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I. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

A. Contractor's Duties and Representations:

1. Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent Contractor's provision of the goods (or MD Anderson's use of the goods) and/or performance of the services (the provision of goods and/or performance of services are collectively referred to herein as the "Work") set forth in this Agreement (as defined in Section IV.A).
2. Contractor warrants, represents, covenants, and agrees that all of the Work performed by Contractor will be of the standard and quality prevailing among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving an undertaking as set forth in this Agreement.
3. Contractor warrants, represents, covenants, and agrees that all Work it performs under this Agreement will be accurate and free from any material defects or errors.
4. Contractor warrants, represents, covenants, and agrees that all persons performing Work are duly registered and/or licensed under the laws, rules, and regulations of any authority having jurisdiction (collectively, "Governmental Authorities").
5. Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing, and in good standing under the laws of the State of Texas, or is a foreign entity duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
6. Contractor warrants, represents, covenants, and agrees that neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations under this Agreement will result in the violation of any provision of Contractor's organizational documents or conflict with any order or decree of any court or governmental instrumentality, and there are no pending or, to Contractor's knowledge, threatened proceedings for the dissolution, liquidation, insolvency, or rehabilitation of Contractor.
7. If this Agreement will exceed \$10,000.00 or if Contractor anticipates or has a history of exceeding \$10,000.00 in sales to MD Anderson within a continuous twelve (12) month period, then Contractor's execution of this Agreement will signify Contractor's compliance with the provisions of Section 202 of Executive Order No. 11246 pertaining to Equal Employment Opportunities, effective September 24, 1965, as amended, and Section 503 of the Rehabilitation Act of 1973, as amended. If this Agreement is \$100,000.00 or more, then Contractor's execution of this Agreement will signify Contractor's compliance with the provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. §4212). **Contractor shall, to the extent they apply, abide by the requirements of 41 C.F.R. §§60-1.4(a), 60-300.5(a), and 60-741.5(a); these regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation,**

gender identity, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.

8. If Contractor is a franchise, then 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. Contractor shall provide MD Anderson with all data that MD Anderson, in its sole discretion, deems necessary to identify Contractor's franchise and 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 this Agreement.

B. Contractor Compliance with Laws, Regulations, and Policies:

1. **Compliance with Applicable Law:** Contractor is aware of, is fully informed about, and is in full compliance with its obligations under all applicable laws, rules, and regulations.
2. **HIPAA:** MD Anderson and Contractor will cooperate fully in meeting any obligations imposed upon MD Anderson or Contractor by any Governmental Authority with respect to the Work performed under the terms of this Agreement. This obligation will specifically include, but not be limited to, compliance with the Health Insurance Portability and Accountability Act ("HIPAA").
3. **FERPA Compliance:** In the course of performing the Work under this Agreement, Contractor may have access to student education records that are subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Such "education records" are considered Confidential Information and are also protected under FERPA. To the extent Contractor has access to "education records" under this Agreement, MD Anderson hereby designates Contractor as a "school official" as each of these terms are defined under FERPA. Contractor agrees that it shall not use the education records for any purpose other than in the performance of its obligations under this Agreement, and except as required by law, Contractor shall not disclose any education records to, or share any education records with, any third party unless permitted by the terms of this Agreement.
4. **Anti-Bribery:** Contractor represents and warrants that Contractor has neither given, offered to give, and has no intention to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement.
5. **Antitrust:** Contractor represents and warrants that neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation, partnership, or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et. seq. *Texas Business and Commerce Code*, or the federal antitrust laws, nor communicated directly or indirectly Contractor's bid or proposal made to MD Anderson to any competitor or any other person engaged in such line of business. Contractor has not received compensation for participation in the preparation of the specifications for this Agreement or of the request for proposal on which this Agreement is based.

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6. **Federal Healthcare Requirements:** Contractor represents and warrants that Contractor is not excluded, debarred, or otherwise suspended from participating in the Federal Healthcare programs, as defined in 42 U.S.C. §1320a – 7b(f), or listed in the U.S. System for Award Management's ("SAM") List of Parties Excluded From Federal Procurement or Non-Procurement Programs, or the United States Office of Inspector General's List of Excluded Individuals/Entities ("LEIE"). Contractor further acknowledges that MD Anderson is prohibited by federal regulations and arrangements with third party payors from allowing any employee, subcontractor, or agent of Contractor to provide services to MD Anderson if such employee, subcontractor, or agent is not eligible to participate in the Federal Healthcare programs. Therefore, Contractor shall not assign any employee, subcontractor, or agent that is excluded from participating in any Federal Healthcare program, including, but not limited to, Medicare, Medicaid, or Tricare, to work on an MD Anderson engagement. Contractor shall perform an LEIE, SAM, and State Medicaid sanction check monthly on each of its employees, subcontractors, and agents during the time such employees, subcontractors, and agents are assigned to work on an MD Anderson engagement. Contractor acknowledges that MD Anderson will require immediate removal of any employee, subcontractor, or agent of Contractor assigned to work on an MD Anderson engagement if such employee, subcontractor, or agent is found to be excluded from participating in any Federal Healthcare program. Upon request, Contractor will provide MD Anderson a letter signed by an authorized officer of Contractor that certifies compliance with this Section.
7. **Anti-Kickback:** Contractor affirms that: (i) 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 (ii) 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 subsections (i)-(ii), by sending written notice within ten (10) days of such status change to: The University of Texas M. D. Anderson Cancer Center, Legal Services – Unit 1674, P.O. Box 301407, Houston Texas 77230-1407, Attention: Chief Legal Officer.
8. **OSHA:** Contractor affirms, certifies, and warrants that all goods and services furnished under this Agreement will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act ("OSHA") (Public Law 91-596) and its regulations in effect as of the date on which the goods or services are furnished.
9. **MD Anderson Policies; Conflicts of Interest:**
- a. If Contractor accesses MD Anderson's campus, other facilities, or network, Contractor agrees to abide by all applicable MD Anderson policies, including, without limitation, MD Anderson policies 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 MD Anderson policies that restrict the use of alcohol or tobacco on MD Anderson's campus.
- b. In accordance with the education requirements set forth in Section 6032 of the Deficit Reduction Act of 2005, MD Anderson has implemented, and Contractor agrees to abide by, the following policies, as may be subsequently amended that are available at: <https://www.mdanderson.org/about-md-anderson/business-legal/doing-business/vendors-and-suppliers.html>: (i) Fraud, Waste, and Abuse Policy; (ii) Hospital Compliance Plan; and (iii) Non Retaliation Policy.
- c. If MD Anderson, in its sole and absolute discretion, determines that any Contractor Personnel has violated any MD Anderson policy, then, upon MD Anderson's request, Contractor will remove such Contractor Personnel from MD Anderson's campus, other facilities, and network, and such Contractor Personnel shall no longer provide Work under this Agreement.
- d. Contractor and its employees, agents, representatives, and subcontractors agree to abide by MD Anderson's Ethics Policy, Conflicts of Interest Policy, and Standards of Conduct Guide (which are available at the link in subsection b. above) and applicable state ethics laws and rules available at www.utsystem.edu/offices/systemwide-compliance/ethics. Neither Contractor nor its employees, agents, representatives, or subcontractors will assist or cause MD Anderson employees to violate MD Anderson's Ethics Policy, Conflicts of Interest Policy, Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board of Regents (the "Board") of The University of Texas System ("System") has a direct or indirect financial interest in the transaction that is the subject of this Agreement. Contractor affirms that: (i) 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 (ii) Contractor has not been an employee of MD Anderson within the twelve (12) month period immediately prior to the effective date of this Agreement; or (iii) in the event such a relationship does exist, full written disclosure of the relationship has been made by Contractor to MD Anderson prior to the effective date of this Agreement. Contractor understands that all such disclosures will be subject to administrative review and approval by MD Anderson prior to the effective date of this Agreement. Subsection (ii) of this subsection does not prohibit MD Anderson from entering into a contract with a corporation, firm, or other business entity that employs a former or retired employee of MD Anderson within twelve (12) months of the employee's leaving MD Anderson, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by MD Anderson.
- C. **Access by Individuals with Disabilities:** Contractor represents and warrants ("EIR Accessibility Warranty") that the electronic and information resources and all associated information, documentation, and support that it provides to MD Anderson under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, Rule §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas*

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Government Code). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with this EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to MD Anderson, either (i) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (ii) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor is unable to satisfy the foregoing subsections (i) or (ii) within thirty (30) days of MD Anderson's request, MD Anderson may (a) perform the necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty, and Contractor will reimburse MD Anderson for all costs incurred, (b) return any such non-compliant EIRs to Contractor for a full refund for such non-compliant EIRs, or (c) MD Anderson may terminate this Agreement, in which case Contractor will refund to MD Anderson all amounts MD Anderson has paid under this Agreement for such non-compliant EIRs within thirty (30) days after the termination date. Contractor will provide all assistance and cooperation necessary for performance of accessibility testing conducted by MD Anderson or MD Anderson's third-party testing resources, if required by 1 *Texas Administrative Code* §213.38(g).

D. Notification: Contractor agrees to notify MD Anderson in writing within thirty (30) days of any changes in facts or circumstances that render any of Contractor's representations, warranties, certifications, or affirmations under this Section I incorrect.

II. COVENANTS

A. Confidentiality: Contractor will not at any time, except as required to perform the Work or as authorized in writing by MD Anderson, supply, disclose, use, or otherwise permit access to any information, in whole or in part, that Contractor may acquire by reason of its performance under this Agreement and that concerns or in any way relates to MD Anderson, System, or the Board, including, without limitation, any information, data, or records pertaining to MD Anderson's faculty, staff, patients, business, or financial affairs ("**Confidential Information**"). The obligations in this Section shall not apply to any Confidential Information that (i) is rightfully already in Contractor's possession at the time of disclosure by MD Anderson, (ii) is or later becomes part of the public domain through no fault of Contractor, (iii) is received from a third party having no obligations of confidentiality to MD Anderson, (iv) is independently developed by Contractor without use of the Confidential Information, or (v) is required by law to be disclosed, provided that (a) Contractor provides MD Anderson prompt written notice before any such disclosure so that MD Anderson may seek a protective order or other appropriate remedy, and (b) Contractor complies with any such protective order (or equivalent) imposed on such disclosure. In the event that a protective order or other remedy is not obtained, Contractor shall furnish only that portion of the Confidential Information which is legally required to be disclosed. MD Anderson will have the right to audit and otherwise verify the security of Confidential Information in the possession of or being managed by Contractor. Within ten (10) Business Days after the termination of this Agreement or the request of MD Anderson, Contractor will return or destroy all Confidential Information, which complete return or destruction shall be certified in writing to MD Anderson. "**Business Day**" means any weekday except a weekday on which a national or Texas state holiday occurs. Without prejudice to the rights and remedies otherwise available to MD Anderson under this Agreement, MD Anderson shall be entitled to equitable relief by way of injunction if Contractor breaches or threatens to breach any of the provisions of this Section, without the necessity of posting bond or other security. The provisions of this Section shall expressly survive the termination of this Agreement.

B. Public Information:

1. MD Anderson strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act ("**TPIA**"), Chapter 552, *Texas Government Code*. In accordance with §§552.002 and 2252.907, *Texas Government Code*, and at no additional charge to MD Anderson, Contractor will make any information created or exchanged with MD Anderson pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by MD Anderson that is accessible by the public.
2. If this Agreement is in excess of \$1,000,000.00, pursuant to Section 552.372 of the *Texas Government Code*, Contractor must:
 - a. preserve all contracting information (ref. Section 552.003(7), *Texas Government Code*) related to this Agreement as provided by the records retention requirements applicable to MD Anderson for the duration of this Agreement;
 - b. promptly provide to MD Anderson any contracting information related to this Agreement that is in the custody or possession of Contractor on request of MD Anderson; and
 - c. on completion of this Agreement, either:
 - i. provide at no cost to MD Anderson all contracting information related to this Agreement that is in the custody or possession of Contractor; or
 - ii. preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to MD Anderson.
3. The requirements of Subchapter J, Chapter 552, *Texas Government Code* ("**Subchapter J**"), may apply to this Agreement, and Contractor agrees that this Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of Subchapter J. Such termination will be in accordance with Subchapter J.

C. Publicity: Contractor will not state or imply that MD Anderson endorses any of Contractor's products or services. All materials utilizing the name, trademarks, service marks, or symbols of MD Anderson, 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), must be submitted to MD Anderson's Public Relations team for prior written approval at the following email address: PublicRelations@mdanderson.org, or to such other person or contact as indicated by MD Anderson in writing.

D. Insurance:

1. Contractor, consistent with its status as an independent contractor, will carry and will cause its subcontractors to carry, at its sole cost, the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the *Texas Insurance Code*, having an A.M. Best rating of AVIII or better and in amounts not less than the minimum limits for each coverage set forth below. The insurance requirements herein are minimum requirements for this Agreement and in no way limit Contractor's liability hereunder. MD Anderson in no way

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warrants that the minimum limits contained herein are sufficient to protect the Contractor, its agents, representatives, employees, or subcontractors, and Contractor is free to purchase additional insurance as may be determined necessary.

- a. Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:
 - i. Employer's Liability – Each Accident
\$1,000,000
 - ii. Employer's Liability Disease – Each Employee
\$1,000,000
 - iii. Employer's Liability Disease – Policy Limit
\$1,000,000
 - iv. Workers' Compensation policy must include any states where Contractor performs operations for MD Anderson.
- b. Commercial General Liability Insurance with limits of not less than:
 - i. Each Occurrence Limit
\$1,000,000
 - ii. Damage to Rented Premises
\$1,000,000
 - iii. Personal & Advertising Injury
\$1,000,000
 - iv. General Aggregate
\$2,000,000
 - v. Products – Completed Operations Aggregate
\$2,000,000

The Commercial General Liability policy shall include bodily injury, property damage, and liability assumed under an insured contract, including defense costs with respect to liability arising out of activities performed by or on behalf of Contractor.

- c. Business Auto Liability Insurance covering all owned, non-owned, or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage.
- d. Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 per claim and \$3,000,000 in the aggregate. Such insurance will cover wrongful acts in the rendering of or failure to render professional services fully inclusive of the Work. If subcontractors are to be used, coverage must also apply to claims arising from services performed on behalf of Contractor, and such subcontractors shall be required to provide tantamount limits at the sole discretion of MD Anderson. Failure of subcontractors to maintain such insurance shall not alleviate Contractor's obligations under this Agreement. When professional liability insurance required by this Agreement is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time the Work is completed. Renewal policies written on a claims-made basis

will maintain the same retroactive date as in effect at the effective date of this Agreement.

- e. Cyber Liability Insurance with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:
 - i. Liability for network security failures or privacy breaches, including loss or unauthorized access, use, or disclosure of MD Anderson data, whether by Contractor or any subcontractor or cloud service provider used by Contractor;
 - ii. Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management/public relations consulting, legal services of a privacy attorney, credit monitoring, and identity fraud resolution services for affected individuals;
 - iii. Expenses related to regulatory compliance, government investigations, fines, fees assessments, and penalties;
 - iv. Payment Card Industry (PCI) fines, fees, penalties, and assessments;
 - v. Cyber extortion payment and response costs;
 - vi. First and Third Party Business Interruption Loss resulting from a network security failure;
 - vii. Liability for technological products and services;
 - viii. Costs of restoring, updating, or replacing data;
 - ix. Liability losses connected to network security, privacy, and media liability (including intellectual property infringement arising out of software and/or content but excluding patent infringement and misappropriations of trade secrets); and
 - x. Affirmative coverage for General Data Protection Regulation (GDPR).

If the Cyber Liability Insurance policy is written on a claims-made basis, (1) the "retroactive date" must be prior to the commencement of Work under this Agreement, (2) Contractor warrants that any retroactive date under the policy shall precede the effective date of this Agreement, and (3) Contractor warrants either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time Work under this Agreement is completed.

Contractor's policies will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

2. Additional Requirements Regarding Insurance Coverage:

- a. Promptly after the execution and delivery of this Agreement (not later than fifteen (15) days after Contractor's execution of this Agreement) and prior to the performance of any Work by Contractor, Contractor will deliver to MD Anderson evidence of insurance on a Texas Department of Insurance ("TDI") approved certificate form (the Acord form is a TDI approved form) verifying the existence and actual limits of all required insurance policies; and,

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if the coverage period shown on the current certificate form ends during the term of this Agreement, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

- b. All insurance policies (with the exception of workers' compensation, employer's liability, and professional liability) will be endorsed and name the Board, System, and MD Anderson as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its ongoing and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. The Commercial General Liability Additional Insured endorsement, including ongoing and completed operations coverage, will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
 - c. Contractor hereby waives all rights of subrogation against the Board, System, and MD Anderson. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the Board, System, and MD Anderson. Contractor will notify MD Anderson at least thirty (30) days prior to any cancellations, material change, or non-renewal relating to any insurance policy required in this Agreement.
 - d. Contractor will pay any deductible or self-insured retention for any loss.
 - e. Contractor will email all Certificates of Insurance and Additional Insured Endorsements required by this Agreement to CertificateOfInsurance@mdanderson.org.
3. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by MD Anderson in writing.

E. Ownership of Created Works:

1. "Intellectual Property" includes all right, title, and interest in or arising under patents, industrial designs, trade secrets, know-how, confidential information, copyrights, moral rights, trademarks, applications for registration or issuance of any of the foregoing, and all other intellectual property rights of a similar nature or effect anywhere in the world.
2. If this Agreement is strictly for the procurement of standard, off-the-shelf goods and/or services that do not include software:
 - a. Notwithstanding anything to the contrary in this Agreement, Contractor shall retain ownership of all Intellectual Property owned by Contractor ("Contractor Background IP"), and nothing in this Section II.E shall result in a transfer of ownership of any such Contractor Background IP.
 - b. 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 provided by MD Anderson to Contractor, shall at all times remain the property of MD Anderson, and MD Anderson does not provide

a license or right to use the same or a license under any Intellectual Property of MD Anderson.

- c. All deliverables shall be solely owned by and are hereby assigned to MD Anderson. Contractor hereby grants to MD Anderson an irrevocable, perpetual, and royalty-free license under Contractor Background IP for the purpose of using the deliverables in the normal course of MD Anderson's operations and activities.
3. If this Agreement is for the procurement of custom goods and/or services, or software:
- a. All inventions, discoveries, technologies, trade secrets, know-how, works of authorship, deliverables, documentation, results, data, processes, products, methods, formulas, and techniques that are discovered, developed, created, made, produced, authored, conceived, or reduced to practice by Contractor, whether patentable or not, in the course of performing the Work hereunder, or otherwise arising from the conduct of the services hereunder (including, without limitation, all Intellectual Property therein and all tangible and intangible manifestations thereof) shall be hereinafter referred to as the "Created Works."
 - b. Notwithstanding anything to the contrary in this Agreement, Contractor shall retain ownership of all Intellectual Property owned by Contractor and developed by it outside of the performance of any Work for MD Anderson ("Contractor Developed IP"), and nothing in this Section II.E shall result in a transfer of ownership of any such Contractor Developed IP.
 - c. 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 provided by MD Anderson to Contractor shall at all times remain the property of MD Anderson, and MD Anderson does not provide a license or right to use the same or a license under any Intellectual Property of MD Anderson except to the extent necessary for Contractor to perform the Work that is contemplated hereunder.
 - d. The Created Works shall be solely owned by and are hereby assigned to MD Anderson. Contractor hereby grants to MD Anderson an irrevocable, perpetual, and royalty-free license to use, disclose, modify, and copy Contractor Developed IP for the purpose of using the Created Works in the normal course of MD Anderson's operations and activities.
 - e. Notwithstanding any other provision of this Agreement, if any copyrightable Created Works are created or produced by Contractor, the Created Works are deemed to be a work made for hire to the extent possible as that phrase is understood under the copyright laws of the United States. If for any reason the copyrightable Created Works are not considered a work made for hire under applicable law, Contractor hereby assigns to MD Anderson, its successors, and its assigns, the entire right, title, and interest in and to the copyright in the copyrightable Created Works and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the copyrightable Created Works.

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- f. Contractor represents and warrants that its assigns, agents, successors, and personal representatives will not have the right to make any claims in any way or with regard to any aspect of any Created Works.
- g. Contractor agrees to promptly execute and deliver all papers, instruments, and documents and to perform such other proper acts as necessary to secure for MD Anderson or its designee the right, title, and interest in the Created Works assigned to MD Anderson hereunder. Furthermore, Contractor shall procure the necessary assignments, signatures, and approvals of its employees and agents to perfect MD Anderson's right, title, and interest in and to all Created Works.
4. If this Agreement is for the purchasing and/or licensing of Contractor's off-the-shelf software without any customizations:
- a. With respect to any software (including, but not limited to, software in object code or source code form) that is being licensed to MD Anderson under this Agreement ("Software"), Contractor represents and warrants that: (i) Contractor has the authority and right to grant to MD Anderson the license to the Software as set forth in this Agreement; and (ii) except as to any express provisions to the contrary stated herein, there shall be no restrictions, obligations, or conditions on MD Anderson's use, distribution, transfer, commercialization, attribution of authorship, licensing or sublicensing (for a fee or otherwise), decompilation, disclosure, duplication, or creation of derivative works of the Software, or any portion thereof.
- b. Malware: Contractor represents and warrants the Work is and will remain virus-free and will not include any trojan horses, trap doors, lock outs, interrupt mechanisms, or similar disabling software or code that does or can disable, damage, corrupt, interfere with, or delete any element of software, data, computer, or electronic records or files of MD Anderson, including any such code that allows or any third party to access or to perform any unauthorized operations on MD Anderson's systems without MD Anderson's prior authorization.
- c. Disabling Code: Contractor will ensure that there is no Disabling Code in the Work. Contractor further covenants that with respect to any Disabling Code that may, in breach of this provision, be part of the Work, Contractor will not invoke such Disabling Code at any time, including upon expiration or termination of this Agreement for any reason. "Disabling Code" means computer programming code which could have the effect of permitting improper use, access, deletion, or modification of, or disabling, deactivating, damaging, or shutting down one or more software programs or systems and/or hardware or hardware systems, including "time bombs," "protect codes," "data destruction keys," "trap doors," and similar code or devices.
5. If this Agreement is for Contractor to develop custom software or write source code for MD Anderson:
- a. With respect to any software (including, but not limited to, software in object code or source code form) that is being created for MD Anderson under this Agreement ("Custom Software"), Contractor represents and warrants that: (i) Contractor holds, and has the authority and right to transfer, all right, title, and interest in the Custom Software to MD Anderson; (ii) the Custom Software shall be free and clear of all liens, claims, and encumbrances of any kind whatsoever; (iii) no software code subject to any Open Source License has been used or will be used in the development of the Custom Software; (iv) the Custom Software will not be subject to any Open Source License requirements or terms and conditions; and (v) there shall be no restrictions, obligations, or conditions on MD Anderson's use, distribution, transfer, commercialization, attribution of authorship, licensing or sublicensing (for a fee or otherwise), decompilation, disclosure, duplication, or creation of derivative works of the Custom Software, or any portion thereof. As used herein, the term "Open Source License" means any open source license or any license arrangement granting any rights to any third party or imposing any terms and conditions requiring the public disclosure of, or distribution of, source or object code derived from, or incorporating any third-party software, including, but not limited to, copyleft provisions, and the like. Contractor further represents and warrants that Contractor shall not take any action or provide any Custom Software that will cause any patents, copyrights, or other intellectual property rights which are owned or controlled by MD Anderson and/or the Board to become subject to any terms and conditions of any Open Source License or to any encumbrance or third party rights.
- F. Data Security:** In the event of a Data Security Incident, Contractor shall promptly notify MD Anderson in writing as set forth in Section IV.H and via email to Institutional_Compliance@mdanderson.org, 4info@mdanderson.org, and cybersecurity@mdanderson.org, and such notice shall include the following information: (i) the timing and nature of the Data Security Incident; (ii) the information related to MD Anderson that was compromised; (iii) when the Data Security Incident was discovered; and (iv) remedial actions that have been taken and that Contractor plans to take. Additionally, Contractor shall reasonably comply with MD Anderson's requests to further remedy the Data Security Incident, including, without limitation, providing third party notifications in a manner and method as determined necessary by MD Anderson and in accordance with applicable law, at Contractor's sole expense. "Data Security Incident" means an incident whereby (a) an unauthorized person (whether within Contractor, its representative, or a third party) attempted to acquire or access, or actually acquired or accessed Confidential Information; (b) Contractor becomes aware of a failure to encrypt Confidential Information; or (c) Confidential Information is otherwise lost, stolen, or compromised while in the possession or control of Contractor or its representative(s). Notwithstanding the foregoing, Contractor shall not be required to notify MD Anderson of pings and other broadcast attacks on Contractor's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in defeat or circumvention of any security control, or in the unauthorized access, use, or disclosure of Confidential Information.
- G. Right to Audit:**
1. At any time during the term of this Agreement and for a period of four (4) years thereafter, System and/or MD Anderson, at reasonable times and at their expense, will have the right to audit Contractor's records and books as such pertain to this Agreement. Contractor will include this provision in all contracts with permitted

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subcontractors. If needed for audit, Contractor will supply, at its expense, original or independently-certified copies of off-site records within two (2) weeks of written request.

2. U.S. Government Access to Contractor Books, Documents, and Records:

a. If Contractor furnishes services under this Agreement in connection with matters for which the U.S. Government may make payment under Subchapter XVIII, Chapter 7, Title 42 of the United States Code, and the value or cost of such services is \$10,000 or more over a twelve-month period, then the provisions of this subsection 2 will be in full force and effect under this Agreement.

b. Until the expiration of four (4) years after Contractor completes furnishing all of the services described in subsection 2.a of this Section, Contractor will make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the United States Comptroller General, or any of their duly authorized representatives, this Agreement, and all of Contractor's books, documents, and records that are necessary to certify the nature and extent of the costs for such services. Contractor and MD Anderson agree that this Section will comply with the provisions of 42 U.S.C. §1395x(v)(1)(I) and C.F.R. Title 42, Chapter IV, Subchapter B, Part 420, Subpart D, and in the event that this Section does not comply with such provisions, this Section will be automatically reformed to so comply and such reformation will be documented in writing and signed by both parties. If Contractor carries out any of the services described in subsection 2.a of this Section through a subcontract with a related organization, as that term is used in 42 U.S.C. §1395x and interpreted in C.F.R. Title 42, Chapter IV, Subchapter B, Part 420, Subpart D, and that subcontract has a value or cost of \$10,000 or more over a twelve-month period, then Contractor will include a clause in its subcontract with the related organization setting forth all of the requirements of this subsection 2.

3. Pursuant to Section 2262.154 of the Texas Government Code, Contractor understands that acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency ("Auditor") to conduct an audit or investigation in connection with those funds (ref. §§51.9335(c), 73.115(c), and 74.008(c), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing Auditor any information Auditor considers relevant to the investigation or audit. Contractor will include this provision in all contracts with permitted subcontractors.

H. Quality Assurance: Contractor agrees to: (i) comply with all applicable standards of The Joint Commission (the "Joint Commission"), and any successor organization; (ii) implement and monitor a quality assurance process that complies with Joint Commission standards; (iii) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (iv) upon request, provide assurance to MD Anderson of a licensed independent practitioner's privileging file; and (v) provide MD Anderson with periodic reports of its quality assurance indicators and/or permit MD Anderson to conduct periodic quality assurance audits of Contractor's services as otherwise specified in this Agreement and, if incorporated herein, as more particularly set forth in Rider 200.

I. Drug Testing Requirements: Prior to commencing any Work under this Agreement, Contractor will ensure that all Contractor Personnel have tested negative on a five (5) panel drug test. The test must include the following: (i) Amphetamines; (ii) Cocaine; (iii) Opiates (2000 ng/ml); (iv) PCP; and (v) THC. "Contractor Personnel" is any individual who is compensated by Contractor, or by a subcontractor engaged by Contractor, for providing a service directly to MD Anderson, whether or not that individual is present on MD Anderson premises. Contractor Personnel may include consultants, service vendor employees, construction workers, and temporary personnel needed for staff augmentation.

J. Responsibility for Individuals Performing Work; Criminal Background Checks: Each Contractor Personnel who is assigned to perform Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all Contractor Personnel performing Work under this Agreement. Prior to any Contractor Personnel commencing Work, Contractor will have the following criminal background checks and screenings performed on the Contractor Personnel assigned: (i) Positive Identification Check – Social Security Number Trace, Maiden and Alias Name Search; (ii) Criminal Record Search – County, Statewide, and Nationwide Level (past seven (7) years); (iii) Employment Verification (all previous employers for past seven (7) years); and (iv) Sex Offender Registry Search. Contractor will maintain all documentation, including the results of any background checks, during the term of this Agreement and will provide The University of Texas Police Department investigators copies of such documentation upon request. Contractor will determine on a case-by-case basis whether each Contractor Personnel assigned to perform Work is qualified to do so. Contractor will not assign any Contractor Personnel to perform Work under this Agreement who has a felony conviction or convictions of theft, embezzlement, fraud, or property crime offenses of any grade, or a history of criminal conduct, or who does not otherwise comply with MD Anderson's Criminal and Personal Background Check Policy (ADM0312). Upon request, Contractor will provide MD Anderson a letter signed by an authorized officer of Contractor that certifies compliance with this Section. Contractor should send any questions regarding investigations to The University of Texas Police at Houston at UTPD-SSR@mdanderson.org.

K. Direct Patient Care/Contact: Contractor will ensure that all Contractor Personnel performing Work at MD Anderson's campus who have direct patient care/contact under this Agreement will be able to show proof that (i) a tuberculosis screening was completed within ninety (90) calendar days prior to starting Work at MD Anderson's campus, and (ii) such Contractor Personnel do not have active tuberculosis. Contractor will further ensure that all Contractor Personnel with direct patient care/contact will be able to show proof of current immunization to influenza and proof of immunization or immunity to varicella (chicken pox) prior to active duty at MD Anderson. Contractor shall make records of screenings, vaccinations, immunity, and related reports immediately available to MD Anderson upon request.

L. HUB Subcontracting Plan:

1. If MD Anderson's expenditures under this Agreement reach or exceed \$100,000 or as otherwise requested by MD Anderson's Supply Chain Management, Contractor shall promptly submit a HUB subcontracting plan ("HSP") for the utilization of Historically Underutilized Businesses ("HUB") in accordance with MD Anderson's requirements (see Rider 104), including, but not limited to, subsections 2-4 of this Section. If this Agreement or any resulting purchase order is not conducive to HUB

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subcontracting opportunities, MD Anderson's Supply Chain Management will execute the required MD Anderson form stating such. Contractor may obtain information regarding HUB requirements from MD Anderson's Office of HUB and Federal Small Business Program Office ("MD Anderson HUB Office").

2. Contractor will comply with and use good faith efforts to subcontract Work performed under this Agreement in accordance with Contractor's HSP. Except as specifically provided in the HSP, Contractor's duties and obligations under this Agreement and the fees due to Contractor under this Agreement may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (i) not be binding on MD Anderson; and (ii) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Texas law, including Chapter 2161, *Texas Government Code*, and Title 34, Part I, Chapter 20, Subchapter D, §§20.285(h)(4), 20.585, and 20.586, *Texas Administrative Code*.

Contractor agrees to maintain records documenting its compliance with the HSP and to submit a monthly progress assessment report ("PAR"), if subcontracting opportunities have been identified, to MD Anderson with each invoice in the format required by the Texas Comptroller of Public Accounts or any successor state agency ("Texas Comptroller"). Submission of a PAR with each invoice will be required as a condition for payment under this Agreement. If the MD Anderson HUB Office determines that Contractor has failed to comply with the HSP, MD Anderson will notify Contractor of the deficiencies and give Contractor an opportunity to submit documentation and explain why Contractor's failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. Any deficiencies identified by MD Anderson must be rectified by the Contractor prior to the next reporting period. If the MD Anderson HUB Office determines that Contractor failed to implement the HSP in good faith, MD Anderson, in addition to any other remedies, may report non-performance to the Texas Comptroller in accordance with Chapter 34, §§20.285(h)(4), 20.585, and 20.586, *Texas Administrative Code*.

3. If at any time during the term of this Agreement, Contractor desires to change the HSP or to perform or subcontract any part of this Agreement in a manner that is not consistent with Contractor's existing HSP, then before doing so, Contractor must submit an amended Contractor's HSP to the MD Anderson HUB Office for review and approval. Contractor will demonstrate good faith by complying with the requirements of Chapter 34, §20.285(d), *Texas Administrative Code*, in the development of Contractor's amended HSP. If the MD Anderson HUB Office approves Contractor's amended HSP, this Agreement must be amended to replace Contractor's existing HSP with Contractor's amended HSP.
4. If MD Anderson expands the scope of Work under this Agreement through a properly executed change order or other form of amendment, the MD Anderson HUB Office will determine if the additional Work contains probable subcontracting opportunities. If the MD Anderson HUB Office determines additional probable subcontracting opportunities exist, Contractor will submit an amended HSP covering those opportunities to the MD Anderson HUB Office for review and approval. Contractor will demonstrate good faith by complying with the requirements of Chapter 34, §20.285(d), *Texas Administrative Code*, in the development of Contractor's

amended HSP. If the MD Anderson HUB Office approves Contractor's amended HSP, this Agreement must be amended to replace the existing HSP with the amended HSP before Contractor may perform the expanded scope of Work.

- M. **Contractor Certification Regarding Boycotting Israel:** Pursuant to Chapter 2271, *Texas Government Code*, Contractor certifies that Contractor (i) does not currently boycott Israel and (ii) will not boycott Israel during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate or becomes inaccurate at any time during the term of this Agreement.
- N. **Contractor Certification Regarding Business with Certain Countries and Organizations:** Pursuant to Chapter 2252, *Texas Government Code*, Contractor certifies that Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate or becomes inaccurate at any time during the term of this Agreement.
- O. **Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations:** Pursuant to Chapter 2274, *Texas Government Code*, Contractor verifies (i) Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) Contractor will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- P. **Contractor Verification Regarding Boycotting Energy Companies:** Pursuant to Chapter 2276, *Texas Government Code*, Contractor verifies (i) Contractor does not boycott energy companies, and (ii) Contractor will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- Q. **Contractor Certification Regarding COVID-19 Vaccination:** Pursuant to Section 161.0085, *Texas Health and Safety Code*, Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor's business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- R. **Contractor Compliance and Certification Relating to Cloud Computing Services:** This Section applies if Contractor is providing cloud computing services. The Texas Department of Information Resources ("DIR") has established and implemented a state risk and authorization management program providing a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services ("CCSs") that process (including storing or transmitting) the data of Texas state agencies ("TX-RAMP"). The requirements of TX-RAMP include Section 2054.0593 of the Texas Government Code, Title 1, Rule 202.77 of the Texas Administrative Code, and DIR's TX-RAMP Manual. Contractor represents and warrants that throughout the term of this Agreement it will comply with the requirements of TX-RAMP and that all CCSs subject to TX-RAMP will comply with the requirements of and be certified under TX-RAMP. The CCSs subject to TX-RAMP include those provided by Contractor either through this Agreement or in furtherance of this Agreement, including CCSs provided through Contractor's subcontractors or third-party providers. A CCS used in furtherance of this

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Agreement includes a CCS that Contractor or its subcontractors or third-party providers use to process (including storing or transmitting) MD Anderson data, even if MD Anderson itself does not access or use that CCS. Contractor's subcontractors or third-party providers responsible solely for servicing or supporting a CCS provided by Contractor or another Contractor subcontractor or third-party provider shall not be required to provide evidence of TX-RAMP certification; instead, Contractor will be responsible for providing such evidence. The list of current TX-RAMP certified CCSs and DIR's TX-RAMP Manual are set forth at <https://dir.texas.gov/txramp>. Contractor understands and agrees that MD Anderson may not enter into or renew a contract with Contractor to purchase CCSs that are subject to TX-RAMP unless Contractor demonstrates compliance with TX-RAMP requirements. Contractor acknowledges this Agreement may be terminated and payment withheld if Contractor does not comply with TX-RAMP or this Section.

S. Data Security Controls: Pursuant to Section 2054.138 of the *Texas Government Code*, if Contractor will be authorized to access, transmit, use, or store data for MD Anderson, Contractor is required to meet the security controls MD Anderson determines are proportionate with MD Anderson's risk under this Agreement based on the sensitivity of MD Anderson's data. Contractor must periodically provide to MD Anderson evidence that Contractor meets the security controls required under this Agreement.

T. Disclosure of Interested Parties Statute: If applicable, Contractor agrees to comply with §2252.908, *Texas Government Code* (Disclosure of Interested Parties Statute), and 1 *Texas Administrative Code* §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission ("TEC"), including, among other things, providing TEC and MD Anderson with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at <https://www.ethics.state.tx.us/filinginfo/1295/>.

U. Cybersecurity Training Program: If Contractor and/or its subcontractors, officers, or employees who are performing Work will have an account on a State of Texas computer system (for example, an account to an application, database, or network), then pursuant to Section 2054.5192, *Texas Government Code*, Contractor and its subcontractors, officers, and employees who are performing Work must complete a cybersecurity training program certified under Section 2042.519, *Texas Government Code*, and selected by MD Anderson prior to commencing such Work. Contractor shall verify completion of the program to MD Anderson.

V. Contractor Certification Relating to Critical Infrastructure: Pursuant to Chapter 2275, *Texas Government Code*, if Contractor is granted direct or remote access to or control of critical infrastructure in the State of Texas, excluding access specifically allowed by MD Anderson for product warranty and support purposes, then Contractor certifies (i) it is neither owned by nor is the majority of stock or other ownership interest of the Contractor held or controlled by (a) individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2275.0103 of the *Texas Government Code* (a "Designated Country") or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Designated Country; and (ii) Contractor is not headquartered in China, Iran, North Korea, Russia, or a Designated Country. Contractor understands that the prohibitions set forth in the preceding sentence apply regardless of whether (1) Contractor's or its parent company's

securities are publicly traded or (2) Contractor or its parent company is listed on a public stock exchange as either (A) a Chinese, Iranian, North Korean, or Russian company or (B) a company of a Designated Country. Contractor acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

W. Consulting Reports: If Contractor is providing consulting services to MD Anderson, Contractor must provide a copy of all consulting reports and work product submitted pursuant to this Agreement directly to the following:

The University of Texas M. D. Anderson Cancer Center
Institutional Compliance Office – Unit 1640
P.O. Box 301407
Houston, Texas 77230-1407

AND

The University of Texas M. D. Anderson Cancer Center
Internal Audit – Unit 1641
ATTN: Vice President and Chief Audit Officer
P.O. Box 301407
Houston, Texas 77230-1407

III. INFRINGEMENT INDEMNITY

A. SUBJECT TO THE STATUTORY DUTIES OF THE TEXAS ATTORNEY GENERAL, CONTRACTOR WILL INDEMNIFY, HOLD HARMLESS, AND DEFEND MD ANDERSON, SYSTEM, THE BOARD, AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSSES, DAMAGES, CLAIMS, DEMANDS, ALLEGATIONS, LIABILITIES, COSTS, SETTLEMENTS, OR EXPENSES FOR OR AS A RESULT OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHTS, OR MISAPPROPRIATION OR MISUSE OF ANY TRADE SECRET OR PROPRIETARY INFORMATION BASED ON OR RELATED TO THE USE OR APPLICATION (i) BY CONTRACTOR OR ITS SUBCONTRACTORS OF THE WORK, OR (ii) BY MD ANDERSON OF ANY WORK THAT IS SUPPLIED, DESIGNED, OR PROVIDED TO MD ANDERSON BY CONTRACTOR UNDER THIS AGREEMENT (COLLECTIVELY, THE "CLAIMS"). THE INDEMNITY IN THIS SECTION III SHALL NOT APPLY TO ANY CLAIMS TO THE EXTENT SUCH CLAIMS ARE BASED ON (a) CONTRACTOR'S FULL COMPLIANCE WITH MD ANDERSON'S SPECIFIC WRITTEN DESIGN REQUIREMENTS OR SPECIFICATIONS OR WRITTEN INSTRUCTIONS ON CONTRACTOR'S METHOD OF PERFORMANCE, BUT ONLY IF SUCH INSTRUCTIONS ARE INCONSISTENT WITH THE METHOD OF PERFORMANCE OR WITH THE GOODS THAT CONTRACTOR CUSTOMARILY PROVIDES TO ITS OTHER CUSTOMERS, OR (b) USE BY MD ANDERSON OF CONTRACTOR'S WORK IN CONNECTION OR IN COMBINATION WITH EQUIPMENT OR PROCESSES NOT PROVIDED BY CONTRACTOR OTHER THAN EQUIPMENT OR PROCESSES FOR WHICH THE WORK IS INTENDED TO BE USED.

B. If Contractor is prevented from performing any portion of the Work or should MD Anderson be prevented or estopped from use or application of any Work designed or provided by Contractor by reason of legal proceedings based upon Claims described in this Section III, MD Anderson shall be relieved of any obligation to make payment for Work not performed, or of which the Work may not be used, as a result thereof, and Contractor shall promptly, at its own cost, either:

1. obtain the necessary license to allow Contractor and MD Anderson, as applicable, to use such third party rights to the extent necessary to allow performance of the Work in complete compliance with this Agreement

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and to allow MD Anderson to use the Work in the manner contemplated by this Agreement; or

2. re-design and re-perform such Work to enable complete performance of the Work in accordance with this Agreement without infringing any such third-party rights and without affecting the utility and functionality of the Work.

IV. GENERAL PROVISIONS

- A. Entire Agreement:** This Rider 103 and all accompanying riders, work orders, and purchase orders (as well as any exhibits to any of the foregoing) constitutes the sole, entire, and only agreement between the parties with regard to the subject matter hereof, and all such documents are collectively designated as the “Agreement.” This Agreement supersedes any prior agreements or understandings, whether written or oral, between the parties with respect to the Work. No course of prior dealings, no usage of trade, and no course of performance will be used to modify, supplement, or explain any terms used in this Agreement. In the event of any conflict between the terms of this Agreement and any other document constituting part of this Agreement, excluding Rider 111, the terms of this Agreement will control and govern. In the event of a conflict between the terms of Rider 111 and any other document constituting part of this Agreement, the terms of Rider 111 will control and govern. This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor’s performance or provision of goods or services under this Agreement (“External Terms”). External Terms are null and void and will have no effect under this Agreement, even if MD Anderson or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browserwrap, web-based terms and conditions of use (including hyperlinks), and any other terms and conditions displayed in any format that MD Anderson or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.
- B. Amendment:** MD Anderson may at any time and in its sole discretion unilaterally amend this Agreement, purchase order, or rider, as applicable.
- C. Independent Contractor:** Contractor is an independent contractor for purposes of this Agreement. No employer-employee, partnership, or joint venture relationship is created by this Agreement or by Contractor’s service to MD Anderson. Except as specifically required under the terms of this Agreement, Contractor will not represent itself to be an agent or representative of MD Anderson or System or the State of Texas.
- D. Assignment:** No rights and privileges granted to any party under this Agreement may be transferred or assigned without obtaining the prior written consent of the other party. The foregoing prohibition will also apply to any change in control of Contractor. Any attempt to transfer or assign any rights or privileges under this Agreement without having first obtained written consent from the other party will be null and void and will entitle the other party to immediately terminate this Agreement. Notwithstanding anything to the contrary herein, any assignment of this Agreement or the subcontracting of any Work to be performed hereunder shall not relieve Contractor of its obligations hereunder.
- E. Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make such provision enforceable, or, if necessary, this Agreement shall be deemed to be amended to delete the unenforceable provision or portion thereof. In

the event any provision is deleted or amended, the remaining provisions shall remain in full force and effect.

- F. Non-Waiver of Defaults:** Failure of any party to declare any default by any other party immediately upon occurrence thereof, or delay by any party in taking any action in connection therewith, will not waive such default or a potential remedy for such default.
- G. Force Majeure:** Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, pandemics, public health emergencies, war, riots, flood, fire, sabotage, or any other circumstances of like character. Contractor will use its commercially reasonable best efforts to mitigate the impact of any such event or occurrence so that MD Anderson may continue to provide healthcare services during such period.
- H. Notices:** Any notice required or permitted to be sent under this Agreement will be (i) delivered by hand, or (ii) mailed by a nationally recognized overnight courier service (delivery receipt requested) with charges paid by the dispatching party, or (iii) mailed by registered or certified mail, return receipt requested, or (iv) emailed (to the extent an email address is set forth below), to Contractor at the address provided to MD Anderson and to MD Anderson as noted below. Notice so mailed will be deemed effective (a) upon hand delivery, (b) on the scheduled date of delivery by a nationally recognized overnight courier service, (c) on the third (3rd) day following the date of deposit into the United States mail, or (d) on the date the email is sent (or the next Business Day if sent (x) after 5:00 p.m. Houston time on a Business Day or (y) on a non-Business Day).

Mailing Address: (Via U.S. Mail)

The University of Texas M. D. Anderson Cancer Center
Supply Chain Management – Unit 1680
P.O. Box 301407
Houston, Texas 77230-1407

OR

Delivery Address: (In person or Via Courier)

The University of Texas M. D. Anderson Cancer Center
Supply Chain Management – Unit 1680
7007 Bertner Avenue
Houston, Texas 77030

OR

Email: ContractEmailNotice@mdanderson.org

A party may change its notice address(es) set forth in this Section by providing written notice to the other party in accordance with this Section.

- I. Taxes:** MD Anderson is a tax-exempt State of Texas agency and an institution of higher education. Notwithstanding its exemption from certain state and federal taxes, MD Anderson will be responsible for any taxes it may be liable for and from which MD Anderson is not exempt. Notwithstanding anything to the contrary herein, MD Anderson shall never be liable for Contractor’s federal or state income taxes, franchise taxes, or taxes on Contractor Personnel, including personal income tax and social security taxes associated therewith. Contractor will cooperate with, and provide reasonable assistance to, MD Anderson in obtaining any tax exemptions to which MD Anderson is entitled.
- J. Termination:** MD Anderson will have the right to terminate all or any undelivered portion of this Agreement for convenience upon thirty (30) days’ written notice to Contractor. Notwithstanding anything to the contrary herein,

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MD Anderson may terminate this Agreement immediately upon notice to Contractor due to MD Anderson institutional direction, policy, standard, or other communication related to the COVID-19 virus requiring cancellation of the activities or services contemplated herein. Should MD Anderson terminate this Agreement pursuant to the immediately preceding sentence, Contractor shall only be entitled to reimbursement for reasonable expenses actually incurred in connection with this Agreement as of the date of such termination, and Contractor shall otherwise reimburse MD Anderson for all amounts paid hereunder. Either party will have the right to terminate all or any undelivered portion of this Agreement for breach immediately upon the other party's breach of this Agreement, so long as such party is provided with written notice and thirty (30) days in which to cure such breach to the reasonable satisfaction of the other party. The party terminating this Agreement will send the other party a "Notice of Termination" which will specify the basis for termination and the effective date of the termination ("Termination Date").

1. MD Anderson's responsibility under this Agreement will be limited to payment for only the Work performed prior to the Termination Date.
2. Under no circumstances will Contractor be entitled to payment for anticipated profits, unabsorbed overhead, or interest on borrowing by reason of such termination.
3. In the event this Agreement terminates or expires prior to the full completion of the Work, Contractor will refund to MD Anderson, prorated on a per diem basis, any amount that may have been prepaid by MD Anderson.

K. DISPUTE RESOLUTION:

1. 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 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by MD Anderson and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business.
2. Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, in whole or in part, except as permitted by Subchapter D, Chapter 2251 of the *Texas Government Code*. Any periods set forth in this Agreement for notice and cure of defaults are not waived.

L. Subcontracting: Unless expressly provided otherwise in this Agreement, before subcontracting any part of the Work described in this Agreement, Contractor is required to obtain MD Anderson's prior written consent, which consent may be withheld in its sole and absolute discretion.

M. Counterparts; Facsimile Signature: This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed an original of this Agreement, but all of which together will constitute one and the same document. This Agreement also may be evidenced by facsimile signature or by email delivery of a ".pdf" format data file, and facsimile or ".pdf" signature page will be deemed to be an original signature, or may be signed by electronic means, including, but not limited to, DocuSign, and shall be valid and binding on the parties.

N. Survival: Expiration or termination of this Agreement will not affect any right or obligation that either party may have

accrued prior to, or that expressly survives, the expiration or termination of this Agreement.

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

P. Franchise Tax Certification: Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, *Texas Tax Code*, or that Contractor is exempt from the payment of those taxes, or otherwise not subject to those taxes.

Q. Loss of Funding: Performance by MD Anderson under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then MD Anderson will issue written notice to Contractor and MD Anderson may terminate this Agreement without further duty or obligation under this Agreement.

R. Construction: This Agreement shall not be construed either more favorably for or strongly against either of the parties based upon which party drafted it. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning.

S. Headings: The headings used in this Agreement are used for reference purposes only and do not constitute substantive matters to be considered in construing the terms of this Agreement.

T. 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.

U. Texas Family Code Child Support Certification: Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

V. Group Purchasing: MD Anderson is an institution of System, which consists of multiple academic and health institutions. Texas law authorizes institutions of higher education (defined by Section 61.003, *Texas Education Code*) to use the group purchasing procurement method (ref. Sections 51.9335, 73.115, and 74.008, *Texas Education Code*). Therefore, if this Agreement resulted from a competitive procurement method, Contractor acknowledges that additional Texas institutions of higher education may elect to enter into a contract with Contractor for the Work set forth in this Agreement, on the same terms and conditions recited herein, by entering into a separate contract with Contractor, or by concluding an appropriate addendum to this Agreement. In either case, it is understood and agreed that:

1. Unless specifically stated otherwise, any volume of Work stated in this Agreement reflects only Work to be purchased by MD Anderson and does not include potential purchases by other System institutions; and

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2. Each System institution is a financially separate entity and will be solely responsible for its own commitments to Contractor.

W. Texas State Agency:

1. 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.
2. Any provision of any applicable law, rule, or regulation that invalidates any provision of this Agreement or would cause one or both of the parties hereto to be in violation of law will be deemed to have superseded the terms of this Agreement. The parties, however, will use their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of the law and negotiate in good faith toward amendment of this Agreement in such respect.