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Committee Meetings: 11/11/2009 and 11/12/2009

Colleen McHugh, Chairman
James D. Dannenbaum
Janiece Longoria
Wm. Eugene Powell

Board Meeting: 11/12/2009
Austin, Texas

Wednesday, November 11, 2009

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3. U. T. System: Discussion of federal health care legislation and its impact on the U. T. System health institutions	<i>3:25 p.m.</i> Discussion <i>Dr. Shine</i>	Not on Agenda	186
4. U. T. System: Quarterly report on health matters, including a report on the U. T. System Health Services Working Group, established to facilitate discussion of anticipated changes in health care, and recent conferences	<i>3:40 p.m.</i> Report <i>Dr. Shine</i>	Not on Agenda	186
B. ADJOURN MEETING OF THE HEALTH AFFAIRS COMMITTEE	<i>4:00 p.m.</i>		

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Thursday, November 12, 2009

Committee Meeting

C. CONVENE SPECIAL MEETING OF THE HEALTH AFFAIRS COMMITTEE

*8:00 a.m.
Chairman McHugh
Dr. Shine*

U. T. System: Report on efforts and activities related to patient safety and clinical effectiveness at U. T. System health institutions

Report

*Sherry Martin, M.Ed., MT (ASCP) SC,
former professor at U. T. M. D.
Anderson Cancer Center and current
Health Care Quality Manager, Martin
Consultants*

*Eric J. Thomas, M.D., M.P.H.,
Associate Professor of General
Internal Medicine, U. T. Health
Science Center – Houston*

D. ADJOURN SPECIAL MEETING

9:30 a.m.

1. **U. T. System Board of Regents: Authorization to enter into amended and restated license agreements between the U. T. System Board of Regents and M. D. Anderson Physicians Network and between the U. T. System Board of Regents and M. D. Anderson Services Corporation relating to the use of certain trademarks of U. T. M. D. Anderson Cancer Center**

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and the Vice Chancellor and General Counsel that the U. T. System Board of Regents enter into First Amended and Restated License Agreements between the U. T. System Board of Regents and M. D. Anderson Physicians Network (Physicians Network) as set forth on Pages 161 - 171 and between the U. T. System Board of Regents and M. D. Anderson Services Corporation (Services Corporation) as set forth on Pages 172 - 184 to allow the continued use of certain trademarks of U. T. M. D. Anderson Cancer Center for certain business activities, to clarify the terms and conditions of such use, and to ensure the collaboration of all parties in such business activities.

BACKGROUND INFORMATION

Physicians Network and Services Corporation are Texas nonprofit corporations organized under Section 501(c)(3) of the *Internal Revenue Code* in support of U. T. M. D. Anderson Cancer Center pursuant to previous approval of the U. T. System Board of Regents.

Physicians Network and Services Corporation are used by U. T. M. D. Anderson Cancer Center to carry out certain business activities of U. T. M. D. Anderson Cancer Center, such as development and delivery of an array of oncology-related services and programs to third parties throughout the world in conjunction with and in furtherance of U. T. M. D. Anderson Cancer Center's mission, programs, and services.

The U. T. System Board of Regents owns and controls all U. T. M. D. Anderson Cancer Center trade and service marks.

The U. T. System Board of Regents and Services Corporation originally entered into a license agreement effective March 1, 1990.

The U. T. System Board of Regents and Physicians Network originally entered into a license agreement effective in 1994, and amended in 1996.

The new license agreements update, clarify, and enhance the original license agreements and include the following principal terms:

- Nonexclusive licenses of U. T. M. D. Anderson Cancer Center marks to Physicians Network and to Services Corporation
- Quality assurance and prior notice provisions for new business activities
- Use of marks within Texas only in association with the name The University of Texas
- Consultation with the U. T. System Vice Chancellor and General Counsel 90 days prior to any public announcement of a new business venture
- Termination provisions for defaults under the agreements
- Indemnity in favor of the U. T. System Board of Regents

**FIRST AMENDED AND RESTATED LICENSE AGREEMENT
BETWEEN
BOARD OF REGENTS AND
M. D. ANDERSON PHYSICIANS NETWORK**

This First Amended and Restated License Agreement (“AGREEMENT”) is entered into effective as of the ____ day of _____, 2009 (hereinafter referred to as the “EFFECTIVE DATE”), between the parties hereto, who agree as follows in consideration of the mutual promises contained herein:

1. PARTIES

- 1.1 The Board of Regents of The University of Texas System (hereinafter referred to as “BOARD OF REGENTS”) has its principal office at 201 West 7th Street, Austin, Texas, 78701.
- 1.2 M. D. Anderson Physicians Network, a Texas corporation (hereinafter referred to as “LICENSEE”) has a principal place of business at 7505 S. Main, Suite 500, Houston, Texas 77030.
- 1.3 BOARD OF REGENTS and LICENSEE are parties to this AGREEMENT.

2. BACKGROUND

- 2.1 The BOARD OF REGENTS is the governing body of The University of Texas System (“UT SYSTEM”).
- 2.2 The University of Texas M. D. Anderson Cancer Center (“UTMDACC”) is an institution of higher education within UT SYSTEM, an agency of the State of Texas, and a comprehensive cancer treatment, research, and prevention facility.
- 2.3 LICENSEE is a Texas nonprofit corporation that was organized, pursuant to the approval of BOARD OF REGENTS, as an organization described in Section 501(c)(3) of the *Internal Revenue Code* as a supporting organization to UTMDACC. LICENSEE is governed by a board of directors that is appointed by the President of UTMDACC.
- 2.4 LICENSEE develops and delivers an array of oncology-related services and programs to third parties throughout the world in conjunction with and in furtherance of UTMDACC’s mission, programs, and services.
- 2.5 For the use and benefit of UTMDACC, BOARD OF REGENTS owns and controls the licensing of certain trademarks and service marks used by UTMDACC that have acquired public recognition and goodwill through the use of such marks.

- 2.6 The parties entered into a License Agreement effective in 1994 (the “ORIGINAL LICENSE AGREEMENT”), which was amended by the parties in 1996, pursuant to which BOARD OF REGENTS granted to LICENSEE a nonexclusive license to use such marks.
- 2.7 The parties desire to further amend and restate the ORIGINAL LICENSE AGREEMENT in order to clarify and extend LICENSEE’s rights to use such marks. Accordingly, the parties are entering into this AGREEMENT.

3. DEFINITIONS

- 3.1 AFFILIATION means a contractual affiliation between LICENSEE and another entity (other than UTMDACC) pursuant to which LICENSEE provides certain LICENSED SERVICES to such entity. AFFILIATE shall mean the entity with whom LICENSEE has an AFFILIATION.
- 3.2 LICENSED MARK(S) mean the mark(s) listed in Attachment A, including common law rights, as well as any applications for registration that may be filed by BOARD OF REGENTS or registrations that may be issued to BOARD OF REGENTS covering such mark(s), whether state or federal.
- 3.3 LICENSED SERVICES mean those services specified in Attachment B hereto in connection with which any of the LICENSED MARK(S) are used.
- 3.4 LICENSED TERRITORY means the area described in Attachment C.
- 3.5 TERM means the effective period of this AGREEMENT, which shall commence on the EFFECTIVE DATE and which shall terminate on the tenth (10th) anniversary of the EFFECTIVE DATE unless (i) earlier terminated in accordance with the terms of this AGREEMENT or (ii) extended by mutual written agreement of the parties.
- 3.6 QUALITY means an acceptable level of quality to, in the sole judgment of, BOARD OF REGENTS.

4. LICENSE GRANT

- 4.1 Subject to and in accordance with the terms and conditions of this AGREEMENT, BOARD OF REGENTS grants to LICENSEE the nonexclusive right and license to utilize the LICENSED MARK(S) in the LICENSED TERRITORY during the TERM.
- 4.2 LICENSEE shall use the LICENSED MARK(S) (a) solely in connection with the LICENSED SERVICES of QUALITY; and (b) with advertising and promotional materials in conjunction with the provision of LICENSED SERVICES.

- 4.3 LICENSEE may use, and subject to the notice provisions of Section 4.6, LICENSEE may permit an AFFILIATE to use, the LICENSED MARK(S) in conjunction with LICENSED SERVICES that LICENSEE provides to such AFFILIATE. Any such use of the LICENSED MARK(S) by LICENSEE or an AFFILIATE pursuant to an AFFILIATION shall be in accordance with the terms and conditions of this AGREEMENT. Any such use of the LICENSED MARK(S) by the AFFILIATE pursuant to this Section 4.3 shall not require a sublicense agreement between LICENSEE and the AFFILIATE but shall be subject to prior review and approval by LICENSEE.
- 4.4 In any use of the LICENSED MARK(S), the LICENSEE may combine the LICENSED MARK(S) with the name of an AFFILIATE (if applicable), a geographic location, and/or a description of the type of LICENSED SERVICES that shall be provided.
- 4.5 LICENSEE shall include the modifier “The University of Texas” with any use of the LICENSED MARK “M. D. Anderson” with respect to activities that are conducted in the State of Texas. LICENSEE shall not include the modifier “The University of Texas” with any use of the LICENSED MARK “M. D. Anderson” with respect to activities that are conducted outside the State of Texas. Notwithstanding the foregoing and subject to the notice provisions of Section 4.6, the parties may agree in writing to waive the requirements of this Section 4.5 with respect to specific programs and/or specific AFFILIATIONS, and any such waiver shall not require an amendment to this AGREEMENT.
- 4.6 LICENSEE shall notify the Vice Chancellor and General Counsel and the Executive Vice Chancellor for Health Affairs of UT SYSTEM of any potential or new AFFILIATION that will include any use of the LICENSED MARK(S) at least ninety (90) days prior to any public announcement of such AFFILIATION. Any such notice shall be kept confidential by BOARD OF REGENTS and UT SYSTEM until such public announcement.

5. DEFAULT, TERMINATION

- 5.1 In the event that LICENSEE becomes insolvent, makes any assignment for the benefit of creditors, is subject to any bankruptcy or receivership proceedings, or fails to comply with any of its obligations under this AGREEMENT (including but not limited to its obligations under Section 8.1), BOARD OF REGENTS may serve on LICENSEE a notice of default specifying the nature of the default. If the default is not cured within thirty (30) days from service of the notice of default, this AGREEMENT shall automatically terminate upon service by BOARD OF REGENTS of a formal notice of termination.

- 5.2 LICENSEE may terminate this AGREEMENT without cause upon at least thirty (30) days written notice to BOARD OF REGENTS, which termination shall be effective at the end of such notice period or upon such later date that shall be specified in the termination notice.
- 5.3 Upon expiration or termination of this AGREEMENT, all rights granted to LICENSEE hereunder shall cease, and LICENSEE will refrain from further use of the LICENSED MARK(S), or any mark or name reasonably deemed to be similar to the LICENSED MARK(S), in connection with the provision of or promotion of LICENSED SERVICES. LICENSEE acknowledges that failure to comply with this provision will result in immediate and irreparable harm affording injunctive relief and any and all other appropriate relief to the BOARD OF REGENTS.
- 5.4 Upon expiration or termination of this AGREEMENT, LICENSEE shall not operate its business in any manner which would falsely suggest to the public that this AGREEMENT is still in force or that any relationship exists between LICENSEE and BOARD OF REGENTS.
- 5.5 Notwithstanding the foregoing, upon expiration or earlier termination of this AGREEMENT, LICENSEE shall be permitted to continue to use the LICENSED MARK(S) in accordance with the terms of this AGREEMENT through the expiration or earlier termination of each AFFILIATION then in effect, provided that LICENSEE shall be prohibited from renewing or extending any such AFFILIATION.

6. SUBLICENSES

LICENSEE shall have the right to grant a sublicense under this AGREEMENT only with the prior written approval of BOARD OF REGENTS, and only under terms at least as restrictive as those of this AGREEMENT.

7. GOODWILL IN LICENSED MARK(S)

LICENSEE agrees that the essence of this AGREEMENT is founded on the goodwill associated with the LICENSED MARK(S) and the value of that goodwill in the minds of the consuming public. LICENSEE agrees that it is critical that such goodwill be protected and enhanced and, toward this end, LICENSEE shall not during the TERM or thereafter:

- (a) attack the title or any rights in or to the LICENSED MARK(S);
- (b) apply to register or maintain any application or registration of the LICENSED MARK(S) or any other mark confusingly similar thereto in any jurisdiction, domestic or foreign;
- (c) use any colorable imitation of any of the LICENSED MARK(S), or any variant form (including variant design forms, logos, colors, or typestyles) of the LICENSED MARK(S) not specifically approved by BOARD OF REGENTS;

- (d) misuse the LICENSED MARK(S);
- (e) take any action that would bring the LICENSED MARK(S) into public disrepute;
- (f) use the LICENSED MARK(S), or any mark or name confusingly similar thereto, in its corporate or trade name without approval of BOARD OF REGENTS, provided however that the use of the LICENSED MARK “M. D. Anderson Physicians Network” as the corporate name of LICENSEE is approved; or
- (g) take any action that would tend to destroy or diminish the goodwill in the LICENSED MARK(S).

8. QUALITY CONTROL

- 8.1 All LICENSED SERVICES shall be QUALITY services. LICENSEE acknowledges that if LICENSED SERVICES were of inferior quality, the substantial goodwill in LICENSED MARK(S) would be impaired. Accordingly, LICENSEE agrees that all LICENSED SERVICES shall be QUALITY services. In particular, LICENSEE shall maintain a standard of quality with respect to its LICENSED SERVICES that is consistent with the standards approved and applied by UTMDACC.
- 8.2 All advertising and promotional material bearing the LICENSED MARK(S) shall comply with the terms of this AGREEMENT.

9. INDEMNITY/HOLD HARMLESS

- 9.1 LICENSEE agrees that it is wholly responsible for all services provided by it, including all LICENSED SERVICES, and that BOARD OF REGENTS shall have no liability for any services, including any LICENSED SERVICE, provided by LICENSEE to any AFFILIATE or the sublicensee of LICENSEE. LICENSEE indemnifies and holds harmless BOARD OF REGENTS and the officers, employees, and agents thereof, from any claims, demands, causes of action, and damages, including reasonable attorney’s fees, caused or arising out of LICENSEE’S provision of LICENSED SERVICES.
- 9.2 INDEMNITY. To the extent authorized by the Constitution and the laws of the State of Texas, the BOARD OF REGENTS indemnifies and holds harmless LICENSEE and the officers, employees, and agents, thereof, from any claims, demands, causes of action, and damages, including reasonable attorneys’ fees, based solely on an alleged infringement by LICENSEE of the claimant’s trademark or trade name directly resulting from the use by LICENSEE of LICENSED MARK(S). Notwithstanding the foregoing, nothing herein shall be construed to be a waiver of the sovereign immunity of BOARD OF REGENTS. The indemnity contained in this Section 9.2 shall not apply to any AFFILIATE, and no AFFILIATE shall be entitled to rely on such indemnity.

10. NOTICES

All notices or demands required to be made or permitted under this AGREEMENT shall be in writing and shall be given by personal delivery, overnight delivery, or United States mail, first class postage prepaid, certified, or registered mail, return receipt requested, addressed as follows:

If to LICENSEE:

M. D. Anderson Physicians Network
7505 South Main Street
Suite 500
Houston, Texas 77030
Facsimile: (713)794-5025
Attn: President and Chief Executive Officer

If to BOARD OF REGENTS:

The University of Texas System Board of Regents
Office of Vice Chancellor and General Counsel
201 West 7th Street, 6th Floor
Austin, Texas 78701
Facsimile: (512)499-4523

All notices will be effective and will be deemed delivered (i) if by personal delivery, delivery service, or courier, or facsimile, on the date of delivery and (ii) if by mail, three (3) days after deposit in the mail. Either party may change their mailing address by written notice to the other.

11. STATUS OF PARTIES

This AGREEMENT is not intended to create, and shall not be interpreted or construed as creating, a partnership, joint venture, agency, employment, master and servant, or similar relationship between BOARD OF REGENTS and LICENSEE or any sublicensee, and no representation to the contrary shall be binding upon LICENSEE or BOARD OF REGENTS.

12. BINDING EFFECT

This AGREEMENT shall be binding upon and inure to the benefit of BOARD OF REGENTS and LICENSEE and their respective successors, assigns, executors, heirs, and personal representatives.

13. LAW GOVERNING

This AGREEMENT shall for all purposes be governed by and interpreted and enforced in accordance with the laws of the State of Texas. LICENSEE hereby agrees that any action arising out of this AGREEMENT shall be litigated under the laws of the State of Texas in a court of competent jurisdiction in Travis County, Texas. LICENSEE hereby agrees to submit to the jurisdiction of the courts of the State of Texas and to use reasonable effort to obtain each sublicensee's consent to submit to the jurisdiction of the courts of the State of Texas or such other dispute resolution processes that are acceptable to UTMDACC and are in accordance with allowances under the rules of the BOARD OF REGENTS, and that service of process by certified mail, return receipt requested, shall be sufficient to confer in personam jurisdiction over LICENSEE or any sublicensee. LICENSEE agrees that the terms of this paragraph shall be part of any sublicense.

14. MISCELLANEOUS

14.1 The provisions of this AGREEMENT are severable, and if any provision shall be held illegal, invalid, or unenforceable, such holding shall not affect the legality, validity, or enforceability of any other provision. Any such illegal, invalid, or unenforceable provision shall be deemed stricken herefrom as if it had never been contained herein, but all other provisions shall continue in full force and effect.

14.2 As used herein, the term LICENSEE shall include the plural as well as the singular, the masculine and feminine genders, and corporations, partnerships, and other business entities as well as individuals.

14.3 This AGREEMENT contains the entire agreement between the parties with respect to the LICENSED MARK(S) and supersedes any prior agreements between the parties, written or oral, with respect to such LICENSED MARK(S). Specifically, this AGREEMENT is intended to amend and restate in its entirety the terms, conditions, and provisions of the ORIGINAL LICENSE AGREEMENT as of the EFFECTIVE DATE. Notwithstanding anything to the contrary herein, any past use of any form of the LICENSED MARK(S) by LICENSEE is hereby ratified, approved, and confirmed.

14.4 This AGREEMENT may not be amended, modified, or rescinded except by a written agreement executed by BOARD OF REGENTS and LICENSEE.

14.5 This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

EXECUTED BY BOARD OF REGENTS and LICENSEE effective as of the day and year first above written, in duplicate copies, each of which shall be deemed an original.

BOARD OF REGENTS:

LICENSEE:

THE BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS SYSTEM

M. D. ANDERSON PHYSICIANS NETWORK

By: _____

By: _____

William A. Hyslop

Title:

Title: President and Chief Executive Officer

Date Signed: _____

Date Signed: _____

Approved as to Form:

The University of Texas System
Office of General Counsel

ATTACHMENT A

LICENSED MARK(S) ARE:

M. D. Anderson

M. D. Anderson Physicians Network

ATTACHMENT B

LICENSED SERVICES ARE:

In accordance with LICENSEE's purposes and emphases on the clinical, educational, and scientific aspects of cancer care, the following services may be provided by LICENSEE in connection with the LICENSED MARK(S) listed in Attachment A:

1. Cancer care services provided in Surgery, Medicine, Radiotherapy, Diagnostic Imaging, Laboratory Medicine, Pathology, Pediatrics, Cancer Prevention, Nursing, and Pharmacy;
2. Cancer research services;
3. Cancer education services; and
4. Services that support the delivery of cancer care services, cancer research services, and/or cancer education services by another entity.

ATTACHMENT C

LICENSED TERRITORY IS:

LICENSED TERRITORY means all countries of the world except as otherwise prohibited by federal statute or regulation.

**FIRST AMENDED AND RESTATED LICENSE AGREEMENT
BETWEEN
BOARD OF REGENTS AND
M. D. ANDERSON SERVICES CORPORATION**

This First Amended and Restated License Agreement (“AGREEMENT”) is entered into effective as of the ____ day of _____, 2009 (hereinafter referred to as the “EFFECTIVE DATE”), between the parties hereto, who agree as follows in consideration of the mutual promises contained herein:

1. PARTIES

- 1.1 The Board of Regents of The University of Texas System (hereinafter referred to as “BOARD OF REGENTS”) has its principal office at 201 West 7th Street, Austin, Texas, 78701.
- 1.2 M. D. Anderson Services Corporation, a Texas corporation formerly known as M. D. Anderson Outreach Corporation (hereinafter referred to as “LICENSEE”) has a principal place of business at 7505 S. Main, Suite 500, Houston, Texas 77030.
- 1.3 BOARD OF REGENTS and LICENSEE are parties to this AGREEMENT.

2. BACKGROUND

- 2.1 The BOARD OF REGENTS is the governing body of The University of Texas System (“UT SYSTEM”).
- 2.2 The University of Texas M. D. Anderson Cancer Center (“UTMDACC”) is an institution of higher education within UT SYSTEM, an agency of the State of Texas, and a comprehensive cancer treatment, research, and prevention facility.
- 2.3 LICENSEE is a Texas nonprofit corporation that was organized, pursuant to the approval of BOARD OF REGENTS, as an organization described in Section 501(c)(3) of the *Internal Revenue Code* as a supporting organization to UTMDACC. LICENSEE is governed by a board of directors that is appointed by the President of UTMDACC and BOARD OF REGENTS.
- 2.4 LICENSEE develops and delivers an array of oncology-related services and programs to third parties throughout the world in conjunction with and in furtherance of UTMDACC’s mission, programs, and services.
- 2.5 For the use and benefit of UTMDACC, BOARD OF REGENTS owns and controls the licensing of certain trademarks and service marks used by UTMDACC that have acquired public recognition and goodwill through the use of such marks.

- 2.6 The parties entered into a License Agreement effective the 1st day of March, 1990 (the “ORIGINAL LICENSE AGREEMENT”), pursuant to which BOARD OF REGENTS granted to LICENSEE a nonexclusive license to use certain marks.
- 2.7 The parties entered into another License Agreement effective the 1st day of January, 1996 (the “1996 LICENSE AGREEMENT”), which was subsequently amended by the parties, pursuant to which BOARD OF REGENTS granted to LICENSEE a nonexclusive license to use certain marks.
- 2.8 The parties desire that the terms and conditions for LICENSEE’s ongoing use of the marks be set forth in a single agreement between the parties that clarifies and extends LICENSEE’s rights to use such marks. Accordingly, by entering this AGREEMENT, the parties intend to substitute this AGREEMENT for the ORIGINAL LICENSE AGREEMENT and the 1996 LICENSE AGREEMENT, as amended. Further, the parties desire that the ORIGINAL LICENSE AGREEMENT and the 1996 LICENSE AGREEMENT shall terminate as of the EFFECTIVE DATE, upon the terms and conditions hereinafter set forth.

3. DEFINITIONS

- 3.1 AFFILIATION means a contractual affiliation between LICENSEE and another entity (other than UTMDACC) pursuant to which LICENSEE provides certain LICENSED SERVICES to such entity. AFFILIATE shall mean the entity with whom LICENSEE has an AFFILIATION.
- 3.2 LICENSED MARK(S) mean the mark(s) listed in Attachment A, including common law rights, as well as any applications for registration that may be filed by BOARD OF REGENTS or registrations that may be issued to BOARD OF REGENTS covering such mark(s), whether state or federal.
- 3.3 LICENSED SERVICES mean those services specified in Attachment B hereto in connection with which any of the LICENSED MARK(S) are used.
- 3.4 LICENSED TERRITORY means the area described in Attachment C.
- 3.5 TERM means the effective period of this AGREEMENT, which shall commence on the EFFECTIVE DATE and which shall terminate on the tenth (10th) anniversary of the EFFECTIVE DATE unless (i) earlier terminated in accordance with the terms of this AGREEMENT or (ii) extended by mutual written agreement of the parties.
- 3.6 QUALITY means an acceptable level of quality to, in the sole judgment of, BOARD OF REGENTS.

4. LICENSE GRANT

- 4.1 Subject to and in accordance with the terms and conditions of this AGREEMENT, BOARD OF REGENTS grants to LICENSEE the nonexclusive right and license to utilize the LICENSED MARK(S) in the LICENSED TERRITORY during the TERM.
- 4.2 LICENSEE shall use the LICENSED MARK(S) (a) solely in connection with the LICENSED SERVICES of QUALITY; and (b) with advertising and promotional materials in conjunction with the provision of LICENSED SERVICES.
- 4.3 LICENSEE may use, and subject to the notice provisions of Section 4.6, LICENSEE may permit an AFFILIATE to use, the LICENSED MARK(S) in conjunction with LICENSED SERVICES that LICENSEE provides to such AFFILIATE. Any such use of the LICENSED MARK(S) by LICENSEE or an AFFILIATE pursuant to an AFFILIATION shall be in accordance with the terms and conditions of this AGREEMENT. Any such use of the LICENSED MARK(S) by the AFFILIATE pursuant to this Section 4.3 shall not require a sublicense agreement between LICENSEE and the AFFILIATE but shall be subject to prior review and approval by LICENSEE.
- 4.4 In any use of the LICENSED MARK(S), the LICENSEE may combine the LICENSED MARK(S) with the name of an AFFILIATE (if applicable), a geographic location, and/or a description of the type of LICENSED SERVICES that shall be provided.
- 4.5 LICENSEE shall include the modifier “The University of Texas” with any use of the LICENSED MARK “M. D. Anderson” with respect to activities that are conducted in the State of Texas. LICENSEE shall not include the modifier “The University of Texas” with any use of the LICENSED MARK “M. D. Anderson” with respect to activities that are conducted outside the State of Texas. Notwithstanding the foregoing and subject to the notice provisions of Section 4.6, the parties may agree in writing to waive the requirements of this Section 4.5 with respect to specific programs and/or specific AFFILIATIONS, and any such waiver shall not require an amendment to this AGREEMENT.
- 4.6 LICENSEE shall notify the Vice Chancellor and General Counsel and the Executive Vice Chancellor for Health Affairs of UT SYSTEM of any potential or new AFFILIATION that will include any use of the LICENSED MARK(S) at least ninety (90) days prior to any public announcement of such AFFILIATION. Any such notice shall be kept confidential by BOARD OF REGENTS and UT SYSTEM until such public announcement.

5. DEFAULT, TERMINATION

- 5.1 In the event that LICENSEE becomes insolvent, makes any assignment for the benefit of creditors, is subject to any bankruptcy or receivership proceedings, or fails to comply with any of its obligations under this AGREEMENT (including but not limited to its obligations under Section 8.1), BOARD OF REGENTS may serve on LICENSEE a notice of default specifying the nature of the default. If the default is not cured within thirty (30) days from service of the notice of default, this AGREEMENT shall automatically terminate upon service by BOARD OF REGENTS of a formal notice of termination.
- 5.2 LICENSEE may terminate this AGREEMENT without cause upon at least thirty (30) days written notice to BOARD OF REGENTS, which termination shall be effective at the end of such notice period or upon such later date that shall be specified in the termination notice.
- 5.3 Upon expiration or termination of this AGREEMENT, all rights granted to LICENSEE hereunder shall cease, and LICENSEE will refrain from further use of the LICENSED MARK(S), or any mark or name reasonably deemed to be similar to the LICENSED MARK(S), in connection with the provision of or promotion of LICENSED SERVICES. LICENSEE acknowledges that failure to comply with this provision will result in immediate and irreparable harm affording injunctive relief and any and all other appropriate relief to the BOARD OF REGENTS.
- 5.4 Upon expiration or termination of this AGREEMENT, LICENSEE shall not operate its business in any manner which would falsely suggest to the public that this AGREEMENT is still in force or that any relationship exists between LICENSEE and BOARD OF REGENTS.
- 5.5 Notwithstanding the foregoing, upon expiration or earlier termination of this AGREEMENT, LICENSEE shall be permitted to continue to use the LICENSED MARK(S) in accordance with the terms of this AGREEMENT through the expiration or earlier termination of each AFFILIATION then in effect, provided that LICENSEE shall be prohibited from renewing or extending any such AFFILIATION.

6. SUBLICENSES

- 6.1 LICENSEE shall have the right to grant a sublicense under this AGREEMENT only with the prior written approval of BOARD OF REGENTS, and only under terms at least as restrictive as those of this AGREEMENT.

6.2 BOARD OF REGENTS hereby approves and authorizes LICENSEE to amend and/or terminate the sublicense agreements described on Attachment D as necessary, and/or if such sublicense agreements should no longer be required, pursuant to the terms and conditions of this AGREEMENT.

7. GOODWILL IN LICENSED MARK(S)

LICENSEE agrees that the essence of this AGREEMENT is founded on the goodwill associated with the LICENSED MARK(S) and the value of that goodwill in the minds of the consuming public. LICENSEE agrees that it is critical that such goodwill be protected and enhanced and, toward this end, LICENSEE shall not during the TERM or thereafter:

- (a) attack the title or any rights in or to the LICENSED MARK(S);
- (b) apply to register or maintain any application or registration of the LICENSED MARK(S) or any other mark confusingly similar thereto in any jurisdiction, domestic or foreign;
- (c) use any colorable imitation of any of the LICENSED MARK(S), or any variant form (including variant design forms, logos, colors, or typestyles) of the LICENSED MARK(S) not specifically approved by BOARD OF REGENTS;
- (d) misuse the LICENSED MARK(S);
- (e) take any action that would bring the LICENSED MARK(S) into public disrepute;
- (f) use the LICENSED MARK(S), or any mark or name confusingly similar thereto, in its corporate or trade name without approval of BOARD OF REGENTS, provided however that the use of the LICENSED MARK "M. D. Anderson Services Corporation" as the corporate name of LICENSEE is approved; or
- (g) take any action that would tend to destroy or diminish the goodwill in the LICENSED MARK(S).

8. QUALITY CONTROL

8.1 All LICENSED SERVICES shall be QUALITY services. LICENSEE acknowledges that if LICENSED SERVICES were of inferior quality, the substantial goodwill in LICENSED MARK(S) would be impaired. Accordingly, LICENSEE agrees that all LICENSED SERVICES shall be QUALITY services. In particular, LICENSEE shall maintain a standard of quality with respect to its LICENSED SERVICES that is consistent with the standards approved and applied by UTMDACC.

8.2 All advertising and promotional material bearing the LICENSED MARK(S) shall comply with the terms of this AGREEMENT.

9. INDEMNITY/HOLD HARMLESS

9.1 LICENSEE agrees that it is wholly responsible for all services provided by it, including all LICENSED SERVICES, and that BOARD OF REGENTS shall have no liability for any services, including any LICENSED SERVICE, provided by

LICENSEE to any AFFILIATE or the sublicensee of LICENSEE. LICENSEE indemnifies and holds harmless BOARD OF REGENTS and the officers, employees, and agents thereof, from any claims, demands, causes of action, and damages, including reasonable attorney's fees, caused or arising out of LICENSEE'S provision of LICENSED SERVICES.

9.2 INDEMNITY. To the extent authorized by the Constitution and the laws of the State of Texas, the BOARD OF REGENTS indemnifies and holds harmless LICENSEE and the officers, employees, and agents, thereof, from any claims, demands, causes of action, and damages, including reasonable attorneys' fees, based solely on an alleged infringement by LICENSEE of the claimant's trademark or trade name directly resulting from the use by LICENSEE of LICENSED MARK(S). Notwithstanding the foregoing, nothing herein shall be construed to be a waiver of the sovereign immunity of BOARD OF REGENTS. The indemnity contained in this Section 9.2 shall not apply to any AFFILIATE, and no AFFILIATE shall be entitled to rely on such indemnity.

10. NOTICES

All notices or demands required to be made or permitted under this AGREEMENT shall be in writing and shall be given by personal delivery, overnight delivery, or United States mail, first class postage prepaid, certified, or registered mail, return receipt requested, addressed as follows:

If to LICENSEE:

M. D. Anderson Services Corporation
7505 South Main Street
Suite 500
Houston, Texas 77030
Facsimile: (713)794-5025
Attn: President and Chief Executive Officer

If to BOARD OF REGENTS:

The University of Texas System Board of Regents
Office of Vice Chancellor and General Counsel
201 West 7th Street, 6th Floor
Austin, Texas 78701
Facsimile: (512)499-4523

All notices will be effective and will be deemed delivered (i) if by personal delivery, delivery service, or courier, or facsimile, on the date of delivery and (ii) if by mail, three (3) days after deposit in the mail. Either party may change their mailing address by written notice to the other.

11. STATUS OF PARTIES

This AGREEMENT is not intended to create, and shall not be interpreted or construed as creating, a partnership, joint venture, agency, employment, master and servant, or similar relationship between BOARD OF REGENTS and LICENSEE or any sublicensee, and no representation to the contrary shall be binding upon LICENSEE or BOARD OF REGENTS.

12. BINDING EFFECT

This AGREEMENT shall be binding upon and inure to the benefit of BOARD OF REGENTS and LICENSEE and their respective successors, assigns, executors, heirs, and personal representatives.

13. LAW GOVERNING

This AGREEMENT shall for all purposes be governed by and interpreted and enforced in accordance with the laws of the State of Texas. LICENSEE hereby agrees that any action arising out of this AGREEMENT shall be litigated under the laws of the State of Texas in a court of competent jurisdiction in Travis County, Texas. LICENSEE hereby agrees to submit to the jurisdiction of the courts of the State of Texas and to use reasonable effort to obtain each sublicensee's consent to submit to the jurisdiction of the courts of the State of Texas or such other dispute resolution processes that are acceptable to UTMDACC and are in accordance with allowances under the rules of the BOARD OF REGENTS, and that service of process by certified mail, return receipt requested, shall be sufficient to confer in personam jurisdiction over LICENSEE or any sublicensee. LICENSEE agrees that the terms of this paragraph shall be part of any sublicense.

14. MISCELLANEOUS

14.1 The provisions of this AGREEMENT are severable, and if any provision shall be held illegal, invalid, or unenforceable, such holding shall not affect the legality, validity, or enforceability of any other provision. Any such illegal, invalid, or unenforceable provision shall be deemed stricken herefrom as if it had never been contained herein, but all other provisions shall continue in full force and effect.

14.2 As used herein, the term LICENSEE shall include the plural as well as the singular, the masculine and feminine genders, and corporations, partnerships, and other business entities as well as individuals.

- 14.3 This AGREEMENT contains the entire agreement between the parties with respect to the LICENSED MARK(S) and supersedes any prior agreements between the parties, written or oral, with respect to such LICENSED MARK(S). Specifically, this AGREEMENT constitutes a novation insofar as it shall be a substitute for both the ORIGINAL SUBLICENSE AGREEMENT and the 1996 SUBLICENSE AGREEMENT, as amended. LICENSEE and BOARD OF REGENTS hereby agree that each of the ORIGINAL SUBLICENSE AGREEMENT and the 1996 SUBLICENSE AGREEMENT, as amended, shall terminate automatically and without action by the parties as of the EFFECTIVE DATE hereof. Pursuant to such terminations, no party shall have any further obligations under the ORIGINAL SUBLICENSE AGREEMENT and/or the 1996 SUBLICENSE AGREEMENT. Notwithstanding anything to the contrary herein, any past use of any form of the LICENSED MARK(S) by LICENSEE is hereby ratified, approved, and confirmed.
- 14.4 This AGREEMENT may not be amended, modified, or rescinded except by a written agreement executed by BOARD OF REGENTS and LICENSEE.
- 14.5 This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

EXECUTED BY BOARD OF REGENTS and LICENSEE effective as of the day and year first above written, in duplicate copies, each of which shall be deemed an original.

BOARD OF REGENTS:

LICENSEE:

THE BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS SYSTEM

M. D. ANDERSON SERVICES CORPORATION

By: _____

By: _____

William A. Hyslop

Title:

Title: President and Chief Executive Officer

Date Signed: _____

Date Signed: _____

Approved as to Form:

The University of Texas System
Office of General Counsel

ATTACHMENT A

LICENSED MARK(S) ARE:

M. D. Anderson

M. D. Anderson Services Corporation

M. D. Anderson International

M. D. Anderson Outreach

ATTACHMENT B

LICENSED SERVICES ARE:

In accordance with LICENSEE's purposes and emphases on the clinical, educational, and scientific aspects of cancer care, the following services may be provided by LICENSEE in connection with the LICENSED MARK(S) listed in Attachment A:

1. Cancer care services provided in Surgery, Medicine, Radiotherapy, Diagnostic Imaging, Laboratory Medicine, Pathology, Pediatrics, Cancer Prevention, Nursing, and Pharmacy;
2. Cancer research services;
3. Cancer education services; and
4. Services that support the delivery of cancer care services, cancer research services, and/or cancer education services by another entity.

ATTACHMENT C

LICENSED TERRITORY IS:

LICENSED TERRITORY means all countries of the world except as otherwise prohibited by federal statute or regulation.

ATTACHMENT D

SUBLICENSE AGREEMENTS

1. Sublicense Agreement by and among LICENSEE, Orlando Regional Healthcare System, Inc., and Orlando Cancer Center, Inc.
2. Sublicense Agreement by and between LICENSEE and MDA Holding, Spain, S.A.

2. **U. T. M. D. Anderson Cancer Center: Discussion and appropriate action regarding the sale of U. T. M. D. Anderson Cancer Center's interest in P.E.T.Net Houston, LLC, to PETNET Solutions, a wholly-owned subsidiary of Siemens Medical Solutions USA, Inc., for a negotiated price based on the fair market value to be determined by an independent business valuation expert**

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs, the Vice Chancellor and General Counsel, and President Mendelsohn that the U. T. System Board of Regents discuss and take appropriate action related to

- a. negotiation of the sale of U. T. M. D. Anderson Cancer Center's interest in P.E.T.Net Houston, LLC, to PETNET Solutions, a wholly-owned subsidiary of Siemens Medical Solutions USA, Inc., for a negotiated price based on the fair market value to be determined by an independent business valuation expert; and
- b. authorization for the President of U. T. M. D. Anderson Cancer Center or his delegate to execute all documents, instruments, and other agreements, subject to approval by the U. T. System Office of General Counsel, and to take all further actions deemed necessary or advisable to carry out the purpose and intent of the foregoing recommendation.

BACKGROUND INFORMATION

U. T. M. D. Anderson Cancer Center owns a 49% interest in P.E.T.Net Houston, LLC, a Texas limited liability company that is a radiopharmaceutical manufacturer operating out of a facility leased from U. T. M. D. Anderson Cancer Center on the institution's Mid-Campus. M. D. Anderson cofounded P.E.T.Net Houston, LLC, in March 2002 with P.E.T.Net Pharmaceuticals, Inc. (subsequently acquired by Siemens Medical Solutions USA, Inc., and now operating as PETNET Solutions), as a means of securing a cyclotron on campus to service its need for radiopharmaceuticals used in patient care and research. PETNET Solutions owns the remaining 51% interest in P.E.T.Net Houston, LLC, and has managed and operated P.E.T.Net Houston since its inception.

Siemens Medical Solutions USA, Inc., currently has a global initiative to reduce the number of its worldwide affiliates, which presents the opportunity for M. D. Anderson to cash out its interest in P.E.T.Net Houston, LLC, and realize a substantial return on its original investment. M. D. Anderson desires to sell its interest in P.E.T.Net Houston, LLC, to PETNET Solutions to simplify the institution's relationships with the radiopharmaceutical companies.

According to the terms of the initial agreement establishing P.E.T.Net, the sale of the institution's interest in the limited liability company P.E.T.Net is subject to the consent of PETNET Solutions. The sale price will be based on the fair market value of the institution's interest as determined by an independent business valuation expert. P.E.T.Net Houston, LLC, will continue to lease its facility on M. D. Anderson's campus and to supply the institution with radiopharmaceuticals.

3. **U. T. System: Discussion of federal health care legislation and its impact on the U. T. System health institutions**

DISCUSSION

Executive Vice Chancellor Shine will lead a discussion of federal health care legislation and its impact on the U. T. System health institutions.

4. **U. T. System: Quarterly report on health matters, including a report on the U. T. System Health Services Working Group, established to facilitate discussion of anticipated changes in health care, and recent conferences**

REPORT

Executive Vice Chancellor Shine will report on health matters of interest to the U. T. System, including a report on the U. T. System Health Services Working Group and recent conferences held October 1 and 15, 2009. This is a quarterly update to the Health Affairs Committee of the U. T. System Board of Regents.

The U. T. System Health Services Working Group is comprised of representatives from the six U. T. System health institutions and the Chancellor's Health Fellows, and was established to facilitate discussion of anticipated changes in health care.