per LEED's and Green Seal program requirements.

2. Service Level Requirement. Service Provider agrees to manage and operate the Rotary House premises in accordance with the Mobil Star Rating Service, Facilities, Guest Room and Specialized Facility Details listed below for Ratings One through Five. The Rotary House premises shall be operated as a Four Star Facility.

2.01 Defined. * * * * Four-Star Lodging Establishment indicates an outstanding hotel providing the guest with a luxury experience in a distinctive setting, including expanded amenities and exceptional service. Guests at a Four-Star Hotel, Resort or Inn can expect to find all of the qualities for a Three-Star Hotel, Resort or Inn plus the following characteristics:

2.02 Services Detail.

1. Written confirmation is automatic or offered, either by mail, fax or e-mail.
2. Guest's name is used effectively, but discreetly, as a signal of recognition.
3. The time from arriving at the reception area until registration is complete does not exceed five minutes (includes queuing).
4. Bed is plush and inviting with oversized or numerous pillows.
5. Bedcovers are elegant and stylish and with linens of exceptional quality and comfort.
6. All written information is provided on good quality paper or pads, custom-printed or logoed.
7. Bathroom presentation and placement of amenities and linens is thoughtful, careful, and elegant.
8. Fresh ice is provided during evening service or at another time during the day.
9. Turndown service is automatically provided.
10. During turndown service, guest clothing is neatly handled and guest toiletries are neatly arranged and displayed on a cloth or shelf.
11. Room service is delivered within 30 minutes.
12. Room service order is delivered within five minutes of quoted time.
13. One hour pressing is available.
14. Same day laundry and dry cleaning is available seven days/week.
15. Wake-up call is personalized with guest's name and time

of day.

16. Wake-up call is delivered within two minutes of requested time.
17. Special service desk identified as concierge/guest service is situated apart from reception/front desk.
18. Workstation where guest can access internet is available.
19. If spa services are present, treatments are begun and ended on schedule, within five minutes of expected or booked time.
20. If spa services are present, during treatment, therapist appears to be genuinely expert, moving seamlessly through treatment as described and expected.

2.03 Facilities Detail.

1. Lobby areas feature elegant live plants and/or fresh floral displays.
2. A dedicated and secure luggage storage area is available.
3. Public phones are equipped with seats, privacy panels and pad/pens.
4. Public washrooms are furnished with upgraded materials and appointments/luxurious design.
5. Televisions feature premium cable TV (two movie channels; two all-news, channels, and two financial channels).
6. Guest room telephones have two lines.

2.04 Guest Room Detail.

1. Selection of at least 10 hangers including a variety of bars, clips and padded.
2. Bed is triple sheeted or features washable duvets.
3. Live plants are present in guest rooms.
4. Shaving/makeup, lighted magnifying mirror is present.

2.05 Specialized Facility Detail.

1. Fitness equipment is available with personal headphones/televisions.
2. Current newspapers and national-title magazines are provided in fitness and locker areas.
3. If spa, treatment rooms are equipped with individually controlled temperature and sound systems.

3. **Patients/Customers.**

- Meet and greet as many clients as time will allow, and make sure they have everything they need and know how to use any equipment.
- Last minute requests should be granted in a timely manner, as most clients are very anxious about their treatment schedule.
- Answer pages quickly, as they are usually about a client request.
- When all checks are complete, be visible until the majority of the meetings have begun; this is so you can handle requests.
- Remain professional at all times. Any request you're not sure about, tell the client that you will find out for them. Be sure to follow through.

**EXHIBIT C –
TOTAL QUALITY AUDIT FORM**

**EXHIBIT D –
GUEST SATISFACTION FORM**

**EXHIBIT E –
NOT USED**

**EXHIBIT F –
RESPONDENT’S EXECUTION OF OFFER**

1.1 RESPONDENT'S EXECUTION OF OFFER
(See additional signature lines at end of this section)

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED, AND RETURNED WITH THE RESPONDENT'S PROPOSALS. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSALS WILL RESULT IN REJECTION OF THE PROPOSALS.

SIGNING A FALSE STATEMENT MAY VOID THE SUBMITTED PROPOSALS OR ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS, WHICH MAY RESULT FROM THE SUBMISSION OF RESPONDENT'S PROPOSALS, AND THE RESPONDENT MAY BE REMOVED FROM ALL PROPOSER LISTS. A FALSE CERTIFICATION SHALL BE DEEMED A MATERIAL BREACH OF CONTRACT AND, AT OWNER'S OPTION, MAY RESULT IN TERMINATION OF ANY RESULTING CONTRACT OR PURCHASE ORDER.

- 1.1.1 By signature hereon, Respondent acknowledges and agrees that (1) this Request For Competitive Sealed Proposals is a solicitation for Proposals and is not a contract or an offer to contract; (2) the submission of Proposals by Respondent in response to this Request For Competitive Sealed Proposals will not create a contract between the Owner and Respondent; (3) the Owner has made no representation or warranty, written or oral, that one or more contracts with the Owner will be awarded under this Request For Competitive Sealed Proposals; and (4) Respondent shall bear, as its sole risk and responsibility, any cost which arises from Respondent's preparation of a response to this Request For Competitive Sealed Proposals.
- 1.1.2 By signature hereon, Respondent offers and agrees to furnish to the Owner the products and/or services more particularly described in its Proposals, and to comply with all terms, conditions and requirements set forth in the Request For Competitive Sealed Proposals documents and contained herein.
- 1.1.3 By signature hereon, Respondent affirms that he has not given, nor intends 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 the submitted Proposals.
- 1.1.4 By signature hereon, a corporate Respondent certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, Texas Tax Code, or that the corporate Respondent is exempt from the payment of such taxes, or that the corporate Respondent is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable.
- 1.1.5 By signature hereon, the Respondent hereby certifies that neither the Respondent nor the firm, corporation, partnership or Owner represented by the Respondent, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the Proposals made to any competitor or any other person engaged in such line of business.
- 1.1.6 By signature hereon, Respondent represents and warrants that:
 - 1.1.6.1 Respondent is a reputable company regularly engaged in providing products and/or services necessary to meet the terms, conditions and requirements of the Request For Competitive Sealed Proposals;

- 1.1.6.2 Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions and requirements of the Request For Competitive Sealed Proposals;
- 1.1.6.3 Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances;
- 1.1.6.4 Respondent understands (i) the requirements and specifications set forth in this Request For Competitive Sealed Proposals and (ii) the terms and conditions set forth in the Contract under which Respondent will be required to operate;
- 1.1.6.5 Respondent, if selected by the Owner, will maintain insurance as required by the Contract;
- 1.1.6.6 All statements, information and representations prepared and submitted in response to this Request for Competitive Sealed Proposals are current, complete, true and accurate. Respondent acknowledges that the Owner will rely on such statements, information and representations in selecting the successful Respondent. If selected by the Owner as the successful Respondent, Respondent will notify the Owner immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.
- 1.1.7 By signature hereon, Respondent certifies that the individual signing this document and the documents made part of the Request For Competitive Sealed Proposals is authorized to sign such documents on behalf of the company and to bind the company under any agreements or other contractual arrangements, which may result from the submission of Respondent's Proposals.
- 1.1.8 By signature hereon, Respondent certifies that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Resident Respondent as defined in Rule 1 TAC 111.2.
- 1.1.9 By signature hereon, Respondent certifies as follows:
 - 1.1.9.1 "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
 - 1.1.9.2 "Under Section 2155.004, Texas Government Code, the vendor or applicant certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
 - 1.1.9.3 "Under Section 2254.004, Texas Government Code, the vendor or applicant certifies that each individual or business entity which is an engineer or architect proposed by Respondent as a member of its team was selected based on demonstrated competence and Proposals only."
- 1.1.10 By signature hereon, Respondent certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent

and an employee of any University of Texas component, or Respondent has not been an employee of any University of Texas component within the immediate twelve (12) months prior to your Request For Competitive Sealed Proposals response. All such disclosures will be subject to administrative review and approval prior to the Owner entering into any contract with Respondent.

- 1.1.11 By signature hereon, Respondent affirms that no compensation has been received for participation in the preparation of the specifications for this Request for Competitive Sealed Proposals (reference Section 2155.004 Texas Government Code).
- 1.1.12 Respondent represents and warrants that all articles and services quoted in response to this Request for Competitive Sealed Proposals 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 or proposed as of the date of this solicitation.
- 1.1.13 By signature hereon, Respondent signifies his compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 1.1.14 By signature hereon, Respondent agrees to defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of Respondent in the execution or performance of any agreements or other contractual arrangements which may result from the submission of Respondent's Proposals.
- 1.1.15 By signature hereon, Respondent agrees that any payments that may become due under any agreements or other contractual arrangements, which may result from the submission of Respondent's Proposals, will be applied towards any debt including, but not limited to, delinquent taxes and child support that is owed to the State of Texas.
- 1.1.16 By signature hereon, Respondent certifies that no member of the Board of Regents of The University of Texas System, or the Executive Officers of the University of Texas System or its component institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of the contract.
- 1.1.17 The Respondent must complete, sign and return this Execution of Offer as part of their submittal response. The Respondent's company official(s) who are authorized to commit to such a submittal must sign submittals. Failure to sign and return this form will subject the submittal to disqualification.

(Respondent's Name)

(Title)

(Authorized Signature)

(Date)

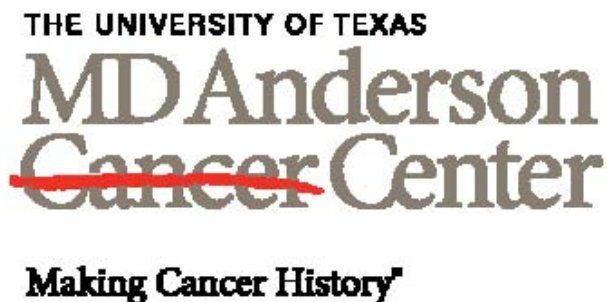
**EXHIBIT G –
RIDER 104; POLICY ON UTILIZATION OF
HISTORICALLY UNDERUTILIZED BUSINESSES**


THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER
March 2012

RIDER 104-A

POLICY ON UTILIZATION HISTORICALLY UNDERUTILIZED BUSINESSES

Commodities/Other Services/JOC Contracts



**The University of Texas MD Anderson Cancer Center
HUB and Federal Small Business Program
Policy on Utilization of Historically Underutilized Businesses (HUBs)**

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The University of Texas MD Anderson Cancer Center HUB and Federal Small Business Program

POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBs)
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Introduction

In accordance with the Texas Government Code, Sections 2161.181-182 and Title 34, Section 20.13 of the Texas Administrative Code (TAC), The Board of Regents of the University of Texas System, acting through The University of Texas MD Anderson Cancer Center's HUB and Federal Small Business Program, shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction services, including professional and consulting services; and commodities contracts. The HUB Rules promulgated by the Texas Comptroller of Public Accounts (the "Texas Comptroller"), set forth in 34 TAC Sections 20.10-20.28, encourage the use of HUBs by implementing these policies through race-, ethnic- and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the following goals as specified in the State of Texas Disparity Study:

- **11.2% for heavy construction other than building contracts;**
- **21.1% for all building construction, including general contractors and operative builders contracts;**
- **32.7% for all special trade construction contracts;**
- **23.6% for professional services contracts**
- **24.6% for all other services contracts, and**
- **21% for commodities contracts.**

The University of Texas MD Anderson Cancer Center (MD Anderson) shall make a good faith effort to meet or exceed these goals to assist HUBs in receiving a portion of the total contract value of all contracts that MD Anderson expects to award in a fiscal year. MD Anderson may achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F.

<p style="text-align: center;">SUMMARY OF REQUIREMENTS Historically Underutilized Business (HUBs) Subcontracting Plan</p>

It is the policy of The University of Texas System and each of its component institutions, to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (HUBs) in all contracts. Accordingly, The University of Texas MD Anderson Cancer Center has adopted “**RIDER 104-A, Policy on Utilization of Historically Underutilized Businesses**”. The Policy applies to all contracts with an expected value of \$100,000 or more. The University of Texas MD Anderson Cancer Center is the contracting authority.

1. In all contracts for professional services, contracting services, and/or commodities with an expected value of \$100,000 or more, The University of Texas MD Anderson Cancer Center (“MD Anderson” or “University”) will indicate in the purchase solicitation (e.g. RFQ, RFP, or CSP) whether or not MD Anderson has determined that subcontracting opportunities are probable in connection with the contract. A HUB Subcontracting Plan is a required element of the architect, contractor or vendor Response to the purchase solicitation. The HUB Subcontracting Plan shall be developed and administered in accordance with the Policy.
Failure to submit a required HUB Subcontracting Plan will result in rejection of the Response.
2. If subcontracting opportunities are probable, MD Anderson will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents, and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are probable, and the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors **[[34 TAC §20.14 (d) (1)(A)(B)(C)(D) (i)(ii)(iii)(2)(3)(A)(B)(C)(D)(E)(F)(4)(A)(B)].**
 - b. When subcontracting opportunities are probable, but the Respondent can perform such opportunities with its employees and resources, the Respondent’s HUB Subcontracting Plan shall include **the Self Performance HUB Subcontracting Plan, Section 3 – Self Performance Justification as the HUB Subcontracting Plan (HSP). [34 TAC §20.14 (d)(5)(A)(B)(C)(D)].**
3. If subcontracting opportunities are not probable, MD Anderson will declare such probability in its invitations for bids, requests for proposals, or other purchase solicitation documents and shall require submission of the appropriate HUB Subcontracting Plan with the Response.
 - a. When subcontracting opportunities are not probable, and the Respondent proposes to perform all of the work with its employees and resources, the Respondent shall submit a HUB Subcontracting Plan that includes **the Self Performance HUB Subcontracting Plan, Section 3 – Self Performance Justification as the HUB Subcontracting Plan (HSP).**
 - b. When subcontracting opportunities are not probable, but the Respondent proposes to subcontract any part of the work, the Respondent shall submit a **HUB Subcontracting Plan as prescribed by the Texas Comptroller** identifying subcontractors.
4. Respondents shall follow, but are not limited to, procedures listed in the Policy when developing a HUB Subcontracting Plan.
5. In making a determination whether a good faith effort has been made in the development of the required HUB Subcontracting Plan, MD Anderson shall follow the procedures listed in the Policy. If accepted by the University, the HUB Subcontracting Plan shall become a provision of the Respondent's contract with MD Anderson. **Revisions necessary to clarify and enhance information submitted in the original HUB subcontracting plan may be made in an effort to determine good faith effort.** Any revisions after the submission of the HUB Subcontracting Plan shall be approved by the HUB Coordinator.
6. The University of Texas MD Anderson Cancer Center shall reject any Response that does not include a fully completed HUB Subcontracting Plan, as required. **An incomplete HUB Subcontracting Plan is considered a material failure to comply with the solicitation for proposals.**

7. Changes to the HUB Subcontracting Plan. Once a Respondent's HUB Subcontracting Plan is accepted by MD Anderson and becomes a provision of the contract between Respondent and MD Anderson, the Respondent can only change that HUB Subcontracting Plan if (a) the Respondent complies with 34 TAC Section 20.14; (b) the Respondent provides its proposed changes to MD Anderson for review; (c) MD Anderson (including MD Anderson's HUB Coordinator) approves Respondent's proposed changes to its HUB Subcontracting Plan; and (d) MD Anderson and the Respondent amend their contract (via a writing signed by authorized officials of both parties) in order to replace the contract's existing HUB Subcontracting Plan with a revised HUB Subcontracting Plan containing the changes approved by MD Anderson.
8. Expansion of Work. If, after entering into a contract with a Respondent as a result of a purchase solicitation subject to the Policy, MD Anderson wishes to expand the scope of work that the Respondent will perform under that contract through a change order or any other contract amendment (the "Additional Work"), MD Anderson will determine if the Additional Work contains probable subcontracting opportunities not identified in the initial purchase solicitation for that contract. If MD Anderson determines that probable subcontracting opportunities exist for the Additional Work, then the Respondent must submit to MD Anderson an amended HUB Subcontracting Plan covering those opportunities that complies with the provisions of 34 TAC Section 20.14. Such an amended HUB Subcontracting Plan must be approved by MD Anderson (including MD Anderson's HUB Coordinator) before (a) the contract may be amended by MD Anderson and the Respondent to include the Additional Work and the amended HUB Subcontracting Plan and (b) the Respondent performs the Additional Work. If a Respondent subcontracts any of the additional subcontracting opportunities identified by MD Anderson for any Additional Work (i) without complying with 34 TAC Section 20.14 or (ii) before MD Anderson and that Respondent amend their contract to include a revised HUB Subcontracting Plan that authorizes such subcontracting, then the Respondent will be deemed to be in breach of its contract with MD Anderson. As a result of such breach, MD Anderson will be entitled to terminate its contract with the Respondent, and the Respondent will be subject to any remedial actions provided by Texas law, including those set forth in Chapter 2161, Texas Government Code, and 34 TAC Section 20.14. University may report a Respondent's nonperformance under a contract between that Respondent and MD Anderson to the Texas Comptroller in accordance with 34 TAC Sections 20.101 through 20.108.
9. A Response may state that the Respondent intends to perform all the subcontracting opportunities with its own employees and resources in accordance with the Policy. However, if such a Respondent enters into a contract with MD Anderson as a result of such a Response but later desires to subcontract any part of the work set forth in that contract, before the Respondent subcontracts such work it must first change its HUB Subcontracting Plan in accordance with the provisions of Section 7 above .
10. MD Anderson shall require a vendor to whom a contract has been awarded to report the identity and the amount paid to its subcontractors on a monthly basis using **a HUB Subcontracting Plan (HSP) Prime Contractor Progress Assessment Report (PAR)** as a condition for payment.
11. If the University determines that the successful Respondent failed to implement an approved HUB Subcontracting Plan in good faith, the University, in addition to any other remedies, may report nonperformance to the Texas Comptroller in accordance with 34 TAC, Section 20.14, (g)(1) related remedies of nonperformance to professional services firms, contractor, and vender implementation of the HUB Subcontracting Plan.
12. In the event of any conflict between this "Summary of Requirements" and the remainder of the HUB Policy, the remainder of the HUB Policy will control.
13. These requirements, including the attachments referred to above, may be downloaded over the Internet from <http://www.mdanderson.org/bids>. For additional information contact the MD Anderson HUB and Federal Small Business Program at 713-745-8300.

**Commodities/Other Services/JOC Contracts HSP
Summary of Attachments required from Respondents**

	Letter of Transmittal Page 7	HUB Subcontracting Plan (HSP) Pages 9-15	Progress Assessment Report (PAR) Page 17
1. MD ANDERSON DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE PROBABLE.			
1. A. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> .	X	X	
1. B. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X	X	
2. MD ANDERSON DETERMINES THAT SUBCONTRACTING OPPORTUNITIES ARE NOT PROBABLE.			
2. A. Respondent Proposes Self-Performance: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> , but the Respondent can perform such opportunities with its employees and resources.	X	X	
2. B. Respondent Proposes Subcontractors: Attachments required from the Respondent for the HUB Subcontracting Plan if the solicitation states that <u>subcontracting opportunities are not probable</u> but the Respondent proposes to subcontract any part of the work.	X	X	
3. Changes in the HUB Subcontracting Plan After Award: Attachments required from the Respondent to whom a contract has been awarded if it desires to make changes to the approved HUB Subcontracting Plan.		X	
4. Reporting: The Progress Assessment Report (PAR) is required with all payment requests. The submittal of this attachment is a condition of payment.			X

(RESPONDENT'S BUSINESS LETTERHEAD)
To be completed ONLY if you will be subcontracting.

**MDACC (only) Procurement
please check:**

- ☐ New HUB plan
- ☐ Design build/contract manager at risk
- ☐ Renewal
- ☐ Change order
- ☐ Other:

Date

Mrs. Marian Nimon
Associate Director, HFSB Program
The University of Texas MD Anderson Cancer Center
PO box 301439, Unit 546
Houston, TX 77230-1439

Re: Historically Underutilized Business Plan for _____ (related services)
RFP No. _____

Dear Mrs. Nimon,

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this HUB Subcontracting Plan (HSP) as an integral part of our response in connection with your invitation for Request for Proposals referencing the above project.

I have read and understand The University of Texas System Policy on Utilization of Historically Underutilized Businesses (HUBs). I also understand the State of Texas Annual Procurement Goal according to 34 Texas Administrative Code Section 20.13, and the goal as stated in the Agency Special Instructions section of the HUB Subcontracting Plan, page 9.

This HSP includes _____ Subcontracting Opportunities

Subcontractors	# of Subcontractors	Total Subcontract \$ Value	Total Estimated %	% Min Owned	% Woman Owned
HUB					
Non-HUB					
TOTAL					

I understand the above HUB percentages must represent Texas Comptroller HUB certification standards. For each of the listed HUB firms, I have attached a Texas Comptroller certification document, or, if the HUB is certified by another Texas Comptroller approved certifying agency, a copy of their approved certification document.

Should we discover additional subcontractors claiming Historically Underutilized Business status during the course of this contract we will notify you of the same. In addition, if for some reason a HUB is unable to fulfill its contract with us, we will notify you immediately in order to take the appropriate steps to amend this contractual obligation.

Sincerely,

(Signature)

(Vendor's Printed Name and Title)

(Vendor's Printed Company Name)

cc: Contract Administrator

Note: The inclusion of a HUB Subcontracting Plan is a requirement of this solicitation. Failure to submit a fully executed HUB Plan will result in rejection of your response.

(BUSINESS LETTERHEAD)

Date

Mrs. Marian Nimon
Associate Director, HFSB Program
The University of Texas MD Anderson Cancer Center
PO box 301439, Unit 546
Houston, TX 77230-1439

Re: Historically Underutilized Business Plan for: _____ (Project Title)
Project Number _____

Dear Mrs. Nimon:

In accordance with the requirements outlined in the specification section "HUB Participation Program," I am pleased to forward this Letter of HUB Commitment as an integral part of our submittal in connection with your Request For Proposal, referencing Project Number _____.

I understand that following the award of the RFP, the HUB Plan in its entirety is due prior to signing of the contract.

I have read and understand The University of Texas MD Anderson Cancer Center's Policy on Utilization of Historically Underutilized Businesses (HUBs).

Good Faith Effort will be documented with each contract and will contain a Letter of Transmittal and HUB Subcontracting Plan for each contract solicited. An updated HUB Plan will be submitted prior to the execution of each contract process. Documentation of sub-consulted work and the Progress Assessment Report must be provided with each pay request as well as to MD Anderson's HUB and Federal Small Business Program.

Sincerely,

Contractor's Printed Name and Title

Contractor's Signature

cc: Contract Manager



HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders contracts,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

Other Services HUB Goal – 24.6%

Commodities HUB Goal – 21%

Special Trades HUB Goal – 32.7%

- Responses for other services, commodities and special trade construction that contain subcontracting opportunities shall include a HUB Subcontracting Plan (HSP) that meets the Good Faith Effort prescribed in Method A or Method B of the attachments.
- Responses for Miscellaneous Service Agreements for indefinite duration/indefinite quantity (IDIQ) – Two (2) part process:
 1. Submit a Letter of HUB Commitment (page 8).
 2. Submit a HSP or revised HSP as appropriate, prior to execution of each contract process.
- **Respondents shall submit a completed HUB Subcontracting Plan (HSP) to be considered responsive.** Failure to submit a completed HSP shall result in the bid, proposal or other expression of interest to be considered NON- responsive. Respondents who intend to Self-Perform all of their work shall submit an HSP for Self Performance HUB Subcontracting Plan (HSP).
- Prime Contractor Progress Assessment Report (PAR) will be required monthly if subcontracting
- **Please note that phone logs are no longer acceptable documentation of good faith effort. Only fax, e-mail and written correspondence are acceptable.**
- ***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into 'new' contracts.

SECTION 1 RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
- Point of Contact: _____ Phone #: _____
- E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. RFP/PO #: _____ Bid Close Date: _____ / ____ / ____
mm/dd/yyyy)

Enter your company's name here: _____

Requisition #: _____

SECTION 2 SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

☐ - **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)

☐ - **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3. And SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have had contracts in place for <u>five (5) years or less</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have had contracts in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs .
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

☐ - **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the **aggregate expected percentage** of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract in place with for five (5) years or less **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

☐ - **Yes** (If **Yes**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)

☐ - **No** (If **No**, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

a. This page can be used as a continuation sheet to the HSP Form's page 2, SECTION 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

11

SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- ☐ - **Yes** (If **Yes**, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees **and attach copies of the page(s) or section(s) to this plan for HUB Plan review purposes.**)
- ☐ - **No** (If **No**, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

Provide explanation:

SECTION 4 AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature

Printed Name

Title

Date

- REMINDER:** ➤ If you responded "**Yes**" to **SECTION 2, Items c or d**, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "**No**" **SECTION 2, Items c and d**, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

(Rev. 10/11)

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "Yes" to SECTION 2, Items c or d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-A.doc>

SECTION A-1 SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: _____ Description: _____

SECTION A-2 SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas Certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas Certified HUB	VID # (Required if Texas Certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
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	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

(Rev. 10/11)

Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "**No**" to SECTION 2, Items c and d of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b of the completed HSP form. You may photo-copy this page or download the form at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/HUBSubcontractingPlanAttachment-B.doc>

SECTION B-1 SUBCONTRACTING OPPORTUNITY:

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing this attachment.

Item #: _____ Description: _____

SECTION B-2 MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in SECTION B-1, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, to continue to SECTION B-4.)

- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3.)

SECTION B-3 NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items a, b, c and d, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and minority or women trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person.

When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and minority or women trade organizations or development centers. Be mindful that a working day is considered a normal business day of the state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive order. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven(7) working days.

- a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to your submitting your bid response to the contracting agency. When searching for Texas certified HUBs, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Search directory located at <http://www.window.state.tx.us/procurement/cmbll/cmbllhub.html>. HUB Status code "A" signifies that the company is a Texas certified HUB.
- b. List the three (3) Texas certified HUBs you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Vendor ID (VID) number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	VID #	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
		/ /	- Yes - No
		/ /	- Yes - No
		/ /	- Yes - No

- c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more minority or women trade organizations or development centers to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to minority or women trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency.

List two (2) trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at <http://www.window.state.tx.us/procurement/prog/hub/mwb-links-1/>

- d. Enter the name of the minority or women trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Minority/Women Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
	/ /	- Yes - No
	/ /	- Yes - No

HSP Good Faith Effort - Method B (Attachment B) *Cont.*

Enter your company's name here: _____

Requisition #: _____

SECTION B-4 SUBCONTRACTOR SELECTION

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item#: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas Certified HUB and their VID number, the approximate dollar value of the work to be subcontracted, the expected percentage of work to be subcontracted, and indicate whether the company is a Texas certified HUB.

Company Name	Texas Certified HUB	VID # (Required if Texas Certified HUB)	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in SECTION B-1 is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded

HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.14 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, the respondent must provide notice of each of its subcontracting opportunities to minority/women trade organizations or development centers at least seven (7) working days prior to submitting its bid response to the contracting agency.

We respectfully request that vendors interested in bidding on the subcontracting opportunity identified in **Section C, Item 2** reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

Section A

PRIME CONTRACTOR'S INFORMATION

Company Name: _____ State of Texas VID #: _____
 Point-of-Contact: _____ Phone #: _____
 E-mail Address: _____ Fax #: _____

Section B

CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
 Point-of-Contact: _____ Phone #: _____
 Requisition #: _____ Bid Close Date: _____

Section C

SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

	<p>If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than:</p> <p style="text-align: right;">_____ (Date)</p>
<p>1. Potential Subcontractor's Bid Response Due Date:</p>	<p>(Note: In accordance with 34 TAC §20.14, each notice of subcontracting opportunity shall be provided to <u>at least three (3)</u> Texas certified HUBs, and allow the HUBs <u>at least seven (7) working days</u> to respond to the notice prior to submitting our bid response to the contracting agency. In addition, we must provide the same notice to minority/women trade organizations or development centers <u>at least seven (7) working days</u> prior to submitting our bid response to the contracting agency.) (A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the minority or women trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)</p>
<p>2. Scope of Work:</p>	
<p>3. Required Qualifications: - If Applicable</p>	
<p>4. Bonding/Insurance Requirements: - If Applicable</p>	
<p>5. Location to review plans/specifications: - If Applicable</p>	

HUB Subcontracting Plan (HSP)

Prime Contractor Progress Assessment Report

This form must be completed and submitted to the MD Anderson each month to document compliance with your HSP.

Date of Award: _____
(mm/dd/yyyy)

Object Code: _____
(Agency Use Only)

Contracting
Agency/University Name: _____

Contractor (Company) _____
Name: _____

State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

Reporting (Month) Period: _____ Total Amount Paid this Reporting Period to Contractor: \$ _____

Report HUB and Non-HUB subcontractor information

Subcontractor's Name	Subcontractor's VID(Federal EIN Number or HUB Certificate Number(<u>VID is required for all HUB subs</u>))	*Texas Certified HUB? (Yes or No)	Total Contract \$ Amount from HSP with Subcontractor	Total \$ Amount Paid This Reporting Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	Object Code <small>(Agency Use Only)</small>
			\$ -	\$ -	\$ -	
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Signature: _____ **Title:** _____ **Date:** _____

Printed Name: _____ E-Mail: _____ Phone No. _____

Return Form to: Marian Nimon, M.B.A., C.P.M., Associate Director
HFSB Program, Unit 546
UT MD Anderson Cancer Center
PO Box 301439
Houston, TX 77230-8352 Phone: 713-745-8352 FAX 713-745-5814
mnimon@mdanderson.org

Check if this is the last report to be submitted for this project:

*Note: HUB certification status can be verified on-line at:

<http://www2.cpa.state.tx.us/cmb1/hubonly.html>

Rev. 10/07

Minority Organizations List

Organization	Address	City	ZIP	Phone	FAX	Email
<i>The following organizations have agreed to accept subcontracting opportunities per agreement with the Texas Statewide HUB Program. Please contact the following organizations and at least one organization from the region where the project is located.</i>						
American Indian Chamber of Commerce of Texas	11245 Indian Trail, 2 nd Floor	Dallas	75229	972-241-6450	972-241-6454	tmarshall@aicct.com
Dallas Fort Worth Minority Supplier Development Council	2710 North Stemmons Freeway, North Tower, Ste. 900	Dallas	75207	214-630-0747	214-637-2241	admin@dfwmsdc.com
Houston Minority Supplier Development Council	Three Riverway, Ste. 555	Houston	77056	713-271-7805	713-271-9770	info@hmbc.org
Southwest Minority Supplier Development Center	912 Bastrop Hwy., Ste. 101	Austin	78741	512-386-8766	512-386-8988	smsdc@smsdc.org
Texas Association of Historically Underutilized Businesses	PO Box 684726	Austin	78768	512-220-4293	915-585-7751	rmata@tgsaustin.com
Tri-County Black Chamber of Commerce	PO Box 88376	Houston	77288	832-875-3977	713-839-7329	leondria@tricountyblackchamber.org
Women Contractors Association	PO Box 6757	Houston	77265	713-807-9977	713-807-9917	director@womencontractors.org
Women's Business Council Southwest	2201 N. Collins, Ste. 158	Arlington	76011	817-299-0566	817-299-0949	ementhe@wbcsouthwest.org
Women's Business Enterprise Alliance	9800 Northwest Freeway, Ste. 120	Houston	77092	713-681-9232	713-681-9242	srepka@wbea-texas.org
<i>Austin Area Minority Organizations</i>						
Austin Asian American Chamber of Commerce	10901 N. Lamar Blvd. Ste. B206	Austin	78753	512-407-8240	512-407-8233	aaacc@austinacc.org
Austin Black Contractors	6448 Hwy. 290 E. Ste. E-107	Austin	78723	512-467-6894	512-467-9808	brc-pro@swcbell.net

Minority Organizations List

Organization	Address	City	ZIP	Phone	FAX	Email
Capitol City African American Chamber of Commerce	5407 N. IH 35, Ste. 304	Austin	78723	512-459-1181	512-459-1183	admin@capcitychamber.org
National Association of Women in Construction		Austin		512-608-8388		membership@nawicaustin.org
Southwest Minority Supplier Development Council	912 Bastrop Hwy., Ste. 101	Austin	78741	512-386-8766	512-386-8988	Karen@smsdc.org
US Hispanic Contractors de Austin	319 Congress Ave., Ste. 250	Austin	78723	512-922-0507	512-374-1421	info@ushcs-austin.com
Women's Chamber of Commerce of Texas	PO Box 26051	Austin	78755	512-338-0839		Austin@womenschambertexas.com
San Antonio & South Texas Minority Organizations						
Greater Pleasanton-Atascosa Hispanic Chamber of Commerce	307 North Main St.	Pleasanton	78064	830-569-5211		
San Antonio Hispanic Chamber of Commerce	200 E. Grayson, Ste. 203	San Antonio	78215	210-225-0462	210-225-2485	www.sahcc.org
African American Chamber of Commerce of San Antonio	1717 N. 1604 East, Ste. 220	San Antonio	78232	210-490-1624	210-490-5294	blackchamber@aol.com
Alamo City Black Chamber of Commerce	600 Hemisfair Plaza Way Bldg. 406-10	San Antonio	78205	210-226-9055	210-226-0524	Info@alamocitychamber.org
Greater Victoria Chamber of Commerce	3434 N. Ben Wilson	Victoria	77901	361-573-5277	361-573-5911	www.victoriachamber.org
African American Chamber of Commerce of Victoria	PO Box 3594	Victoria	77903	361-575-2061	361-570-3696	info@aaccv.com

Minority Organizations List

Organization	Address	City	ZIP	Phone	FAX	Email
Corpus Christi Black Chamber of Commerce	PO Box 60574	Corpus Christi	78466	361-698-2166	361-698-2112	www.blackchambercc.org
Greater Hispanic Chamber of Commerce of Comal County	1115 Mahan Circle	New Braunfels	78183			
Seguin-Guadalupe County Hispanic Chamber of Commerce	PO Box 1154	Seguin	78155	830-372-3151	830-372-9499	hcoc@sbcglobal.net
San Marcos Hispanic Chamber of Commerce	174 S. Guadalupe St., Ste. 101	San Marcos	78666	512-353-1103	512-353-2175	
City of San Antonio Small Business Outreach	100 W. Houston	San Antonio	78205	210-207-3900	210-207-8151	
San Antonio Associated General Contractors	10806 Gulfdale	San Antonio	78216	210-349-4921	210-349-4017	mcmurry@sanantonioagc.org
Builders Exchange of Texas, Inc.	4047 Naco Perrin	San Antonio	78217	210-564-6900	210-564-6901	
Houston & Gulf Coast Minority Organizations						
Houston Minority Supplier Development Council	Three Riverway, Ste. 555	Houston	77056	713-271-7805	713-271-9770	info@hmbc.org
Tri-County Black Chamber of Commerce	4820 Caroline, Ste. 111	Houston	77004	832-875-3977	281-501-1043	procurement@tcbcc.net
Women Contractors Association	PO Box 6757	Houston	77265	713-807-9977	713-807-9917	director@womencontractors.org
Women's Business Enterprise Alliance	9800 Northwest Freeway, Suite 120	Houston	77092	713-681-9232	713-681-9242	srepka@wbea-texas.org

Minority Organizations List

Organization	Address	City	ZIP	Phone	FAX	Email
African American Chamber of Commerce of Greater Houston	6112 Wheatley St.	Houston	77091	713-692-7003	713-691-7131	jhall@acreshome.org
Houston Citizen's Chamber of Commerce	2808 Wheeler Ave.	Houston	77004	713-522-9745	713-522-5965	president@hccoc.org
National Association of Minority Contractors (NAMC) Greater Houston Chapter	3835 Dacoma St.	Houston	77092	713-843-3791	713-843-3701	dmjohnson@namctexas.com
Houston Hispanic Chamber of Commerce	1801 Main St., Ste. 1075	Houston	77002	713-644-7070	713-644-7377	jmireles@houstonhispanicchamber.com

**EXHIBIT H –
RIDER 105; VENDOR AFFIRMATIONS**

RIDER 105
CONTRACTOR'S AFFIRMATIONS AND WARRANTIES

By signing the Agreement, or accepting the Purchase Order, to which this Rider is attached 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. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that it 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. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that 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. By signing the Agreement, Contractor affirms, certifies, and warrants that it 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. (Reference Section 2155.004, *Texas Government Code*.)
3. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that it is not suspended, debarred, or listed in the U.S. General Services Administration's List of Parties Excluded From Federal Procurement or Non-Procurement Programs, or excluded from award by the United States Office of the Inspector General ("OIG") regarding Medicare, Medicaid, or other federal programs. Contractor further acknowledges that MD Anderson is prohibited by federal regulations from allowing any employee, subcontractor or agent of Contractor to work on site at MD Anderson's premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Contractor affirms, certifies, and warrants that it shall not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals/Entities issued by the OIG to work on site at MD Anderson's premises or facilities. Contractor affirms, certifies, and warrants that it shall perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at MD Anderson's premises or facilities. Contractor acknowledges that MD Anderson will require immediate removal of any employee, subcontractor or agent of Contractor assigned to work at MD Anderson's premises or facilities if such employee, subcontractor or agent is found to be on the OIG's List of Excluded Individuals/Entities. The OIG's List of Excluded Individuals/Entities may be accessed through the following Internet website: <http://oig.hhs.gov/fraud/exclusions/listofexcluded.html>.
4. By signing hereon Contractor certifies it qualifies status in one of the below as defined by the State of Texas.

4.1 Contractor, **is a Small Business** (as defined by Chapter 2155 of the Texas Government Code), and claims the following status:

- | | |
|--|---|
| <input type="checkbox"/> (100) Small Business, Non-HUB | <input type="checkbox"/> (160) Non-minority, Female, Small Business |
| <input type="checkbox"/> (100N) Disabled Person, Small Business | <input type="checkbox"/> (171) Asian Pacific American, Male, Small Business |
| <input type="checkbox"/> (141) Black American, Male, Small Business | <input type="checkbox"/> (172) Asian Pacific American, Female, Small Business |
| <input type="checkbox"/> (142) Black American, Female, Small Business | <input type="checkbox"/> (181) Native American, Male, Small Business |
| <input type="checkbox"/> (151) Hispanic American, Male, Small Business | <input type="checkbox"/> (182) Native American, Female, Small Business |
| <input type="checkbox"/> (152) Hispanic American, Female, Small Business | |

4.2 Contractor, **is not a Small Business** as defined above and claims the following status:

- | | |
|--|---|
| <input type="checkbox"/> (900N) Disabled Person | <input type="checkbox"/> (971) Asian Pacific American, Male |
| <input type="checkbox"/> (941) Black American, Male | <input type="checkbox"/> (972) Asian Pacific American, Female |
| <input type="checkbox"/> (942) Black American, Female | <input type="checkbox"/> (981) Native American, Male |
| <input type="checkbox"/> (951) Hispanic American, Male | <input type="checkbox"/> (982) Native American, Female |
| <input type="checkbox"/> (952) Hispanic American, Female | <input type="checkbox"/> (900) None of the above |
| <input type="checkbox"/> (960) Non-minority, Female | |

4.3 Contractor is to indicate below if they are /are not certified by the Texas Procurement and Support Services Division of the Texas Comptroller's Office as a Historically Underutilized Business.

RIDER 105
CONTRACTOR'S AFFIRMATIONS AND WARRANTIES

_____ **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.

4.4 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.

5. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that it will comply with all specifications, requirements, terms, and conditions set forth in this Agreement/Purchase Order and on any rider or attachments to the Agreement/Purchase Order. Contractor affirms, certifies, and warrants that the products or services Contractor provides under this Agreement/Purchase Order will meet or exceed the specifications set forth in this Agreement/Purchase Order.
6. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that all statements and information prepared and submitted under this Agreement/Purchase Order (including all information submitted by Contractor in response to or to verify the affirmations, certifications, and warranties set forth in this Rider) are current, complete, and accurate.
7. 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.
8. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that (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.
9. By signing the Agreement, or accepting the Purchase Order, Contractor affirms, certifies, and warrants that: (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.

RIDER 105
CONTRACTOR'S AFFIRMATIONS AND WARRANTIES

10. 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.

11. AFFIRMATIVE ACTION COMPLIANCE

In addition to the Contractor's affirmation, certification, and warranty under Section 10 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 Exhibit A to this Rider.

CONTRACTOR NAME

DATE

BY (ORIGINAL SIGNATURE)

COMPTROLLER I.D. NO., FEI NO. or SSN

TYPED NAME & TITLE

TELEPHONE NUMBER

CORPORATE CONTRACTORS SHALL FURNISH THE FOLLOWING INFORMATION:

WHERE INCORPORATED

CHARTER NUMBER

SOLE OWNER'S SOCIAL SECURITY NUMBER

EXHIBIT A

Civil Rights "Affirmative Action Compliance Program"

**EXHIBIT I –
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. The results of the screening will be made available to MD Anderson upon request. Contractors with direct patient care/contact will also inform MD Anderson whether any of its onsite personnel have had, been exposed to, or been vaccinated against chicken pox. This paragraph does not apply to contractors deemed by MD Anderson to not have direct patient care/contact.
- F. Contractor will be solely responsible for ensuring that all of its agents, employees, personnel, permitted subcontractors, or representatives abide by the provisions set forth in this Rider 106.
- G. The University of Texas Police Department ("UTPD") & Security Equipment:

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

RIDER 106
PREMISES RULES

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

**EXHIBIT J –
RIDER 107; TRAVEL POLICY**

**Rider 107
TRAVEL POLICY**

All travel and expense costs will be calculated as follows:

1. Vendor must use regular coach (state rate or corporate rate, whichever is lower) air transportation for travel in excess of 200 miles, unless otherwise agreed by MD Anderson. In order to maximize discounted airfares, Vendor, 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, the Vendor may charge for any advance-purchase cancellation penalties imposed by the airline.
2. Corporate or state, whichever is lower, rate discounts 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 vendors who travel 50 miles or more, and stay overnight.
4. Rental cars will be the least expensive, air-conditioned, automatic transmission, mid-size car available to the vendor 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 office to and from the client 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 at 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. Vendor will not be reimbursed for expenses which 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. Vendor will not be reimbursed for expenses which are not accompanied by original receipts.

**EXHIBIT K –
RIDER 111; BUSINESS ASSOCIATE AGREEMENT**

RIDER 111

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective _____, 201_ (“Effective Date”), is entered into by and between _____ with an address at _____ (the “Business Associate”) and The University of Texas MD Anderson Cancer Center, with an address at 1515 Holcombe Boulevard, Houston, Texas 77030 (the “Covered Entity”) (each a “Party” and collectively the “Parties”).

The Business Associate is **[identify the Bus. Assoc.’s legal status, such as an Indiana corporation, or a limited partnership, etc.]** and the Covered Entity is an institution of The University of Texas System and a State of Texas agency. The Parties have entered into one or more agreements (the “Services Agreement”) pursuant to which Business Associate is providing certain **[insert the kind(s) of services provided by the Bus. Assoc.]** (“Services”) to the Covered Entity that require the disclosure and use of Protected Health Information. Both Parties are committed to complying with the Privacy Rule and the Security Rule promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) , as well as the HITECH Act.

This Agreement sets forth the terms and conditions pursuant to which Protected Health Information that is provided by, or created or received by, the Business Associate from or on behalf of the Covered Entity, will be handled between the Business Associate and the Covered Entity and with third parties during the term of each Services Agreement and after its termination. All capitalized terms in this Agreement that are used as defined terms herein have the meanings ascribed to them in Section 1 below, unless otherwise noted or the context clearly requires otherwise. The Parties agree as follows:

1. DEFINITIONS

1.1 Administrative Safeguards. “Administrative Safeguards” has the same meaning as the term “administrative safeguards” in 45 C.F.R. §164.304, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.2 Breach. “Breach” means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information and poses a significant risk of financial, reputational, or other harm to the patient. A breach has not occurred, however, where the PHI is retrieved from the unauthorized person in such a manner that he or she would not reasonably have been able to retain such information.

1.3 Designated Record Set. “Designated Record Set” has the same meaning as the term “designated record set” in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.4 Electronic Protected Health Information. “Electronic Protected Health Information” has the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103, as such provision is currently drafted and as it is subsequently updated, amended or revised, but limited to the information created or received by Business Associate from or on behalf of

Covered Entity.

1.5 Health Care Operations. “Health Care Operations” has the same meaning as the term “health care operations” in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.6 HITECH Act. “HITECH Act” means the Health Information and Technology for Economic and Clinical Health Act, as codified at 42 U.S.C. §1790, which was adopted as part of the American Recovery and Reinvestment Act of 2009 on February 17, 2009.

1.7 Individual. “Individual” has the same meaning as the term “individual” in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised, and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.8 Physical Safeguards. “Physical Safeguards” has the same meaning as the term “physical safeguards” in 45 C.F.R. §164.304, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.9 Privacy Officer. “Privacy Officer” has the same meaning as the term “privacy officer” in 45 C.F.R. § 164.530(a)(1), as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.10 Privacy Rule. “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

1.11 Protected Health Information. “Protected Health Information” has the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as such provision is currently drafted and as it is subsequently updated, amended or revised, but limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.12 Required by Law. “Required by Law” has the same meaning as the term “required by law” in 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.13 Secretary. “Secretary” means the Secretary of the Department of Health and Human Services or his designee.

1.14 Security Incident. “Security Incident” has the same meaning as the term “security incident” in 45 C.F.R. § 164.304, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.15 Security Rule. “Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. parts 160, 162 and 164, subpart C.

1.16 Technical Safeguards. “Technical Safeguards” has the same meaning as the term “technical safeguards” in 45 C.F.R. §164.304, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.17 Unsecured PHI. "Unsecured PHI" means PHI that is not secured by a technology standard that (i) renders PHI unusable, unreadable, or indecipherable to unauthorized individuals, and (ii) is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

2. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

2.1 Services. Pursuant to the Services Agreement, Business Associate provides Services for the Covered Entity that involve the use and disclosure of Protected Health Information. Except as otherwise specified herein, the Business Associate may make any and all uses of Protected Health Information necessary to perform its obligations under the Services Agreement. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose Protected Health Information for the purposes authorized by this Agreement only (i) to its employees, subcontractors and agents, in accordance with Sections 3.1(f) and 3.1(l); (ii) as directed by the Covered Entity; or (iii) as otherwise permitted by the terms of this Agreement including, but not limited to, Section 2.2(b) below.

2.2 Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may:

- a. use the Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.
- b. disclose the Protected Health Information in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to the Covered Entity, in writing, that (i) the disclosures are Required by Law; or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such Protected Health Information as required under 45 C.F.R. § 164.504(e)(4).
- c. use and/or disclose Protected Health Information as permitted under 45 C.F.R. § 164.512 except that uses or disclosures for research are not permitted without prior approval by the Covered Entity.

2.3 Additional Activities of Business Associate. In addition to using the Protected Health Information to perform the Services set forth in Section 2.1 of this Agreement, Business Associate may:

- a. aggregate the Protected Health Information in its possession with the Protected Health Information of other covered entities that the Business Associate has in its possession through its capacity as a business associate to those other covered entities provided that the purpose of such aggregation is to provide the Covered Entity with data analyses relating to the Health Care Operations of the Covered Entity. Under no circumstances may the Business Associate disclose Protected Health Information of

one covered entity to another covered entity absent the explicit authorization of the covered entity.

- b. de-identify any and all Protected Health Information provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that the Covered Entity maintains the documentation required by 45 C.F.R. § 164.514(b) which may be in the form of a written assurance from the Business Associate. Pursuant to 45 C.F.R. § 164.502(d)(2), de-identified information does not constitute Protected Health Information and is not subject to the terms of this Agreement.

3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

3.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of Protected Health Information, the Business Associate will:

- a. use and/or disclose the Protected Health Information only as permitted or required by this Agreement or as Required by Law and to use appropriate safeguards to prevent impermissible use or disclosure of PHI.
- b. report to the designated Privacy Officer of the Covered Entity, in writing, any use and/or disclosure of the Protected Health Information that is not permitted or required by this Agreement of which Business Associate becomes aware within two (2) business days of the Business Associate's discovery of such unauthorized use and/or disclosure.
- c. mitigate, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Protected Health Information of which the Business Associate becomes aware and/or reports to the Covered Entity.
- d. implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information it creates, receives, maintains, or transmits on behalf of Covered Entity.
- e. use commercially reasonable efforts to maintain the security of the Protected Health Information and to prevent unauthorized use and/or disclosure of Protected Health Information.
- f. require all of its subcontractors and agents that receive or use, or have access to, Protected Health Information under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to the Business Associate pursuant to Section 3 of this Agreement.
- g. ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the

Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.

- h. make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information to the Secretary, in the time and manner designated by the Secretary, for purposes of the Secretary's determination that the Covered Entity has complied with the Privacy Rule, subject to attorney-client and other applicable legal privileges.
- i. within fourteen (14) days of receiving a written request from the Covered Entity, make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of Protected Health Information for purposes of enabling the Covered Entity to determine the Business Associate's compliance with the terms of this Agreement.
- j. within five (5) days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by an Individual for an accounting of the disclosures of the Individual's Protected Health Information in accordance with 45 C.F.R. § 164.528.
- k. subject to Section 5.4 below, return to the Covered Entity or destroy, within one hundred eighty (180) days of the termination of this Agreement, the Protected Health Information in its possession and retain no copies (which for purposes of this Agreement means destroy all backup tapes).
- l. disclose to its subcontractors, agents or other third parties only the minimum Protected Health Information necessary to perform or fulfill a specific function required or permitted under the Services Agreement or this Agreement.
- m. report to the Director of Information Security of the Covered Entity, in writing, any Security Incident or unintentional use or disclosure of Unsecured PHI, identified internal/external breach of data, or disaster occurrence of which Business Associate becomes aware within two (2) business days of the Business Associate's discovery of such incident. The Business Associate must include the following information when reporting a breach:
 - (i) Identification of the individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during a breach;
 - (ii) Circumstances of the breach;
 - (iii) Date of the breach;
 - (iv) Date of the discovery;

- (v) Type of PHI involved (such as full name, Social Security number, date of birth, home address, account number, or medical record number); and
- (vi) Any other additional information the Covered Entity requests.

This Section 3.1 will survive the termination of this Agreement solely with respect to the Protected Health Information that Business Associate retains in accordance with Section 5.4 below because it is not feasible to return or destroy such Protected Health Information.

3.2 Responsibilities of the Covered Entity. With regard to the use and/or disclosure of Protected Health Information by the Covered Entity to the Business Associate or the use and/or disclosure of Protected Health Information by the Business Associate, the Covered Entity will:

- a. provide Business Associate with a copy of its notice of privacy practices (the "Notice") that the Covered Entity provides to Individuals pursuant to 45 C.F.R. §164.520.
- b. notify the Business Associate of any changes in, or revocation of, the consent or authorization provided to the Covered Entity by Individuals pursuant to 45 C.F.R. §164.506 or §164.508, to the extent such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. parts 160 and 164 that may impact in any manner the use and/or disclosure of Protected Health Information by the Business Associate under this Agreement, including, but not limited to, restrictions on use and/or disclosure of Protected Health Information as provided for in 45 C.F.R. § 164.522 agreed to by the Covered Entity, to the extent such restrictions may affect Business Associate's use or disclosure of Protected Health Information.
- d. not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

4. ADDITIONAL RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PROTECTED HEALTH INFORMATION

4.1 Responsibilities of the Business Associate with Respect to Handling of Designated Record Set. In the event that the Parties mutually agree in writing that the Protected Health Information constitutes a Designated Record Set, the Business Associate will:

- a. at the request of, and in the time and manner designated by the Covered Entity, provide access to the Protected Health Information to the Covered Entity or the Individual to whom such Protected Health Information relates or his or her authorized representative in order to meet a request by such Individual under 45 C.F.R. § 164.524.

- b. at the request of, and in the time and manner designated by the Covered Entity, make any amendment(s) to the Protected Health Information that the Covered Entity directs pursuant to 45 C.F.R. § 164.526. Provided, however, that the Covered Entity makes the determination that the amendment(s) are necessary because the Protected Health Information that is the subject of the amendment(s) has been, or could foreseeably be, relied upon by the Business Associate or others to the detriment of the Individual who is the subject of the Protected Health Information to be amended.

4.2 Responsibilities of the Covered Entity with Respect to the Handling of the Designated Record Set. In the event that the Parties mutually agree in writing that the Protected Health Information constitutes a Designated Record Set, the Covered Entity will:

- a. notify the Business Associate, in writing, of any Protected Health Information that Covered Entity seeks to make available to an Individual pursuant to 45 C.F.R. § 164.524 and the time, manner and form in which the Business Associate will provide such access.
- b. notify the Business Associate, in writing, of any amendment(s) to the Protected Health Information in the possession of the Business Associate that the Business Associate will be required to make and inform the Business Associate of the time, form and manner in which such amendment(s) will be made.

4.3 HITECH Act Obligations. Business Associate acknowledges that:

- a. Sections 164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations (regarding administrative, physical and technical security standards) apply to Business Associate in the same manner in which such sections apply to Covered Entity. The provisions of the HITECH Act that impose additional requirements and standards on Covered Entities with respect to health information security are also applicable to Business Associate and are hereby incorporated into the Agreement.
- b. the HITECH Act requires it to use or disclose PHI only if such use or disclosure is in compliance with all applicable requirements of Section 164.504(e) of the Privacy Rule. The additional requirements of the HITECH Act that impose requirements and standards on Covered Entities with respect to privacy are also applicable to Business Associate and are hereby incorporated into the Agreement.

4.4 Survival. Sections 4.1 and 4.2 of this Agreement will survive the termination of this Agreement, provided that Covered Entity determines that the Protected Health Information being retained pursuant to Section 5.4 below constitutes a Designated Record Set.

5. TERM AND TERMINATION

5.1 Term. This Agreement will become effective on the Effective Date and will continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 5. In addition, certain provisions and requirements of this Agreement will survive its

expiration or other termination in accordance with Section 5.4 herein. **[This provision may be omitted except in cases of a “stand alone” agreement.]**

5.2 Termination by the Covered Entity. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement and any Services Agreement if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with thirty (30) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate must cure said breach to the satisfaction of the Covered Entity within thirty (30) days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement and any Services Agreement. Nothing contained in this Section 5.2 will be deemed to require the Covered Entity to terminate this Agreement and the Services Agreement upon breach by Business Associate of a material term of this Agreement if termination is not feasible, and the Covered Entity will have the right to report any such breach to the Secretary as provided for under 45 C.F.R. § 164.504(e)(1)(ii).

5.3 Termination by Business Associate. If the Business Associate makes the determination that a material condition of performance has changed under any Services Agreement or this Agreement, or that the Covered Entity has breached a material term of this Agreement, Business Associate may provide thirty (30) days written notice of its intention to terminate this Agreement and the Services Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it will not terminate this Agreement so long as any Services Agreement is in effect.

5.4 Effect of Termination. Upon termination of a Services Agreement, Business Associate will return or destroy all Protected Health Information pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I), if it is feasible to do so. Prior to doing so, the Business Associate will recover any Protected Health Information in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said Protected Health Information, the Business Associate will notify the Covered Entity in writing. The notification will include: (i) a statement that the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession; and (ii) the specific reasons for such determination. Business Associate will extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible. If it is not feasible for the Business Associate to obtain, from a subcontractor or agent any Protected Health Information in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the Protected Health Information infeasible. Business Associate's obligations

under this Section 5.4 will not apply to Protected Health Information that is the subject of other agreements between Covered Entity and Business Associate to the extent those other agreements survive the termination, and Business Associate may retain any Protected Health Information necessary to Business Associate's services under any other agreements with Covered Entity.

6. REPRESENTATIONS AND WARRANTIES [Note: This section will likely be omitted except when MDACC is completing a Business Associate Agreement as a "stand alone" contract, as opposed to an addendum or rider to an underlying service agreement.]

6.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other Party that:

- a. it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.
- b. neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. Each Party represents and warrants to the other Party that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.
- c. it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.
- d. all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or will be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations to which the Covered Entity has agreed to adhere regarding the use and disclosure of Protected Health Information of any Individual that materially affect and/or limit the uses and disclosures that are otherwise permitted under the Privacy Rule will be communicated to the Business Associate, in writing, and in a timely fashion.
- e. it will reasonably cooperate with the other Party in the performance of their mutual obligations under this Agreement and their respective obligations under HIPAA.

6.2 Representations and Warranties of Business Associate. Business Associate affirms, certifies, and warrants that it is not suspended, debarred, or listed in the U.S. General Services Administration's List of Parties Excluded From Federal Procurement or Non-Procurement Programs, or excluded from award by the United States Office of the Inspector General ("OIG")

regarding Medicare, Medicaid, or other federal programs. Business Associate further acknowledges that Covered Entity is prohibited by federal regulations from allowing any employee, subcontractor or agent of Business Associate to work on site at Covered Entity's premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Business Associate affirms, certifies, and warrants that it shall not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals/Entities issued by the OIG to work on site at Covered Entity's premises or facilities. Business Associate affirms, certifies, and warrants that it shall perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time such employees, subcontractors and agents are assigned to work on site at Covered Entity's premises or facilities.

6.3 Each Party will immediately notify the other Party as soon as the Party becomes aware that any of the foregoing representations and warranties may be inaccurate or may become incorrect.

7. INDEMNIFICATION

The Parties will indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as "indemnified party," against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this Agreement or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the Privacy Rule, the Security Rule, or the HITECH Act, by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce. This indemnification provision is enforceable against Covered Entity only to the extent authorized under the constitution and laws of the State of Texas.

8. MISCELLANEOUS [Some of the provisions below may be omitted except in the case of a stand-alone agreement.]

8.1 Business Associate. For purposes of this Agreement, Business Associate will include the named Business Associate herein. However, in the event that the Business Associate is otherwise a covered entity under the Privacy Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.504(a), as the Business Associate for purposes of this Agreement.

8.2 Amendments; Waiver. This Agreement may not be modified, nor will any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, and the HITECH Act. A waiver with respect to one event will not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

8.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.4 Notices. Any notices to be given under this Agreement will be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Attn:
Fax No.

If to Covered Entity, to:

The University of Texas
MDAnderson Cancer Center
1515 Holcombe Boulevard
Houston, Texas 77030
Attn: Privacy Officer
Fax No. 713-745-6029

Each Party may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

8.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which will be deemed an original. Facsimile copies hereof will be deemed to be originals.

8.6 Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties will make good faith efforts to resolve such matters informally.

8.7 Interpretation. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the Security Rule.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf effective as of _____, 201_.

COVERED ENTITY

BUSINESS ASSOCIATE

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

**EXHIBIT L –
RIDER 114; NETWORK CONNECTIONS**

RIDER 114 NETWORK CONNECTIONS

1. Definitions.

Information Resources means any and all computer printouts, online display devices, mass storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting data including, but not limited to, mainframes, servers, personal computers, notebook computers, hand-held computers, personal digital assistants (PDAs), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e. embedded technology), telecommunication resources, network environments, telephones, fax machines, printers, and service bureaus. Additionally, Information Resources includes the procedures, equipment, facilities, software, and data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

Network Connection means a connection that Contractor will use to access certain Information Resources on the MD Anderson network from an external network.

Protected health information (PHI) means individually identifiable health information as defined in 45 C.F.R. §160.103), as such provision may be amended.

2. Contractor Network Connections Requests and Approvals

A. All Contractor requests for a Network Connection must have MD Anderson's Information Security Department approval. Requests to Information Security for Network Connections must be accompanied by a completed **Contractor Network Connection Request-Information Requirements Document (the "Requirements Document")**; a blank copy of the Requirements Document is attached as Attachment 1. This Requirements Document should be completed by the MD Anderson Sponsor requesting the Network Connection on behalf of the Contractor. It is the Contractor's responsibility to ensure that Contractor has provided all of the necessary information required for the MD Anderson Sponsor to complete the Requirements Document and that such information is correctly recorded in the Requirements Document submitted by Contractor.

B. All Contractors requesting a Network Connection must also complete and sign an MD Anderson Information Resources Acceptable Use Agreement and User Acknowledgement. The MD Anderson Information Resources Acceptable Use Agreement and User Acknowledgement must be signed by a Contractor representative authorized to bind Contractor and also shall be signed individually by each Contractor personnel who comes into MD Anderson facilities.

C. All Contractors requesting access to protected health information will be required to execute MD Anderson's standard Business Associate Agreement.

3. Connectivity Options

The following connectivity options are the standard methods for MD Anderson to provide a Network Connection. Any Contractor that wants MD Anderson to provide a Network Connection that deviates from the following standard methods must obtain a signed waiver from MD Anderson's Information Security Department.

A. Encrypted Tunnel - Encrypted tunnels should be terminated on the Contractor's network whenever possible. In certain circumstances, with the advance approval of MD Anderson's Information Security Department, it may be necessary to terminate an encrypted tunnel on a dirty subnet, in which case MD Anderson perimeter security measures will control access to MD Anderson internal devices.

B. Leased line/Circuit (e.g. T1, Frame Relay, etc.) - Leased lines should be terminated on the Contractor's network whenever possible. In certain circumstances, with the approval of MD Anderson's Information Security Department, it may be necessary to terminate a Leased Line/Circuit on a dirty subnet, in which case MD Anderson perimeter security measures will control access to MD Anderson internal access.

C. Contractor may use modem connectivity only after obtaining the advance review and approval of the MD Anderson Information Security Department. Modem connection is an option of last resort that may be used only if other options are not feasible.

4. Network Security.

A. Contractor will be responsible for the selection, implementation, and maintenance of security technologies, procedures and policies that are sufficient to ensure that (a) Contractor's use of the Network Connection and Contractor's use of MD Anderson information resources is secure and is used only for authorized purposes, and (b) Contractor's business records and data are protected against improper access, use, loss, alteration or destruction.

B. Contractor will allow only specifically designated employees, subcontractors, agents of Contractor, or other persons for whom Contractor is responsible ("Workforce Members") to access the Network Connection or any MD Anderson Information Resources. Contractor shall be solely responsible for ensuring that authorized Workforce Members are not security risks. Upon MD Anderson's request, Contractor will provide MD Anderson with any information reasonably necessary for MD Anderson to evaluate security issues relating to any authorized Workforce Member's access to the Network Connection or any MD Anderson Information Resources.

C. Contracted solution will not require Domain Administrative rights or permissions. If the solution requires specific permission, those must be defined, presented and accepted by Information Security before any implementation can be agreed to by both parties.

5. Contractor Access Monitoring

Contractor is responsible for tracking and auditing its Workforce Members' access to MD Anderson Information Resources over the Network Connection and must be able to track activity back to an individual Workforce Member. Contractor will, upon request, provide MD Anderson with accounting of each individual Workforce Member who has accessed MD Anderson Information Resources. The retention periods for this tracking information are based on the classification of data available in the Information Resources being accessed, according to the following Data Classification Guidelines and Ratings. The data owner at MD Anderson will make the determination as to the Data Classification.

Data Classification	Definition	Criteria	Data Examples	Rating	Minimum Retention Period*
Public	Information obtained from the public domain or released to the public through official channels. All data not classified in one of the three categories below, falls into the public designation by default.	Negligible adverse impact to the institution, its patients, or employees resulting from confidentiality, integrity, or availability of the data being compromised.	De-identified, Aggregated Published Subject Data	1 User Authentication is not Required	60 days
Internal Use	Information intended to be generally releasable and used within MD Anderson, but should not be released to the general public.	Minimal adverse impact to the institution, its patients, or employees resulting from confidentiality, integrity, or availability of the data being compromised.	General policies/procedures, Employee phone list	2 User Authentication maybe required	60 days
Confidential	Information that, if compromised, would have a significant financial impact to MD Anderson, and violate federal or state law. Information that should be accessed only by a limited group of people. All data sets that contain PHI** receive this classification level, at a minimum.	Adverse impact to the institution, its patients, or employees resulting from confidentiality, integrity, or availability of the data being compromised.	Policies/procedures governing PHI. Financial, PHI, Proprietary, Research Protocols, Sensitive Research Data, Student Data.	3 User Authentication is Required	PHI for 6 years. Non-PHI for 1 year. Payment Card data for 1 year and 3 months online***
Restricted Confidential	Restricted Confidential builds upon the Confidential classification by addressing special access needs of a subset of PHI, such as mental health data. Restricted Confidential information should be accessed only by specific authorized people. Only the owner of the data may designate information sets as Restricted Confidential or grant access to this data.	Significant adverse impact to the institution, its patients, or employees resulting from confidentiality, integrity, or availability of the data being compromised.	Mental health, HIV, Genomics, Research Protocols Subject Data	4 User Authentication is Required	PHI for 6 years Non-PHI for 1 year

*Data owners set the retention schedule based on business needs as well as regulatory requirements. See also Records Management Policy IV.A.9.02

**Protected Health Information (PHI)

***Payment Card Industry (PCI) Sensitive Authentication Data must not be stored subsequent to authorization (even if encrypted)

6. Account Management.

Contractor shall notify the MD Anderson Sponsor responsible for requesting Contractor's Network Connection promptly upon the termination or change of role of any Workforce Member with an individual MD Anderson access account to the Network Connection. The MD Anderson Sponsor is responsible for notifying the appropriate MD Anderson Account Administrator to modify or revoke that Workforce Member's access. Generic contractor accounts will have a limited life of 90 days and will be terminated by MD Anderson at the end of this period. To re-initiate a generic contractor account, a Contractor will need to re-perform the routine account request process set forth in Section 2.

7. Services Provided

Services provided over Network Connections will be limited only to those services and those devices (hosts, routers, etc.) that are (i) explicitly set forth in the Agreement to which this Rider is attached or which MD Anderson determines that Contractor needs to access in order to provide the goods and/or services set forth in that Agreement and (ii) approved in advance by MD Anderson pursuant to the established procedures and the business purposes outlined by this Rider and the **Request Document**. MD Anderson will not provide **blanket access for Contractor, its Workforce Members, or anyone else**. Under no circumstances shall Contractor or any of its Workforce Members use a Network Connection to MD Anderson the Internet connection for the Contractor or the Workforce Members.

8. Contractor Equipment at MD Anderson Site

The Contractor will inventory and identify to MD Anderson all equipment owned or leased and maintained by Contractor that will be located on MD Anderson's facilities or premises ("Contractor Equipment.") Contractor is responsible for maintaining an inventory of all such Contractor Equipment, including but not limited to hardware, software, workstation, and peripheral devices included in such Contractor Equipment.

9. Protection of MD Anderson Confidential Information and Resources

A. Contractor must establish access Control on the Contractor's gateway to which the Contractor sites are connected. The access control will restrict access from predefined hosts within the Contractor's network to pre-defined hosts within the internal MD Anderson network. The access control will be determined by the business requirements as documented in the Requirements Documents; please refer to Attachment 1.

B. MD Anderson shall not be responsible for protecting Contractor's information, business records, data, networks (including Contractor's private internal network), or any Contractor Equipment. The Contractor shall be entirely responsible for providing the appropriate security measures to ensure protection of its network (including its private internal network), information, business records, data, and Contractor Equipment.

10. Audit and Review of Contractor Network Connections

Contractors shall be responsible for periodic reviewing of its audit logs of its and its Workforce Members use of the Network Connection and for immediately communicating to MD Anderson any potential compromise or misuse of the Network Connection.

11. MD Anderson Information Security Department

MD Anderson's Information Security Department is responsible for maintaining policies and standards related to Network Connections. Contractor will at all times comply with such policies and standards. The Information Security Department is responsible for the review and approval of all Network Connections.

12. Payment of Costs.

Contractor will be responsible for all costs incurred by Contractor related to implementing and maintaining a Network Connection, including, without limitation, costs for phone charges, telecommunications equipment, and for all personnel needed for maintaining the Network Connection.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name

and on its behalf effective as of _____.

MD Anderson

(Contractor)

Authorized Signature

Name: _____

Title: _____

Date: _____

Authorized Signature

Name: _____

Title: _____

Date: _____

CONTRACTOR NETWORK CONNECTIONS REQUEST - INFORMATION REQUIREMENTS DOCUMENT

Please submit completed form to MD Anderson's Information Security Department. If you have any questions about this document, please call 713-745-9000)

Project Name	Overview/Purpose: Please describe the nature of the request and its function in detail. <i>What is the desired end result? Must include a statement about the business needs of the proposed Network Connection.</i>

Scope of Needs:
What services are needed?
What are the privacy requirements (i.e. do you need encryption)?
What are the bandwidth needs?
How long is the Network Connection needed?

Type of Work:
What type of work will be done over the Network Connection?
What applications will be used?
What type of data transfers will be done?
How many files are involved?
What are the estimated hours of use each week? What are peak hours?

Type of Data:
Check the classification of the data to be accessed according to the Data Classification Guidelines & Ratings and indicate the retention period as appropriate:
<input type="checkbox"/> Public <input type="checkbox"/> Internal Use <input type="checkbox"/> Confidential <input type="checkbox"/> Restricted Confidential
<input type="checkbox"/> Days/Years <input type="checkbox"/> Days/Years <input type="checkbox"/> Years <input type="checkbox"/> Years

Miscellaneous:
Are there any known issues such as special services that are required? Are there any concerns or issues that you are uncertain about?
Is a backup Network Connection needed? (e.g., Are there any critical business needs associated with this Network Connection?)
What is the requested installation date? (Minimum lead-time is 60 days)
What is the approximate duration of this Agreement?
Will the Contractor be accessing PHI? If so, have they completed a Business Associate Agreement?
Has an Information Resources Acceptable Use Agreement and User Acknowledgement been signed with the Contractor and/or the appropriate workforce members of the Contractor?
Are there any existing Network Connections at MD Anderson with this Contractor?

Other useful information [Redacted]
--

Requestor Information: Please indicate the name of the responsible M D. Anderson Sponsor			
[Redacted]			
Contact	Name	Phone Number	Web/Email Address
Business Owner	[Redacted]	[Redacted]	[Redacted]
Manager	[Redacted]	[Redacted]	[Redacted]
Director	[Redacted]	[Redacted]	[Redacted]

Contractor Information: Please provide the points of contact for members utilizing this network connection. If it is not feasible to list the names of all workforce members, then provide a count of the approximate number of workforce members who will be using the Network Connection.			
Name [Redacted]			
Address [Redacted]			
Host/domain names [Redacted]			
Main Phone Number [Redacted]			
Technical Support Hours [Redacted]			
User/Escalation List			
Name	Position	Phone Number	Web/Email Address
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

Contact Information			
Contact	Name	Phone Number	Email Address
MDACC Technical Contact	[Redacted]	[Redacted]	[Redacted]
MDACC InfoSec Consultant	[Redacted]	[Redacted]	[Redacted]
Contractor Technical Contact	[Redacted]	[Redacted]	[Redacted]

System Information			
Source IP Address or Name	Destination IP Address or Name	Service Port Number or Name	Protocol
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]

The University Of Texas MD Anderson Cancer Center

INFORMATION RESOURCES ACCEPTABLE USE AGREEMENT AND USER ACKNOWLEDGEMENT

Supply Chain Management

The University Of Texas MD Anderson Cancer Center (“MDACC”) relies on information resources and the data contained within those systems to achieve its mission. This Acceptable Use Agreement protects these resources in accordance with regulatory requirements and MDACC policies and practices. All individuals granted access to Information Resources must follow the acceptable use rules below:

A. General	<ul style="list-style-type: none"> MDACC information resources are provided for the express purpose of conducting the business and mission of MDACC. Information stored on MDACC information resources may only be shared with others who have a business need to know such information, and such information may only be shared in compliance with applicable laws, regulations, and policies. MDACC information resources must not be used to: engage in acts against the mission and purposes of the Institution, intimidate or harass, degrade performance, deprive access to an institution resource, obtain extra resources beyond those allocated, or to circumvent security measures. Information resources must not be used to conduct a personal business or used for the exclusive benefit of individuals or organizations that are not part of The University of Texas System. Any exceptions must be in support of MDACC missions and require the prior written approval of an Executive Officer of MDACC. Incidental personal use of certain systems is permitted (refer to Section F below). Obscene materials must not be intentionally accessed, created, stored or transmitted. Users must not copy or reproduce any licensed software except as expressly permitted by the software license, use unauthorized copies on MDACC-owned computers or use software known to cause problems on MDACC-owned computers. Use of camera phone or other devices to inappropriately capture data or images of MDACC Internal Use, Confidential, or Restricted Confidential information is prohibited. Any exception to the acceptable use of information resources must be approved by the Information Security Department.
B. Data Protection	<ul style="list-style-type: none"> Any information concerning any person, system, or asset of MDACC that is obtained in the performance of one's duties is of value to MDACC and may be confidential or restricted confidential and shall not be disclosed to any individual, unless such release of information is directly related to the performance of one's responsibilities. Data will be accessed on a need-to-know basis. Users of MDACC information resources must not attempt to access data or programs contained on resources for which they do not have authorization or consent. All critical data (electronic files) will be saved on network servers to ensure backup of the data. All data, including research data, shall be backed up for disaster recovery purposes. All records (electronic or paper) will be maintained in accordance with the MDACC Records Retention Policy. For systems that contain Social Security Numbers (SSN), the system must use the SSN only as a data element or alternate key to a database and not as a primary key to a database. The system must not display SSNs visually (such as on monitors, printed forms, system outputs) unless required or permitted by law or by the University of Texas System Policy Library – Policy #165 Information Resources Use and Security Policy. Name and directory systems must be capable of being indexed or keyed on a unique identifier, once it is assigned, and not on the SSN. For those databases that require SSNs, the databases may automatically cross-reference between the SSN and other information through the use of conversion tables within the system or other technical mechanisms.
C. Virus Protection	<ul style="list-style-type: none"> All computers connecting to the MDACC network must run current and authorized virus prevention software. Virus protection software must not be disabled or bypassed except as required by the temporary installation of software or for other special circumstance. Computers found to be infected with a virus or other malicious code may be disconnected from the MDACC network until deemed safe by the Information Security Department.
D. Electronic Mail	<ul style="list-style-type: none"> The following electronic mail (email) activities are prohibited: <ul style="list-style-type: none"> Using email for purposes of political lobbying or campaigning except as permitted by the Regents' Rules and Regulations. Posing as anyone other than oneself when sending email. Reading another user's email unless authorized to do so by the owner of the email account, or as authorized by policy for investigation, or as necessary to maintain services. Use of email software that poses a significant security risk to other users on the MDACC network. Sending or forwarding “chain” letters. Sending unsolicited messages to large groups except as required to conduct MDACC business. Sending excessively large messages or attachments unless in performance of official MDACC business. Knowingly sending or forwarding email that is likely to contain computer viruses. Exchanging unencrypted email-containing Confidential or Restricted Confidential information, e.g. ePHI with patients, external physicians, or other parties. Exchanging credit card information (other than your own) via email.
E. Confidential or Restricted Confidential Information	<ul style="list-style-type: none"> All Confidential and Restricted Confidential information (e.g. Protected Health Information, Sensitive Research Data, student Data, Social Security Numbers) transmitted through open networks (e.g., the Internet and wireless) must be encrypted in accordance with MDACC Encryption Guidelines. Refer to Information Security web-site for Data Classification Guidelines & Ratings.
F. Incidental Personal Use of Information Resources	<ul style="list-style-type: none"> Incidental personal use of electronic mail and internet access is permitted by MDACC policy but is restricted solely to authorized users (authorization does not extend to family members or other acquaintances). Incidental personal use must not interfere with normal performance of an employee's duties, must not result in direct costs to MDACC, and must not expose MDACC to unnecessary risks. Storage of any non-work related email messages, files and documents within the MDACC email system must be nominal (less than 5% of a user's allocated mailbox space). Non-work related information may not be stored on network file servers. All messages, files and documents stored on MDACC computing resources—including personal messages, files and documents—are owned by the institution in accordance with the Regents' Rules and Regulations and are subject to MDACC review. Any files, messages or documents residing on MDACC computers may be subject to public information requests and may

	be accessed in accordance with MDACC policy.
G. Internet Use	<ul style="list-style-type: none"> Software for browsing the Internet is provided to authorized users for business, education, research, and patient care purposes. Due to network maintenance and performance monitoring and to ensure compliance with applicable laws and policies, all user activity may be subject to logging and review. Email or postings by users of MDACC network resources to news groups, "chat rooms" or "listservs" must not give the impression that they are representing, giving opinions, or making statements on behalf of MDACC, unless authorized. Faculty and staff members shall use a disclaimer stating that the opinions expressed are their own and not necessarily those of MDACC. Personal commercial advertising must not be posted on MDACC web sites.
H. Portable and Remote Computing	<ul style="list-style-type: none"> All computers and portable-computing devices accessing MDACC information resources must be password protected in accordance with MDACC policy. At a minimum, such passwords are to be changed at least every 90 days, or immediately if there is suspicion that the password has been compromised. Users accessing the MDACC network from a remote computer must adhere to all policies that apply to access from within the local campus network. Remote computers are subject to the same rules and security related requirements that apply to MDACC-owned computers. Unattended portable computing devices must be physically secured. If it is determined that required security related software is not installed on a remote computer or that a remote computer has a virus, is party to a cyber attack or in some way endangers the security of MDACC, the account and/or network connection will be disabled. Access will be re-established once the computer or device is determined to be safe by MDACC. Users must not divulge MDACC dialup or modem phone numbers to anyone. If confidential or protected MDACC data is stored on portable computing devices, it must be encrypted and backed up to a network server for recovery in the event of a disaster or loss of information. Special care shall be taken to protect information stored on laptops and personal digital appliance (PDA) devices, and in protecting such devices from theft.
I. Passwords	<ul style="list-style-type: none"> Every MDACC computer/network account, password, any personal identification number (PIN), digital certificate, security token (<i>i.e.</i>, Smartcard), or any other similar information or device used for identification and authorization purposes, must not be shared. Each user of MDACC resources is responsible for all activities conducted using his or her account(s). Users must not circumvent password entry through use of auto logon, application "remember password" features, embedded scripts or hard-coded passwords in client software. Exceptions may be made for specific applications (such as automated backup and single sign-on solutions) with the approval of the Information Security Department. Any exception must include a procedure to change the passwords and must adhere to security policies for password construction. (For more information, see the Password Guidelines in the Information Resources Security Operations Manual.)
J. Computing System Security	<ul style="list-style-type: none"> Security programs or utilities that reveal or exploit weaknesses in the security of a system or that reveal data by circumventing established authorization procedures and systems shall not be downloaded and/or used, except as authorized by the Information Security Department. For example, password cracking programs, packet sniffers, or port scanners on MDACC information resources shall not be used. Users must report any identified weaknesses in MDACC computer security and any incidents of possible misuse or violation of this agreement to an immediate supervisor, department head, or the Information Security Department. Where technically possible, all PC's, laptops, PDA devices and workstations shall be secured with a password-protected automatic logoff feature set at 15 minutes or less to prevent unauthorized access to the device. Media containing confidential or restricted confidential information must be used, reallocated and disposed of in such a manner as to prevent unauthorized access to the data. System shall be configured to display the MDACC warning banner. This may be accomplished via workstation background, scripting, and initial login screen. Specification may be found in Institutional Policy ADM0335 Information Security Office Policy item 1.3 Warning Statements.

User Acknowledgement - Vendor

I acknowledge that I have received and read the MD Anderson Information Resources Acceptable Use Agreement stated above. I understand that any employee of insert vendor name who accesses MD Anderson information resources must comply with this agreement, and I will inform all such employees of these requirements. I acknowledge that failure to comply may result in termination of my contract with MD Anderson and/or action by law enforcement authorities.

Signature of Authorized Representative: _____ Date: _____

Printed Name and Title of Authorized Representative: _____

Vendor ID # _____ Return this form to: _____

NETWORK CONNECTION AGREEMENT
Rider 114
Decision Matrix

Item	Circumstances	Network Connection Agreement	Business Associates Agreement	Information Resources Acceptable Use Agreement and User Acknowledgement
1	New vendors who request point-to-point connection to the MD Anderson network	X		X
2	New vendors who request point-to-point connection to the MD Anderson network to access *Protected Health Information	X	X	X
3	Existing vendors who currently have point-to-point connections to the MD Anderson network via VPN or other means	X		X
4	Existing vendors who currently have point-to-point connections to the MD Anderson network via VPN or other means to access *Protected Health Information	X	X	X

*Protected Health Information - individually identifiable health information:

(1) Except as provided in paragraph (2) of this definition, that is:

- (i) Transmitted by electronic media;
- (ii) Maintained in any medium; or
- (iii) Transmitted or maintained in any other form or medium.

(2) Protected health information excludes individually identifiable health information in:

- (i) Education records covered by the Family Educational Rights and Privacy Act,
- (ii) Employment records held by a covered entity in its role as employer.

**EXHIBIT M –
RIDER 116; INVOICE PAYMENT REQUIREMENTS**

RIDER 116 INVOICE PAYMENT REQUIREMENTS

Section 1. CONTRACT VALUE

The total cost of the goods and/or services under this Agreement will not exceed the "Cap Amount" without the prior written authorization of MD Anderson's Supply Chain Management Department. 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: Supply Customer Service at 713.745.8355
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
Facsimile	713.792.7448

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.
- 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.
- 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).
- 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 the following reasons:

- Sales Tax (for more information refer to **Section 7.1** of this Rider 116).
- Negotiated Price is less than Invoice Price.

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.

3.4 Validating Purchase Orders

Purchase Orders for purchases not authorized by MD Anderson Supply Chain Management will be considered invalid. Invalid Purchase Orders may be researched by contacting the Buyer listed at the header of the Purchase Order. If the Buyer is unknown, Contractor may contact the MD Anderson Supply Chain Management Department at 713.745.8300.

RIDER 116 INVOICE PAYMENT REQUIREMENTS

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

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.

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.

5.3 Credit Hold

Contractor shall not suspend shipments of goods or performance of services unless Contractor complies with Subchapter D, Chapter 2251, *Texas Government Code*.

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

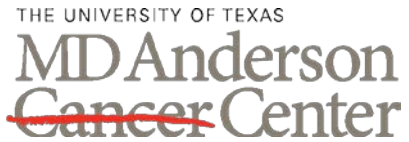
7.1 Taxes: MD Anderson is a tax-exempt State of Texas agency and an institution of higher education. Notwithstanding its exemption from certain state taxes, MD Anderson will be responsible for any taxes (except corporate income taxes, franchise taxes, and taxes on Contractor's personnel, including personal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

7.2 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."

7.3 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.

7.4 Prompt Payment Act: All funds held by MD Anderson are subject to the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*.

EXHIBIT N –
RIDER 117; COMPLIANCE WITH INSTITUTIONAL POLICIES



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