

**CONFIDENTIALITY AGREEMENT
BETWEEN
THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER
AND**

This Confidentiality Agreement (the "Agreement") is entered into and is effective as of the _____ day of _____, 2009 (the "Effective Date"), by and between **THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER ("MD Anderson")**, a component institution of **The University of Texas System**, having its principal place of business at 1515 Holcombe Boulevard, Houston, Texas 77030, and _____ ("**Company**"), having its principal place of business at _____ (MD Anderson and Company are hereinafter referred to individually as the "**PARTY**" and collectively as the "**PARTIES**"). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the **PARTIES** hereby agree as follows:

RECITALS

1. Each **PARTY** is in possession of Confidential Information and desires to enter into this Agreement in connection with a proposed transaction with the other **PARTY** (the "**Transaction**"); and
2. Each **PARTY** desires to receive Confidential Information from the other **PARTY** for purposes of the Transaction.
3. In order to protect the Confidential Information of each **PARTY**, the **PARTIES** are entering into this Agreement.

AGREEMENT

ARTICLE I. DEFINITIONS

For purposes of this Agreement, the following terms will have the meanings ascribed to them below, unless otherwise clearly required by the context in which such term is used:

1.1 **DISCLOSING PARTY** - the **PARTY** that is disclosing Confidential Information, as such term is defined in Article II, to the other **PARTY**.

1.2 **INTERESTED PARTY** - the **PARTY** that is receiving Confidential Information, as such term is defined in Article II, from the other **PARTY**.

ARTICLE II. CONFIDENTIAL INFORMATION

2.1 **Confidential Information**. As used in this Agreement, the term "Confidential Information" means any and all data and information relating to the Transaction (a) delivered by the **DISCLOSING PARTY** to the **INTERESTED PARTY**, whether on, before, or after the date of this Agreement, (b) that has value to the **DISCLOSING PARTY** and is not generally known to its competitors, and (c) that is treated by the **DISCLOSING PARTY** as confidential, or that is confidential under Texas or federal law. Confidential Information includes, but is not limited to, any information that is disclosed to an **INTERESTED PARTY** during any meeting with the

DISCLOSING PARTY or during any discussions regarding the Transaction and information relating to the **DISCLOSING PARTY**'s business and financial affairs, services, service development, processes, procedures, pricing, employees, patients, ideas, systems, structures, programs, manuals, accounting policies, procedures or information, provider and third party payor contracts, leases, business or strategic plans, and marketing or advertising strategies.

2.2 **Exclusions.** The term "Confidential Information" excludes information that:

2.2.1 is or becomes publicly available through actions of persons or entities other than the **INTERESTED PARTY** or its representative;

2.2.2 is learned by the **INTERESTED PARTY** from a third party authorized to disclose such information;

2.2.3 is already known by the **INTERESTED PARTY**, prior to the Effective Date of this Agreement as to which the **INTERESTED PARTY** has no obligation not to disclose or use such information;

2.2.4 is independently developed by the **INTERESTED PARTY** as evidenced by public, written or electronic records existing prior to disclosure by the **DISCLOSING PARTY**; or

2.2.5 is required by law, rule, regulation, or order to be disclosed.

ARTICLE III. OBLIGATIONS OF THE INTERESTED PARTY

3.1 **Maintenance of Confidentiality.** In consideration of the **DISCLOSING PARTY**'s disclosure to it of the Confidential Information, the **INTERESTED PARTY** agrees that it will keep the Confidential Information confidential and that the Confidential Information will not be disclosed by the **INTERESTED PARTY** or by its officers, directors, partners, employees, affiliates, agents, or representatives (collectively "representatives"), in any manner whatsoever, in whole or in part, without the prior written consent of the **DISCLOSING PARTY** unless otherwise required by law. Furthermore, the Confidential Information will not be used by the **INTERESTED PARTY** or by its representatives other than in connection with the Transaction. The Confidential Information disclosed by the **DISCLOSING PARTY** to the **INTERESTED PARTY** will remain the property of the **DISCLOSING PARTY**, and nothing in this Agreement grants the **INTERESTED PARTY** any licensing, assignment, proprietary, or patent rights to any products or material pertaining to the Confidential Information that may relate to the Transaction. Unless otherwise stipulated in writing, the obligation to maintain confidentiality under the terms of this Agreement will exist for a period of five (5) years following the date of termination of this Agreement.

3.2 **INTERESTED PARTY's Representatives.** The **INTERESTED PARTY** will transmit the Confidential Information only to such of its representatives who need to know the Confidential Information and who have been informed of this Agreement for the sole purpose of assisting the **INTERESTED PARTY** in evaluating the Transaction. In any event, the **INTERESTED PARTY** will be fully liable for any breach of this Agreement by its representatives and agrees, at its sole expense, to take all reasonable measures to restrain its representatives from prohibited or unauthorized disclosure or use of the Confidential Information, provided, however, that the foregoing will apply to MD Anderson only to the extent authorized by the Constitution and laws of the State of Texas. The Disclosing Party may require the representatives of the Interested Party to sign individual confidentiality agreements.

3.3 **Copies and Duplications.** The **INTERESTED PARTY** will destroy or delete any copies, abstracts, notes, memoranda, magnetic media, disks, diskettes, or other duplications or extrapolations (in any form) made of the **DISCLOSING PARTY's** Confidential Information at the request of the designated representative of the **DISCLOSING PARTY**. In addition, the **INTERESTED PARTY** will delete all Confidential Information from its computer systems and other electronic storage media, including backup copies. If requested by the **DISCLOSING PARTY**, the **INTERESTED PARTY** will provide the **DISCLOSING PARTY** a written confirmation, signed by an officer or other authorized representative of the **INTERESTED PARTY**, that all copies or duplications (in any form) have been destroyed or deleted as provided in this Agreement.

3.4 **Return of Confidential Information.** At the conclusion of discussions regarding the Transaction or within ten (10) business days after the **DISCLOSING PARTY's** request (whichever occurs first), all copies of the Confidential Information in any form whatsoever (including, but not limited to, any reports, memoranda, notes projections, appraisals, analysis, compilations, studies, magnetic media, disks, diskettes, or other materials prepared by the **INTERESTED PARTY** or at its direction) will be delivered by the **INTERESTED PARTY** and its representatives to the **DISCLOSING PARTY**. Notwithstanding the foregoing, the **INTERESTED PARTY's** records management or legal department may retain one copy of all Confidential Information for archive purposes only (to which such party's obligations contained herein shall continue to apply), and the **INTERESTED PARTY** may retain copies of any confidential information in order to satisfy the requirements of any law, regulation or securities exchange rule governing the receiving party or any of its affiliated entities.

3.5 **Disclosure of Confidential Information.** Notwithstanding any other provision of this Agreement, the **INTERESTED PARTY** may disclose Confidential Information to the extent required by law. If, however, the **INTERESTED PARTY** receives a request to disclose all or any part of Confidential Information through a subpoena or order issued by a court or other governmental body, **INTERESTED PARTY** will promptly provide to **DISCLOSING PARTY** a copy of the request such that the **DISCLOSING PARTY** may seek a protective order or other appropriate protection with respect to such disclosure, which the **INTERESTED PARTY** will fully cooperate in obtaining and comply with, except as provided below. **DISCLOSING PARTY** will give the request its immediate attention, and if **DISCLOSING PARTY** elects to take steps to quash, resist, or narrow the request, **DISCLOSING PARTY** will promptly advise **INTERESTED PARTY** of its intention to pursue such action. Such action will be taken by the **DISCLOSING PARTY** at **DISCLOSING PARTY's** sole cost and expense. **DISCLOSING PARTY** may attempt, through its legal counsel and at its sole cost and expense, to furnish only such portion of the Confidential Information as in the opinion of its counsel is legally subject to disclosure and may attempt to obtain an order or other reliable assurance that confidential treatment will be accorded to the Confidential Information sought to be disclosed. Notwithstanding the foregoing, **DISCLOSING PARTY** will take no action, nor will **INTERESTED PARTY** be required to take any action, which will place **INTERESTED PARTY** in peril of being held in contempt of court or subject to other sanctions for failure to comply with the subpoena, court order or other request. Each **PARTY** will keep the other **PARTY** apprised of any motions or responses the **PARTY** files seeking protection from the court or any other actions taken in connection with responding to or resisting the request. Each **PARTY** will promptly provide the other **PARTY** copies of any motions or other papers filed in response to the subpoena, court order or other request. **DISCLOSING PARTY WILL INDEMNIFY AND HOLD INTERESTED PARTY HARMLESS FROM AND AGAINST ANY DAMAGES, CLAIMS, PENALTIES, OR FINES INCURRED BY OR IMPOSED UPON INTERESTED PARTY AS A RESULT OF DISCLOSING PARTY'S RESISTANCE TO SUCH DISCLOSURE TO THE EXTENT ANY SUCH RECOVERY IS PERMITTED BY STATE LAW, PROVIDED, HOWEVER, THAT THE FOREGOING WILL**

APPLY TO MDANDERSON ONLY TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.

ARTICLE IV. ACCURACY OF INFORMATION

Representations and Warranties. Neither the **DISCLOSING PARTY** nor any of its representatives has made or makes any representation or warranty as to the accuracy or completeness of the Confidential Information, except as may be specifically represented in any agreements executed by the **DISCLOSING PARTY** in the course of the Transaction. Neither the **DISCLOSING PARTY** nor its representatives will have any liability to it or to any of its representatives resulting from the provision or use of the Confidential Information, except as may be specifically represented in any agreements executed by the **DISCLOSING PARTY** in the course of the Transaction.

ARTICLE V. INJUNCTIVE RELIEF

Breach by the INTERESTED PARTY. In the event of any breach of this Agreement, the **DISCLOSING PARTY** would be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, in addition to any other remedy to which it may be entitled at law or in equity, the **DISCLOSING PARTY** will be entitled to seek immediate injunctive relief (without the posting of any bond and without proof of actual damages) as well as any other remedies available at law or in equity to prevent breaches or threatened breaches of this Agreement and/or to compel specific performance of this Agreement.

ARTICLE VI. MISCELLANEOUS

6.1 **Waiver of Breach.** No failure or delay by the **DISCLOSING PARTY** in exercising any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right, power, or privilege preclude any other or further exercise thereof.

6.2 **Amendment.** This Agreement may be modified or amended only by a separate writing by the **DISCLOSING PARTY** and by the **INTERESTED PARTY** expressly so modifying or amending such Agreement.

6.3 **Severability.** If one or more provisions of this Agreement will be held unenforceable, invalid, or illegal in any respect, such unenforceability, invalidity, or illegality will not affect any other provision of this Agreement, which will be construed as if such unenforceable, invalid or illegal provision had never been a part hereof.

6.4 **Governing Law.** This Agreement has been executed and delivered, and will be interpreted, construed and enforced pursuant to and in accordance with the laws of State of Texas, without reference to its conflicts of laws provisions. Any action or proceeding arising out of or related in any way to this Agreement will be brought solely in the state district courts of Harris County, Texas (or if exclusive federal jurisdiction exists, in the United States District Court for the Southern District of Texas located in Harris County, Texas). The **INTERESTED PARTY** hereby irrevocably and unconditionally consents to the jurisdiction of any such court and hereby irrevocably and unconditionally waives any defense of an inconvenient forum to the maintenance of any action or proceeding in any such court, any objection to venue with respect to any such action or proceeding and any right of jurisdiction on account of the place of residence or domicile of any party thereto.

6.5 Indemnification.

6.5.1 **Obligations of the INTERESTED PARTY.** The **INTERESTED PARTY** will indemnify and hold the **DISCLOSING PARTY** and the **DISCLOSING PARTY's** directors, officers, employees, agents, and affiliates harmless from liabilities, claims, and damages resulting from claims against or liability of the **DISCLOSING PARTY** or the **DISCLOSING PARTY's** directors, officers, employees, agents, or affiliates, by or on behalf of any one or more persons or entities, arising from the negligent acts or omissions of the **INTERESTED PARTY** or any of the **INTERESTED PARTY's** directors, officers, employees, agents, or affiliates arising from or out of this Agreement even if the **DISCLOSING PARTY** is alleged to be solely or jointly negligent. Notwithstanding the above, this indemnification provision does not apply if a trier of fact finds the **DISCLOSING PARTY** to be solely or jointly negligent or otherwise at fault. This Section 6.5.1 will apply to MD Anderson only to the extent authorized by the Constitution and laws of the State of Texas.

6.5.2 **Obligations of the DISCLOSING PARTY.** To the extent authorized by the Constitution and laws of the State of Texas, the **DISCLOSING PARTY** will indemnify and hold the **INTERESTED PARTY** and the **INTERESTED PARTY's** directors, officers, employees, agents, and affiliates harmless from liabilities, claims, and damages resulting from claims against or liability of the **INTERESTED PARTY** or the **INTERESTED PARTY's** directors, officers, employees, agents, or affiliates by or on behalf of any one or more persons or entities, arising from the negligent acts or omissions of the **DISCLOSING PARTY** or any of the **DISCLOSING PARTY's** directors, officers, employees, agents, or affiliates, arising from or out of this Agreement even if the **INTERESTED PARTY** is alleged to be solely or jointly negligent. Notwithstanding the above, this indemnification provision does not apply if a trier of fact finds the **INTERESTED PARTY** to be solely or jointly negligent or otherwise at fault. This Section 6.5.2 will apply to MD Anderson only to the extent authorized by the Constitution and laws of the State of Texas.

6.6 **Nondisclosure of Transaction.** Without the prior written consent of the **DISCLOSING PARTY** and except as may be required by law, neither the **INTERESTED PARTY** nor its representatives will disclose to any person the fact that the **INTERESTED PARTY** has received the Confidential Information or that discussions or negotiations are taking place concerning the Transaction, including the status thereof.

6.7 **Non-Binding Negotiations.** Unless and until a definitive agreement between the **PARTIES** with respect to the Transaction has been executed and delivered, neither **PARTY** will be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this or any other written or oral expression by it or by any of its representatives except, in the case of this Agreement, for the matters specifically agreed to in this Agreement.

6.8 **Entire Agreement.** This Agreement represents the full and complete agreement of the **PARTIES** hereto with respect to the disclosure of the Confidential Information and it supersedes and cancels all prior communications, understandings, and agreement between the **PARTIES** with respect to the disclosure of information for the purposes previously recited, whether oral, express, or implied.

6.9 **Term.** This Agreement is effective as of the Effective Date, and will continue in effect until _____. However, either Party may terminate this Agreement on thirty (30) days' written notice to the other Party. However, a Party's obligations of confidentiality and restrictions on use of the Confidential Information disclosed by the other Party will survive the termination of this Agreement for a period of five (5) years from the date of termination of this Agreement.

6.10 **Authority To Enter Agreement.** This Agreement has been duly authorized and executed and is a legal, valid and binding obligation of each party, enforceable in accordance with its terms.

6.11 **Notice of Texas State Law.** The parties acknowledge that MD Anderson is an agency of the State of Texas and under the Constitution and laws of the State of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Texas. Notwithstanding any provision hereof, nothing in this Agreement is intended to be, nor will it be construed to be, a waiver of the sovereign immunity of the State of Texas or a prospective waiver or restriction of any of the rights, remedies, claims, and privileges of the State of Texas. Moreover, notwithstanding the generality or specificity of any provision hereof, the provisions of this agreement as they pertain to MD Anderson are enforceable only to the extent authorized by the Constitution and laws of the State of Texas; accordingly, to the extent any provision hereof conflicts with the Constitution or laws of the State of Texas or exceeds the right, power or authority of MD Anderson to agree to such, such provision will not be enforceable against MD Anderson or the State of Texas.

Intending to be legally bound, the parties have executed this Agreement, to be effective as of the Effective Date first above written.

**The University of Texas
MD Anderson Cancer Center:**

(Contractor's Name):

Authorized Signature

By: _____
Authorized Signature

Printed Name & Title

Printed Name & Title

Date

Date

Read and Agreed:

Signature: _____

Printed Name: _____

Title: _____

Department Name: _____

Project Name: _____

Date: _____