

THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER
PRODUCT EVALUATION AGREEMENT

Requestor's Name: _____ Department's Name: _____
(Please Print) (Please Print)

This Product Evaluation Agreement ("Agreement"), effective as of _____ ("Effective Date"), is by and between _____ ("Company"), located at _____, and The University of Texas M. D. Anderson Cancer Center ("MD Anderson"), an institution of higher education and one of the institutions of The University of Texas System ("System"), which has its principal address at 1515 Holcombe Boulevard, Houston, Texas 77030.

1. Company agrees to furnish certain products and/or equipment as described herein for MD Anderson's evaluation and testing purposes as described further in Exhibit A attached hereto and made part hereof ("Products"), subject to the terms and agreements expressed in this Agreement at no cost to MD Anderson, including, without limitation, any costs or fees related to Product delivery, training, return, freight, restocking, installation, de-installation, and/or insurance. Company's quote may be attached for budgetary purposes only, and MD Anderson may issue a no charge purchase order.

2. The Products are the same products that are offered commercially by Company and are not an "investigational" product within the meaning of federal Food and Drug Administration ("FDA") laws and regulations. The Products evaluation contemplated herein is not a "clinical trial" or any other form of human subjects research.

3. Notwithstanding anything to the contrary herein, all data pertaining to MD Anderson, including, but not limited to, confidential information, all of MD Anderson's proprietary information, and any other materials pertaining to MD Anderson's operations that are disclosed by MD Anderson to Company pursuant to this Agreement and/or MD Anderson's use of the Products, shall at all times remain the property of MD Anderson ("MD Anderson Data"), and MD Anderson does not provide a license or right to use MD Anderson Data to Company, except for MD Anderson Feedback as defined herein. Company will take all necessary steps to safeguard the security and confidentiality of the MD Anderson Data in Company's possession and must return or certify deletion or destruction of MD Anderson Data upon MD Anderson's request and/or termination of this Agreement. MD Anderson may provide, within MD Anderson's sole and absolute discretion, suggestions, opinions, proposals, ideas, recommendations, or other feedback regarding improvements only to the Products being evaluated under this Agreement (collectively, "MD Anderson Feedback"). MD Anderson is providing the MD Anderson Feedback "AS IS."

4. In connection with this Agreement, Company may have access to certain Protected Health Information as that term is defined in 45 C.F.R. § 160.103 ("PHI"). Company and MD Anderson are committed to compliance with the federal privacy regulations in 45 C.F.R. §§ 160 and 164 and the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 201, et seq., Pub. L. No. 104-191, 110 Stat. 1936 (1996)) as amended or modified by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), which is collectively referred to herein as "HIPAA". With respect to any PHI that Company may have with respect to this Agreement, Company will maintain such PHI as confidential in accordance with applicable law and will not use or disclose any such PHI except as authorized by applicable law or in any manner that would constitute a violation of applicable law if such use or disclosure was made by MD Anderson. If Company receives, or anticipates receiving, any PHI from MD Anderson, Company and MD Anderson will enter into MD Anderson's Business Associate Agreement (posted at <https://www.mdanderson.org/about-md-anderson/business-legal/doing-business/vendors-and-suppliers/terms-and-conditions.html>).

5. If this Agreement requires Company's presence on MD Anderson's premises, buildings, grounds, facilities, or campus, whether owned, leased, or otherwise controlled by MD Anderson, Company (and its representatives, agents, employees, and permitted subcontractors) will comply with all applicable MD Anderson rules and policies, including, without limitation, those related to environmental quality, safety, fire prevention, noise,

information security, and architectural barriers issued by MD Anderson's Department of Environmental Health and Safety and those policies that restrict the use of alcohol on MD Anderson's campus.

6. Company is aware of, is fully informed about, and is in full compliance with its obligations under all applicable laws, rules, and regulations.

7. Company acknowledges and agrees that the purpose of this Agreement is for a limited evaluation of the Products only and not for the purpose of renting, leasing, or purchasing the Products from Company. MD Anderson has made no representation, commitment, or guarantee to purchase or otherwise procure the Products or additional products now or in the future. If MD Anderson elects, within its sole and absolute discretion, to rent, lease, purchase, or otherwise procure the Products, such rental, lease, purchase, or procurement will be subject to MD Anderson's sourcing policies and procedures, including, without limitation, a competitive procurement method, standard terms, and a new, separate agreement.

8. Company will advise if training is required to ensure the safe and effective use of Products being evaluated under this Agreement. If training is required or if training is requested by MD Anderson, Company agrees to provide, at no cost to MD Anderson, technical training, including both initial training for new users and supplemental training for existing users, as mutually agreed by both parties. Company represents and warrants that it is an expert in the Product and qualified to provide such training. If Company and/or its representatives visit or access any premises owned, leased, or operated by MD Anderson, Company (on behalf of Company and its representatives) hereby (a) agrees to abide by MD Anderson's policies related to facility access and premises rules, (b) agrees to assume all liability, risk, and expense from all Claims (as defined below) arising out of or related to such visit or access, and (c) waives, releases, and holds harmless MD Anderson, System, the Board of Regents of The University of Texas System (the "Board"), and their respective representatives from all Claims arising out of or related to such visit or access.

9. SUBJECT TO THE STATUTORY DUTIES OF THE TEXAS ATTORNEY GENERAL, COMPANY WILL INDEMNIFY, HOLD HARMLESS, AND DEFEND MD ANDERSON, SYSTEM, THE BOARD, AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSSES, DAMAGES, CLAIMS, DEMANDS, ALLEGATIONS, LIABILITIES, COSTS, SETTLEMENTS, OR EXPENSES ("CLAIMS") FOR OR AS A RESULT OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHTS, OR MISAPPROPRIATION OR MISUSE OF ANY TRADE SECRET OR PROPRIETARY INFORMATION BASED ON OR RELATED TO THE USE OR APPLICATION (i) BY COMPANY OR ITS SUBCONTRACTORS OF THE PRODUCT, OR (ii) BY MD ANDERSON OF ANY PRODUCT THAT IS SUPPLIED, DESIGNED, OR PROVIDED TO MD ANDERSON BY COMPANY UNDER THIS AGREEMENT. THE INDEMNITY IN THIS SECTION 9 SHALL NOT APPLY TO ANY CLAIMS TO THE EXTENT SUCH CLAIMS ARE BASED ON USE BY MD ANDERSON OF COMPANY'S PRODUCT IN CONNECTION OR IN COMBINATION WITH EQUIPMENT OR PROCESSES NOT PROVIDED BY COMPANY OTHER THAN EQUIPMENT OR PROCESSES FOR WHICH THE PRODUCT IS INTENDED TO BE USED.

10. At all times during the term of this Agreement, Company shall maintain Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence with companies authorized to conduct the business of insurance in the State of Texas. The policies will be issued on a form that insures Company's and subcontractor's liability for bodily injury (including death), property damage, personal and advertising injury. If Products include equipment, Company shall maintain insurance applicable to the equipment, issued by an insurance company licensed in the State of Texas, covering the equipment, in an amount equal to the replacement cost thereof. All insurance policies will be endorsed and name MD Anderson as an additional insured and shall provide primary and non-contributory coverage with a waiver of subrogation. If the equipment is damaged, lost, stolen, or destroyed as a result of its operation, use, maintenance, or possession, MD Anderson shall promptly notify Company of the occurrence and shall file all necessary accident reports, including those required by law and those required by interested insurance companies. MD Anderson and its employees and agents shall reasonably cooperate with Company and all insurers providing insurance under this Agreement in the investigation and defense of all claims or suits. MD Anderson shall promptly deliver to Company all papers, notices, and documents served on, or delivered to MD Anderson or its employees and agents in connection with any claim, suit, action, or proceeding at law or in equity commenced or threatened against MD Anderson or Company concerning the Products.

11. MD Anderson is a self-insured agency of the State of Texas. MD Anderson will maintain professional liability insurance coverage for medical staff physicians pursuant to The University of Texas System Professional Medical Liability Benefit Plan as authorized by Chapter 59 of the *Texas Education Code*. Liability for the tortious conduct of MD Anderson employees and agents (other than medical liability of medical staff physicians) or for injuries caused by conditions of tangible state property as provided by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code*, Chapters 101, 104, and 108). MD Anderson will provide Workers' Compensation Insurance coverage for employees of MD Anderson as mandated by, and in compliance with, the provisions of the *Texas Labor Code*, Chapter 503. MD Anderson will carry no insurance other than as set forth in this Section.

12. The Products are, and shall at all times during this Agreement remain, the property of Company. Nothing in this Agreement will give MD Anderson any ownership rights to the Products. MD Anderson will not transfer, patent, copyright, reverse engineer, commercialize, license, sublicense, attribute authorship, disclose, duplicate, and/or create derivative works of the Products, or any portion thereof.

13. Company agrees that MD Anderson's sole responsibilities hereunder are to evaluate and to test Products in good faith and in such a manner and for such a time period as deemed reasonable, necessary, and appropriate by MD Anderson.

14. The term of this Agreement will be for [twelve (12)] months from the Effective Date. MD Anderson may terminate this Agreement at any time, and Company will have thirty (30) days after the termination or expiration of this Agreement to deinstall, retrieve, and remove Product from MD Anderson's premises. Company may terminate this Agreement at any time by providing MD Anderson thirty (30) days' written notice. Unless the parties agree upon the rental, lease, or purchase of the Products pursuant to a new and separate agreement, at the expiration or termination of this Agreement, Company will deinstall, retrieve, and remove the Products, at Company's own cost and expense, from MD Anderson.

15. Company will not state or imply that MD Anderson endorses any of Company's products or services, including, but not limited to, Products. Further, Company will not use the name, trademarks, service marks, or symbols of MD Anderson, System, or The University of Texas for any purpose, including, but not limited to, the use in advertising, marketing, and sales promotion materials or any other materials or mediums (such as the internet, domain names, or URL addresses).

16. MD Anderson is an agency of the State of Texas and under the Constitution and laws of the State of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Texas. Nothing in this Agreement is intended to be, or will be construed as, a waiver of the sovereign immunity of the State of Texas or a prospective waiver or restriction of any of the rights, remedies, claims, and privileges of the State of Texas. Moreover, notwithstanding the generality or specificity of any provision of this Agreement (including, without limitation, any provision pertaining to indemnification, a cap on liability, a limitation of damages, or a waiver or limitation of rights, remedies, representations, or warranties), the provisions of this Agreement as they pertain to MD Anderson are enforceable only to the extent authorized by the Constitution and laws of the State of Texas.

17. Company represents and warrants that it complies with and is not ineligible to enter into this Agreement under Section 161.0085(c), *Texas Health and Safety Code (enacted by SB 968, 87th Texas Legislature, Regular Session (2021))*. Company acknowledges this Agreement may be terminated if this certification is inaccurate.

18. This Agreement will be construed under and in accordance with the laws of the State of Texas without reference to its conflicts of law provisions, and all obligations of the parties created under this Agreement are performable in Harris County, Texas. Subject to the sovereign immunity of the State of Texas, any lawsuit brought against MD Anderson under this Agreement may only be filed in the State District Court in Harris County, Texas.

19. Any and all notices contemplated under this Agreement must be given in writing and delivered to the parties to the stated address above, or to new or additional addresses as the parties may be advised in writing. Such notice shall be deemed effectively given when: (a) personally delivered; or (b) received through United States certified mail, return receipt requested; or (c) received via other commercial third-party delivery service issuing delivery confirmation to the addresses set forth above.

20. If Products include Software (as defined herein) that will connect to the MD Anderson computer network, Company acknowledges and agrees that MD Anderson Cybersecurity department must review and provide written approval (email is sufficient) prior to MD Anderson's use and evaluation of the Products. Company will timely complete and submit any requested documents to MD Anderson's Cybersecurity Department, including, without limitation, Rider 114 and/or Rider 118 (posted at <https://www.mdanderson.org/about-md-anderson/business-legal/doing-business/vendors-and-suppliers/terms-and-conditions.html>). With respect to any software (including, but not limited to, software in object code or source code form) that is being licensed to MD Anderson under this Agreement ("Software"), Company represents and warrants that: (a) Company grants a non-exclusive, non-transferable license to use the Software to MD Anderson for the purpose of this Agreement, and (b) Company has the authority and right to grant such license to MD Anderson.

[Remainder of page intentionally left blank; Signature page follows]

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

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

[INSERT COMPANY'S NAME]:

By: _____

By: _____

Name: Omer F. Sultan

Name: [Insert Signatory Name]

Its: Senior Vice President and Chief Financial Officer

Its: [Insert Signatory Title]

READ AND APPROVED:

By: _____

Name: [Insert Signatory Name]

Its: [Insert Signatory Title]

EXHIBIT A
PRODUCTS

Products Description	S/N (if any)	Purpose/Use	Quantity	Time Frame		Est. Price
				From	To	