

PRODUCT EVALUATION AGREEMENT

BETWEEN

THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER

AND

[INSERT COMPANY'S NAME]

This Product Evaluation Agreement (“Agreement”), effective as of [REDACTED], 20 [REDACTED] (the “Effective Date”), is made by and between The University of Texas M. D. Anderson Cancer Center (“MD Anderson”), an institution of higher education and one of the institutions of The University of Texas System (“System”), which has its principal address at 1515 Holcombe Boulevard, Houston, Texas 77030, and [Insert Complete Name of Company] (“Company”), a [Insert State where Company was Formed and Type of Business Entity, e.g., *Indiana corporation, LLC, etc.*], which has its principal address at [Insert Complete Address of Company]. MD Anderson and Company may each be referred to herein as a “Party” and collectively as the “Parties.”

Section 1. Products: 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. 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 laws and regulations. The Products’ evaluation contemplated herein is not a “clinical trial” or any other form of human subjects research.

Section 2. Term: The term of this Agreement will commence on the Effective Date and continue through [Insert termination date], unless sooner canceled or terminated in accordance with the provisions of this Agreement, including all riders, schedules, exhibits, or other documents attached to and incorporated into this Agreement (“Term”). MD Anderson may terminate this Agreement at any time by providing Company with written notice. Company may terminate this Agreement at any time by providing MD Anderson thirty (30) days’ prior 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 de-install, retrieve, and remove the Products from MD Anderson’s premises, at Company’s own cost and expense.

Section 3. Data:

- 3.1 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. 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.
- 3.2 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.”
- 3.3 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 access to 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. If Company receives, or anticipates receiving, any PHI from MD Anderson, Company agrees to the terms of, and will promptly execute, MD Anderson’s Business Associate Agreement, which is incorporated by reference herein and available at <https://www.mdanderson.org/about-md-anderson/business-legal/doing-business/vendors-and-suppliers/terms-and-conditions.html>. **[If PHI disclosure is anticipated, please consult with Legal.]**

Section 4. Title to Products: The Products are, and shall at all times during the Term 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. Company represents that Company, whether or not Company is the manufacturer of the Products, has the right to enter into this Agreement and to provide the Products to MD Anderson hereunder.

Section 5. Compliance with Law and MD Anderson Policies:

- 5.1 Company is aware of, is fully informed about, and is in full compliance with its obligations under all applicable laws, rules, and regulations.
- 5.2 It is understood and agreed by the Parties that: (i) there is no agreement hereunder that either Party refer business to the other Party or any of its affiliates; (ii) this Agreement is not intended and should not be construed to be in exchange for referrals or arranging referrals; and (iii) any consideration hereunder represents fair market value determined by the Parties through good faith, arms-length bargaining.
- 5.3 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. 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 (i) agrees to abide by MD Anderson’s policies related to facility access and premises rules, (ii) 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 (iii) 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.

Section 6. Purpose: 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. Company agrees that MD Anderson’s sole responsibilities hereunder are to evaluate and to test Products in such a manner and for such a time period as deemed reasonable, necessary, and appropriate by MD Anderson.

Section 7. Training: Company will advise if training is required to ensure MD Anderson’s safe and effective use of the Products. 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 Company is an expert in the Products and qualified to provide such training.

Section 8. INFRINGEMENT INDEMNITY: 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 PRODUCTS, OR (ii) BY MD ANDERSON OF ANY PRODUCTS THAT ARE SUPPLIED, DESIGNED, OR PROVIDED TO MD ANDERSON BY COMPANY UNDER THIS AGREEMENT. THE INDEMNITY IN THIS SECTION SHALL NOT APPLY TO ANY CLAIMS TO THE EXTENT SUCH CLAIMS ARE BASED ON USE BY MD ANDERSON OF COMPANY’S PRODUCTS IN CONNECTION OR IN COMBINATION WITH EQUIPMENT OR PROCESSES NOT PROVIDED BY COMPANY OTHER THAN EQUIPMENT OR PROCESSES FOR WHICH THE PRODUCTS ARE INTENDED TO BE USED.

Section 9. Insurance:

- 9.1 At all times during the Term, 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 the 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.
- 9.2 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.

Section 10. Publicity: Company will not state or imply that MD Anderson endorses any of Company’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.

Section 11. State Law Provisions:

- 11.1 **Certification Regarding Business with Certain Countries and Organizations:** Pursuant to Chapter 2252, *Texas Government Code*, Company certifies that Company is not engaged in business with Iran, Sudan, or a foreign terrorist organization.

- 11.2 **Certification Regarding COVID-19 Vaccination:** Pursuant to Section 161.0085, *Texas Health and Safety Code*, Company 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 Company's business.
- 11.3 **Certification Required by Texas Governor Executive Order GA-48:** Pursuant to [*Executive Order GA-48 of the Governor of Texas effective November 19, 2024*](#), Company certifies that it and, if applicable, any of its holding companies or subsidiaries, is not: (i) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA"); (ii) listed in Section 1260H of the 2021 NDAA; (iii) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or (iv) controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

Section 12. [OPTIONAL PROVISION: Include if software is involved.] Software: With respect to any software (including, but not limited to, software in object code or source code form) that constitutes, or is part of, the Products ("Software"), Company represents and warrants that: (i) Company grants a non-exclusive, non-transferable license to use the Software to MD Anderson for the purpose of this Agreement, and (ii) Company has the authority and right to grant such license to MD Anderson.

Section 13. General Provisions:

- 13.1 **Entire Agreement:** This Agreement and all exhibits constitute the sole, entire, and only agreement between the Parties with regard to the subject matter hereof, and all such documents are collectively designated as this Agreement. This Agreement supersedes any prior agreements or understandings, whether written or oral, between the Parties with respect to the subject matter hereof. No course of prior dealings, no usage of trade, and no course of performance, or External Terms will be used to modify, supplement, or explain any terms used in this Agreement. "[External Terms](#)" are all other terms and conditions or agreements, written or oral, including, but not limited to, any purchase orders issued by Company, any shrinkwrap, clickwrap, browsewrap, and/or web-based terms and conditions of use (including hyperlinks).
- 13.2 **Amendment:** No modification, alteration, waiver, or supplement of this Agreement will be effective unless it is set forth in a written instrument that is signed by all Parties.
- 13.3 **Independent Contractor:** Company is an independent contractor for purposes of this Agreement. No employer-employee, partnership, or joint venture relationship is created by this Agreement or by Company's service to MD Anderson. Except as specifically required under the terms of this Agreement, Company will not represent itself to be an agent or representative of MD Anderson or System or the State of Texas.
- 13.4 **Assignment:** No rights and privileges granted to any Party under this Agreement may be transferred or assigned without obtaining the prior written consent of the other Party. The foregoing prohibition will also apply to any change in control of Company. 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 shall not relieve the assigning Party of its obligations hereunder.
- 13.5 **Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, this Agreement shall be deemed to be amended to the extent necessary to make such provision enforceable, or, if necessary, this Agreement shall be deemed to be amended to delete the unenforceable provision or portion thereof. In the event any provision is deleted or amended, the remaining provisions shall remain in full force and effect.
- 13.6 **Non-Waiver of Defaults:** Failure of any Party to declare any default by any other Party immediately upon occurrence thereof, or delay by any Party in taking any action in connection therewith, will not waive such default or a potential remedy for such default.
- 13.7 **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 Company or to MD Anderson, as the case may be, at the respective notice addresses identified in this Section. Notice so mailed will be deemed effective (a) upon hand delivery, (b) on the 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). “Business Day” means any weekday except a weekday on which a national or Texas state holiday occurs.

COMPANY:

[Insert Company’s Name]
Attention: [Insert Name/Title/Department]
[Insert Complete Street Address]
[Insert City, State, Zip Code]
Email: [Insert Email Address]

MD ANDERSON:

Mailing Address: (Via U.S. Mail)
The University of Texas M. D. Anderson Cancer Center
Supply Chain Management – Unit 1680
P.O. Box 301407
Houston, Texas 77230-1407

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.

- 13.8 **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.
- 13.9 **Survival:** Expiration or termination of this Agreement will not affect any right or obligation that either Party may have accrued prior to such expiration or termination.
- 13.10 **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.
- 13.11 **Dispute Resolution:** To the extent that [Chapter 2260, Texas Government Code](#), 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 Company to attempt to resolve any claim for breach of contract made by

Company that cannot be resolved in the ordinary course of business. Any periods set forth in this Agreement for notice and cure of defaults are not waived.

- 13.12 **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.
- 13.13 **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.
- 13.14 **Texas State Agency:** 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.

Section 14. Attachments:

The documents marked below are attached to and fully incorporated into this Agreement as substantive parts of this Agreement.			
<input checked="" type="checkbox"/>	Exhibit "A" Products	<input type="checkbox"/>	Rider 118. Information Security
<input type="checkbox"/>	Rider 111. Business Associate Agreement	<input type="checkbox"/>	Rider 121. TX-RAMP Information Form
<input type="checkbox"/>	Rider 114. Network Connections	<input type="checkbox"/>	Other

[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: _____

Name: _____

Title: _____

Title: _____

Read and Approved:

By: _____

Name: _____

Title: _____

Requestor: _____

Department: _____

EXHIBIT “A”

PRODUCTS

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