

Meeting No. 913

THE MINUTES OF THE BOARD OF REGENTS
OF
THE UNIVERSITY OF TEXAS SYSTEM

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February 11-12, 1998

Austin, Texas

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 OF
 THE UNIVERSITY OF TEXAS SYSTEM
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MEETING NO. 913

WEDNESDAY, FEBRUARY 11, 1998.--The members of the Board of Regents of The University of Texas System convened at 9:40 a.m. on Wednesday, February 11, 1998, in the Second Floor Conference Room of Ashbel Smith Hall at 201 West Seventh Street in Austin, Texas, with the following in attendance:

ATTENDANCE.--

<u>Present</u>	<u>*Absent</u>
Chairman Evans, presiding	Regent Lebermann
Vice-Chairman Loeffler	Regent Smiley
Vice-Chairman Clements	
Regent Hicks	
Regent Oxford	
Regent Riter	
Regent Sanchez	

Executive Secretary Dilly

Chancellor Cunningham
Acting Vice Chancellor Frederick

In accordance with a notice being duly posted with the Secretary of State and there being a quorum present, Chairman Evans called the meeting to order. He announced that the Board would complete its workshop sessions with the components of The University of Texas System by meeting today with the component presidents and staff of The University of Texas at Dallas and The University of Texas at Arlington to review strategic plans and missions, enrollments, academic and research programs, fiscal resources, faculty and staff development, physical plant maintenance and repair, operating efficiency and effectiveness, and private fund development issues. Chairman Evans emphasized that these would be information gathering sessions for the Board and he hoped for a significant and meaningful interaction between the Board and the component representatives.

*Regents Lebermann and Smiley were excused because of previous commitments.

The Board heard component presentations on the following schedule and [materials used](#) in those presentations are on file in the Office of the Board of Regents:

9:45 a.m. U. T. Dallas: President Jenifer

2:30 p.m. U. T. Arlington: President Witt

Following the U. T. Arlington presentation, which concluded at 4:15 p.m., Chairman Evans expressed the Board's appreciation to Chancellor Cunningham, Acting Vice Chancellor Frederick, and component institution staff for their efforts to make the workshop sessions a valuable informational exchange. He indicated that these sessions would assist the Board to develop a realistic action plan to address the problems and challenges faced by the U. T. System in the 21st Century.

MEETING WITH REPRESENTATIVES OF THE UNIVERSITY OF TEXAS SYSTEM STUDENT ADVISORY GROUP.--Chairman Evans reported that the Board had a long history of sincere interest in those issues which are of concern to students within The University of Texas System. To this end, the Board supported the organization of the Student Advisory Group and has agreed to annual meetings with representatives of that Group.

On behalf of the Board, Chairman Evans welcomed the members of the Student Advisory Group and expressed appreciation for the time and effort the Group has devoted to student concerns within the U. T. System. He noted that Ms. Francie Frederick, Acting Vice Chancellor for Academic Affairs, Dr. David McClintock, and Dr. Homer Pena are the Board's direct liaison to this Group and thanked Ms. Frederick and her associates for their efforts to coordinate and expedite the Group's activities.

Chairman Evans asked Mr. Luke Keller, a student at The University of Texas at Austin and Chairman of the Group, to make the appropriate introductions and to begin the discussions per the [agenda](#) and [supporting materials](#) which were before the Board and which are on file in the Office of the Board of Regents.

RECESS.--At 5:30 p.m., the Board recessed to reconvene in open session at 8:30 a.m. on Thursday, February 12, 1998, in the Regents' Conference Room on the ninth floor of Ashbel Smith Hall to immediately recess to Executive Session. Chairman Evans indicated that the general open session was expected to begin about 9:30 a.m.

THURSDAY, FEBRUARY 12, 1998.--The members of the Board of Regents of The University of Texas System reconvened in regular session at 8:30 a.m. on Thursday, February 12, 1998, in the Regents' Conference Room on the ninth floor of Ashbel Smith Hall at 201 West Seventh Street in Austin, Texas, with the following in attendance:

ATTENDANCE.--

<u>Present</u>	<u>Absent</u>
Chairman Evans, presiding	*Regent Smiley
Vice-Chairman Loeffler	
Vice-Chairman Clements	
Regent Hicks	
Regent Lebermann	
Regent Oxford	
Regent Riter	
Regent Sanchez	

Executive Secretary Dilly

Chancellor Cunningham
Executive Vice Chancellor Mullins
Executive Vice Chancellor Burck
Acting Vice Chancellor Frederick

Chairman Evans announced a quorum present and reconvened the meeting of the Board.

RECESS TO EXECUTIVE SESSION.--At 8:35 a.m., Chairman Evans announced that the Board would recess to convene in Executive Session pursuant to Texas Government Code, Chapter 551, Sections 551.071 and 551.072 to consider those matters listed on the Executive Session agenda.

RECONVENE.--At 9:30 a.m., the Board reconvened in open session in the Regents' Meeting Room.

*Regent Smiley was excused because of a previous commitment.

U. T. AUSTIN: APPRECIATION TO PRESIDENT AD INTERIM PETER T. FLAWN AND INTRODUCTION OF PRESIDENT-ELECT LARRY R. FAULKNER.-- Chairman Evans reported that President ad interim Peter T. Flawn's service to The University of Texas at Austin and to the State of Texas is not only unique but will go down in history as being critical to moving U. T. Austin in the right direction as it heads into the 21st Century. He noted that Dr. Flawn's call to service last Spring epitomizes what public service is all about and the lives of all Texans will be better for all generations to come.

On behalf of the Board, Chairman Evans expressed appreciation to Dr. Flawn for his leadership of U. T. Austin.

Following a standing ovation, Dr. Flawn graciously accepted this accolade and expressed appreciation to the Board for the opportunity to again serve The University of Texas System.

Chairman Evans then introduced Dr. Larry R. Faulkner, President-Elect of U. T. Austin, who will become President of that institution effective April 13, 1998.

U. T. BOARD OF REGENTS: APPROVAL OF MINUTES OF REGULAR MEETING HELD ON NOVEMBER 12-13, 1997, AND SPECIAL MEETINGS HELD ON DECEMBER 16, 1997, JANUARY 5, 1998, AND JANUARY 13-14, 1998.-- Upon motion of Vice-Chairman Loeffler, seconded by Regent Lebermann, the Minutes of the regular meeting of the Board of Regents of The University of Texas System held on November 12-13, 1997, in Brownsville, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XLV, Pages 7 - 675.

Upon motion of Vice-Chairman Clements, seconded by Regent Riter, the Minutes of the special meetings of the Board of Regents of The University of Texas System held on December 16, 1997, January 5, 1998, and January 13-14, 1998, in Austin, Texas, were approved as distributed by the Executive Secretary. The official copies of these Minutes are recorded in the Permanent Minutes, Volume XLV, Pages 676 - 687.

EXECUTIVE SESSION OF THE BOARD OF REGENTS

Chairman Evans reported that the Board had met in Executive Session to discuss matters in accordance with Texas Government Code, Chapter 551, Sections 551.071 and 551.072. In response to Chairman Evans' inquiry regarding the wishes of the Board, the following actions were taken:

1. U. T. Health Science Center - San Antonio: Approval to Settle Disputed Claims with the Department of Health and Human Services and Other Governmental Agencies in Connection with Claims for Reimbursement for Professional Services of Teaching Physicians.--Vice-Chairman Loeffler moved that the Chancellor and the Executive Vice Chancellor for Health Affairs be authorized to settle, on behalf of The University of Texas Health Science Center at San Antonio, disputed claims with the Department of Health and Human Services and other governmental agencies in connection with claims for reimbursement for professional services of teaching physicians in accordance with the proposal presented in Executive Session.

Regent Lebermann seconded the motion which carried without objection.

2. U. T. Tyler: Authorization to Purchase Approximately 2.5 Acres of Land with Improvements Located at 1820 West Spring Street in Palestine, Anderson County, Texas, and Approval for the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to Execute All Documents Related Thereto.--Chairman Evans reported that since the distribution of the Material Supporting the Agenda an additional item was posted with the Secretary of State related to the proposed purchase of real estate on behalf of The University of Texas at Tyler.

Upon motion of Regent Riter, duly seconded, the Board:

- a. Authorized The University of Texas System Real Estate Office, on behalf of U. T. Tyler, to complete negotiations and enter into a contract to purchase approximately 2.5 acres of land with improvements located at 1820 West Spring Street in Palestine, Anderson County, Texas, according to the parameters outlined in Executive Session

- b. Authorized the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to take all steps, including execution of all documents, required to complete the transaction following approval by the Texas Higher Education Coordinating Board and the Office of General Counsel.

SPECIAL ITEMS

1. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Approval of Amendments to Chapter III, Section 6 (Tenure, Promotion, and Termination of Employment), Subsection 6.2, Subdivision 6.26.--Part One, Chapter III, Section 6, Subsection 6.2, Subdivision 6.26 of the Regents' Rules and Regulations was adopted at the April 1984 meeting of the U. T. Board of Regents to make explicit that acceptance of another tenured appointment abandons a tenure contract with a University of Texas System institution and that a tenured appointment within the U. T. System is conditioned on the new faculty member resigning any prior tenured appointments.

While the general reasoning behind the language is sound, highly competitive recruiting for faculty, especially in the professional schools, requires acknowledgment that a tenured appointment at an institution outside the U. T. System may be retained if the arrangement was specifically negotiated as part of the recruitment incentive at the time of initial employment pursuant to approved institutional policy.

In accordance therewith, the Board amended the Regents' Rules and Regulations, Part One, Chapter III, Section 6, Subsection 6.2, Subdivision 6.26, regarding the holding of more than one tenure appointment, to read as set forth below:

- 6.26 A person appointed to a faculty position with the title of Instructor, Assistant Professor, Associate Professor, or Professor or with the title of Technical Instructor, Assistant Master Technical Instructor, Associate Master Technical Instructor or Master Technical Instructor at a component

institution of the System may not, during the term of such appointment, hold a tenured position on the faculty of another educational institution outside the System unless the institutional Handbook of Operating Procedures specifically authorizes the holding of such position as a part of the initial appointment.

6.261 Unless an exception is approved as authorized above, appointments within the System to the above specified titles shall be conditioned upon the appointee having resigned any tenured position that the appointee may then hold on the faculty of an educational institution outside the System. Such resignation must be completed and effective prior to the effective date of the appointment at the System component; otherwise, such appointment shall be void and of no effect.

6.262 The acceptance of an appointment to a tenured position on the faculty of an educational institution outside the System shall be considered as a resignation of any faculty position with the title of Instructor, Assistant Professor, Associate Professor, or Professor or with the title of Technical Instructor, Assistant Master Technical Instructor, Associate Master Technical Instructor or Master Technical Instructor that such appointee may hold at a System component.

2. U. T. Board of Regents - Regents' Rules and Regulations, Part One: Amendments to Chapter III to Add a Section 37 (U. T. System Employee Evaluation Policies) to Consolidate Various Existing Employee Evaluation Policies.--In order to emphasize the importance of employee evaluations to an effective and efficient human resources program, the Board amended the Regents' Rules and Regulations, Part One, Chapter III to add a Section 37 which consolidates various existing employee evaluation policies and includes the current post-tenure review guidelines for faculty and administrators within The University of Texas System. The new Section 37 is set forth on Pages 8 - 15.

Sec. 37. U. T. System Employee Evaluation Policies.

37.1 Annual Evaluation of All Employees.

37.11 An annual evaluation program for all employees (administrative, faculty and classified) within the U. T. System is to be used for the improvement of performance, promotion consideration, and merit salary review.

37.12 Each component will develop policies and procedures regarding evaluations for inclusion in the Handbook of Operating Procedures or the U. T. System Human Resources Manual, as appropriate, after prior approval.

37.2 Evaluation of Probationary Employees.

37.21 Each component shall establish a probationary period not to exceed six months of actual service for all new classified employees. Probationary employees will be evaluated pursuant to procedures and criteria that have been approved for inclusion in the institutional Handbook of Operating Procedures or the U. T. System Human Resources Manual, as appropriate.

37.22 Faculty in tenure-track appointments will be evaluated pursuant to criteria contained in these Rules and Regulations and procedures and criteria that have been approved for inclusion in the institutional Handbook of Operating Procedures.

37.3 U. T. System Guidelines for Periodic Performance Evaluation of Tenured Faculty.

Preamble

The U. T. Board of Regents recognizes the time-honored practice of tenure for university faculty as an important protection of free inquiry, open intellectual and scientific debate, and unfettered criticism of the accepted body of knowledge. Academic institutions have a special need for practices

that protect freedom of expression, since the core of the academic enterprise involves a continual reexamination of ideas. Academic disciplines thrive and grow through critical analysis of conventions and theories. Throughout history, the process of exploring and expanding the frontiers of learning has necessarily challenged the established order. That is why tenure is so valuable, not merely for the protection of individual faculty members but also as an assurance to society that the pursuit of truth and knowledge commands our first priority. Without freedom to question, there can be no freedom to learn.

The U. T. Board of Regents supports a system of periodic evaluation of all tenured faculty. Periodic evaluation is intended to enhance and protect, not diminish, the important guarantees of tenure and academic freedom. The purpose of periodic evaluation is to provide guidance for continuing and meaningful faculty development; to assist faculty to enhance professional skills and goals; to refocus academic and professional efforts, when appropriate; and to assure that faculty members are meeting their responsibilities to the University and the State of Texas. The U. T. Board of Regents is pledged to regular monitoring of this system to make sure that it is serving its intended purposes and does not in any way threaten tenure as a concept and practice. In implementing the plan, component institutions shall maintain an appropriate balance of emphasis on teaching, research, service, and other duties of faculty.

Guidelines

Each component institution of The University of Texas System will develop an institutional policy and plan consistent with the following guidelines for the periodic performance evaluation of tenured faculty effective January 1, 1998, with actual evaluation to begin no later than the Fall Semester 1998. Institutional policies are to be developed with appropriate faculty input, including

consultation with and guidance from faculty governance organizations, and are to be included in each institutional Handbook of Operating Procedures after review and appropriate administrative approval and submission to the U. T. Board of Regents for review and final approval. Periodic evaluations, while distinct from the annual evaluation process now required of all employees, may be integrated with the annual evaluation process to form a single comprehensive faculty development and evaluation process. Nothing in these guidelines or the application of institutional evaluation policies shall be interpreted or applied to infringe on the tenure system, academic freedom, due process, or other protected rights nor to establish new term-tenure systems or to require faculty to reestablish their credentials for tenure.

Institutional Handbook of Operating Procedures policies should be drafted to establish a streamlined, efficient process and should include the following minimum elements for periodic evaluation:

37.31 Evaluation of tenured faculty will continue to be performed annually with a comprehensive periodic evaluation of all tenured faculty performed every six years. The evaluation may not be waived for any tenured faculty member but may be deferred in rare circumstances when the review period will coincide with approved leave, comprehensive review for tenure or promotion, or appointment to an endowed position. No deferral of review of an active faculty member may extend beyond one year from the scheduled review. Institutional policy may specify that periods when a faculty member is on leave need not be counted in calculating when the comprehensive evaluation is required.

The requirement of periodic review does not imply that individuals with unsatisfactory annual evaluations may not be subject to further review and/or appropriate administrative action.

- 37.32 The evaluation shall include review of the faculty member's professional responsibilities in teaching, research, service, patient care, and administration.
- 37.33 Reasonable individual notice of at least six months of intent to review will be provided to a faculty member.
- 37.34 The faculty member being evaluated shall submit a résumé, including a summary statement of professional accomplishments, and shall submit or arrange for the submission of annual reports and teaching evaluations. The faculty member may provide copies of a statement of professional goals, a proposed professional development plan, and any other additional materials the faculty member deems appropriate.
- 37.35 In accordance with institutional policy, initial evaluation of the faculty member's performance may be carried out by the department, department chair (or equivalent), dean, or peer review panel, but in any event must be reported to the chair (or equivalent) and dean for review. Evaluation shall include review of the current résumé, student evaluations of teaching for the review period, annual reports for the review period, and all materials submitted by the faculty member.
- 37.36 If peer review is not required by institutional policy, the peer review process may be initiated by the faculty member, department chair (or equivalent) or dean. If peer committees are involved, the members shall be representative of the

college/school and will be appointed, on the basis of their objectivity and academic strength, by the dean in consultation with the tenured faculty in the college/school or pursuant to other process as defined in institutional policies. If peer review is involved, the faculty member will be provided with an opportunity to meet with the committee or committees.

37.37 Results of the evaluation will be communicated in writing to the faculty member, the department chair/dean, the chief academic officer, and the president for review and appropriate action. Possible uses of the information contained in the report should include the following:

37.371 For individuals found to be performing well, the evaluation may be used to determine salary recommendations, nomination for awards, or other forms of performance recognition.

37.372 For individuals whose performance indicates they would benefit from additional institutional support, the evaluation may be used to provide such support (e.g., teaching effectiveness assistance, counseling, or mentoring in research issues/service expectations).

37.373 For individuals found to be performing unsatisfactorily, review to determine if good cause exists for termination under the current Regents' Rules and Regulations may be considered. All proceedings for termination of tenured faculty on the basis of periodic performance

evaluation shall be only for incompetency, neglect of duty or other good cause shown and must be conducted in accordance with the due process procedures of the Regents' Rules and Regulations, Part One, Chapter III, Section 6 including an opportunity for referral of the matter to alternative dispute resolution. Such proceedings must also include a list of specific charges by the chief administrative officer and an opportunity for a hearing before a faculty tribunal. In all such cases, the burden of proof shall be on the institution, and the rights of a faculty member to due process and academic freedom shall be protected.

The acceptance and success of periodic evaluation for tenured faculty will be dependent upon a well-executed, critical process and an institutional commitment to assist and support faculty development. Thus, remediation and follow-up review for faculty who would benefit from such support, as well as the designation of an academic administrator with primary responsibility for monitoring such needed follow-up activities, are essential.

37.4 Evaluation of Administrators.

37.41 Chief Administrative Officers.

Evaluation of the chief administrative officer of each component institution is primarily the responsibility of the Chancellor or the Executive Vice Chancellor for Health Affairs, as appropriate.

- 37.42 Vice Presidents and Deans. Subject to the requirements of Subsection 37.3 and Subdivision 37.43, the evaluation of the vice presidents and deans is primarily the responsibility of the chief administrative officer or delegate.
- 37.43 Guidelines for Faculty Input into the Evaluation of Academic Administrators.
- 37.431 Each academic administrator below the level of chief administrative officer should be reviewed at least every six years. A written report will contain the substance of the review.
- 37.432 The institutional Academic Senate or other representative faculty body should be consulted in the development of the review policies and procedures. Institutions should also address avenues for faculty input into the review of other administrators who have significant impacts on campus academic affairs.
- 37.433 The review process should provide an opportunity for input by all faculty members in the academic unit(s) reporting to and/or affected directly by the administrator being evaluated.
- 37.434 A summary of faculty input, to be provided to the administrator under review and to the administrator's supervisor, should constitute a significant component of the evaluation report.
- 37.435 Unless otherwise defined by approved institutional policy, academic administrator is intended to refer to the chief academic officer (Vice President for Academic Affairs or Provost); academic deans,

- department chairs, and directors of academic units.
- 37.436 The U. T. System Administration also recognizes and supports comparable involvement by staff members and students, as is now the practice for evaluation of academic administrators at several U. T. System component institutions.
- 37.437 Additionally, the Chancellor and the Executive Vice Chancellor for Health Affairs should be sensitive to the importance of faculty input in the process of evaluating all administrators with direct or significant academic administrative responsibility.

Section 37 as approved requires annual evaluations of all employees as mandated by action of the U. T. Board of Regents in June 1982, codifies current practice with respect to the evaluation of probationary employees including classified employees and tenure-track teaching staff, and incorporates the "Guidelines for Periodic Performance Evaluation of Tenured Faculty" approved by the U. T. Board of Regents in November 1996 and amended in August 1997.

Chairman Evans expressed appreciation to Dr. Michael Siciliano, Chairman of the Faculty Advisory Council, who in earlier remarks had endorsed the inclusion of the post-tenure review guidelines in the Regents' Rules and Regulations.

3. U. T. Board of Regents - Regents' Rules and Regulations, Part Two: Amendments to Chapter XI, Section 1 (Contract Administration) and Chapter XII, Sections 2, 8, and 9 (Intellectual Property).--Approval was given to amend the Regents' Rules and Regulations, Part Two, Chapter XI, Section 1, regarding contract administration, and Chapter XII, Sections 2, 8, and 9, regarding intellectual property, to read as set out on Pages 16 - 19.

CHAPTER XI

CONTRACT ADMINISTRATION

Sec. 1. Delegation of Authority.--Subject to Subsection 1.1 and to the general provisions of Part One, Chapter I, Section 9 and except as otherwise provided in these Rules and Regulations, the Board delegates to the chief administrative officers authority to execute and deliver on behalf of the Board contracts and agreements of any kind or nature, including without limitation licenses issued to the Board or a component.

. . .

1.2 Applicability.--This Chapter applies to all contracts and agreements except contracts or agreements relating to personnel, faculty, athletics or athletic events, real properties (except the lease of space for use by a component), physical plant improvements, acceptance or administration of gifts or bequests, contracts and grants for sponsored research, contracts for legal services, and agreements to settle claims, disputes, or litigation.

. . . .

CHAPTER XII

INTELLECTUAL PROPERTY

. . .

Sec. 2. General Policy.

2.1 The intellectual property policy shall apply to all persons employed by the U. T. System and the component institutions of the System, to anyone using System facilities under the supervision of System personnel, to undergraduates, to candidates for masters and doctoral degrees, and to postdoctoral and predoctoral fellows.

. . .

- 2.3 The Board shall assert its interest in scholarly or educational materials, art works, musical compositions and dramatic and non-dramatic literary works related to the author's academic or professional field, regardless of the medium of expression, as follows:
- 2.31 Students, professionals, faculty and researcher authors.--The Board shall not assert ownership of works covered by this Subsection authored by students, professionals, faculty, and nonfaculty researchers. The Board encourages these authors to carefully manage their copyrights. The Board retains certain rights in these works as set forth in the Policy and Guidelines for Management and Marketing of Copyrighted Works.
- 2.32 Software.--The Board normally shall assert ownership in software as an invention; however, original software which is content covered by Subdivision 2.31, or that is integral to the presentation of such content, shall be owned in accordance with Subdivision 2.31.
- 2.4 Notwithstanding the provisions of Subsection 2.3, the Board shall have sole ownership of all intellectual property created by an employee who was hired specifically or required to produce it or commissioned by the System or a component institution of the System. Except as may be provided otherwise in a written agreement approved by the chief administrative officer of the component institution and the Chancellor, the provisions of Subdivision 5.23 relating to division of royalties shall not apply to intellectual property owned solely by the Board pursuant to this Subsection 2.4.
- . . .
- 2.8 Neither the facilities nor the resources of System or its component institutions may be used (i) to create, develop or commercialize intellectual properties unrelated to an individual's employment responsibilities (See

Subsection 4.1); or (ii) to further develop or commercialize intellectual properties that have been released to an inventor (See Subdivision 5.22) except as the component institution's chief administrative officer and the appropriate Executive Vice Chancellor or Vice Chancellor may approve where System retains an interest under the terms of the release.

. . .

Sec. 8. Reporting.

8.1 Any employee covered by Subsections 6.2, 7.1, or 7.2 shall report in writing to the chief administrative officer of the component institution, or to such other person as may be designated by the chief administrative officer, the name of any business entity as referred to therein in which the person has an interest or for which the person serves as a director, officer or employee and shall be responsible for submitting a revised written report upon any change in the interest or position held by such person in such business entity. These reports shall be accumulated in the office of the chief administrative officer or designee and then forwarded to the appropriate Executive Vice Chancellor or Vice Chancellor by September 1 of each year so that the Chancellor may file a report with the Board. Information in the report shall be included in the annual report required by Section 51.912(c), Texas Education Code.

Sec. 9. Approval of and Execution of Legal Documents Relating to Rights in Intellectual Property.

9.1 Agreements that grant an interest in Board intellectual property may be executed and delivered in accordance with the provisions of the Regents' Rules and Regulations, Part Two, Chapter XI, following any required review by the Office of General Counsel.

9.2 Any document altering substantially the basic intellectual property policy of the System as set out in the preceding Sections and other policies and guidelines that may be adopted by the Board shall have the advance approval of the chief administrative officer, the appropriate Executive Vice Chancellor or Vice Chancellor, the Chancellor, and the Board as an agenda item. Such an alteration in a sponsored research agreement shall not be considered substantial and the agreement may be executed and delivered as set forth in Section 9.1 if, in the judgment of the chief administrative officer and with the concurrence of the appropriate Executive Vice Chancellor or Vice Chancellor, the benefits from the level of funding for the proposed research and/or other consideration from the sponsor outweigh any potential disadvantage that may result from the policy deviation.

9.3 The Chancellor, the appropriate Executive Vice Chancellor or Vice Chancellor, the Vice Chancellor and General Counsel or the authorized representative of UTIMCO may execute, on behalf of the Board, legal documents relating to the Board's rights in intellectual property, including, but not limited to, declarations, affidavits, powers of attorney, disclaimers, and other such documents relating to patent applications and patents; applications, declarations, affidavits, affidavits of use, powers of attorney, and other such documents relating to trademarks; and other documents approved pursuant to Subsections 9.1 or 9.2. The chief administrative officer or designee may execute, on behalf of the Board, institutional applications for registration or recordation of transfers of ownership and other such documents relating to copyrights.

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The purposes of the amendments to the Regents' Rules and Regulations, Chapter XI, Section 1, relating to contract administration, and Chapter XII, Sections 2, 8, and 9, relating to intellectual property, are summarized below:

- a. Part Two, Chapter XI, Subsection 1.2 was amended to make delegation of authority apply to intellectual property agreements that grant an interest in Board intellectual property
- b. Part Two, Chapter XII, Subsection 2.1 was amended to make explicit the application of the Intellectual Property Policy to all students
- c. Part Two, Chapter XII, Subsection 2.3 was amended to broaden the application of the "scholarly works" exception to add teaching materials to those covered by this Section
- d. Part Two, Chapter XII, Subsection 2.4 was amended to clarify when the Board will own intellectual property that would otherwise be owned by a faculty member and when it need not share royalties with an inventor
- e. Part Two, Chapter XII, Subsection 2.8 was added to explicitly prohibit the use of System facilities to develop inventions released to the inventor except as expressly authorized
- f. Part Two, Chapter XII, Subsection 8.1 was amended to correct an outdated requirement for Board approval
- g. Part Two, Chapter XII, Subsections 9.1 and 9.2 were amended to allow all intellectual property agreements covered by this Chapter to be processed like other agreements
- h. Part Two, Chapter XII, Subsection 9.3 was amended to delegate authority to execute copyright registration appli-

cations and related documents to component executives.

See Item 4 below related to the Policy and Guidelines for Management and Marketing of Copyrighted Works.

4. U. T. System: Adoption of a Policy and Guidelines for Management and Marketing of Copyrighted Works.--As copyright assets of The University of Texas System have become a more important part of the U. T. Board of Regents' intellectual property, the management of these assets requires increased attention.

The marketing and management of copyright assets are significantly different from marketing and management of other forms of intellectual property, such as patents and trademarks, and need to be addressed specifically.

In accordance therewith, the Board adopted the Policy and Guidelines for Management and Marketing of Copyrighted Works for the U. T. System as set forth below.

See Page 15 related to the changes to the Regents' Rules and Regulations, Part Two, Chapter XII (Intellectual Property) dealing with ownership of copyrights.

POLICY AND GUIDELINES FOR MANAGEMENT AND MARKETING OF COPYRIGHTED WORKS

The U. T. Board of Regents (Board) finds that works protected by copyright created at the component institutions are valuable assets that promote and further the creation and dissemination of knowledge through research, teaching and publication. Careful management of these assets will benefit the authors, the citizens of Texas, state government, the component institutions, and the U. T. System.

1. Works authored by professionals, faculty, nonfaculty researchers (researchers who do not teach) and undergraduate and graduate students

If component institutions invest in copyright works that the authors will own under the U. T. System Intellectual Property Policy, they must protect their investments and, with the authors, manage author-owned copyrights to facilitate institutional access to the works and preserve rights to make nonprofit educational uses of them.

For projects that may involve significant resource contributions by the institution, component institutions and professionals, faculty, nonfaculty researchers and students will agree to allocate rights to use the resulting works, allocate costs and share benefits from commercialization, as appropriate in each case. Institutions should:

- determine what constitutes significant kinds or amounts of resource contribution;
- identify appropriate institutional uses for the work;
- develop checkpoints in the creative process that will alert authors and administrators of the need to enter an agreement to allocate rights to use works and share costs and benefits from commercialization;
- establish a default allocation of interests including a right to use the work, to obtain reimbursement of contributions and to share in profits in the absence of agreement; and
- take into account the effects of third party funding, if any.

Component institutions and professionals, faculty, nonfaculty researchers and students should explore mutually beneficial opportunities for electronic distribution of scholarly works within the university community.

Professionals, faculty, nonfaculty researchers and students should manage their copyrights to preserve the right to make nonprofit educational uses of their works. _

For example, authors may request that for-profit publishers to whom the author submits articles for publication use one of the following copyright notices, or something similar, on the author's article:

Copyright [date] [Publisher].
Permission is granted for nonprofit educational uses of this [article]. All other uses require permission from the publisher.

Copyright [date] [Publisher].
Permission is granted for nonprofit educational and library duplication and distribution, including but not limited to reserves and coursepacks made by nonprofit or for-profit copyshops. This permission is in addition to rights granted under Sections 107, 108 and other provisions of the U. S. Copyright Act. To use this work electronically, please link to [URL].

If a publisher agrees to use a notice like these, university professionals, faculty, students and staff would be able to make copies of the author's article for research or classroom use without permission, even though the author may have assigned copyright to the publisher as a condition of publication.

Another example of copyright management that helps to achieve the purposes of this Policy is retention by professionals, faculty, nonfaculty researchers and students of copyright in their prepublication drafts. This allows preprint distribution within the university community and the creation by the author of derivative (new) works from prepublication drafts. The intention to retain rights should be clearly stated in an agreement with the publisher. The following clause could be added to a publisher's existing agreement:

Anything to the contrary in this agreement notwithstanding, Author shall retain copyright in each and every draft of the [manuscript] except the final draft as published by Publisher, and reserves all rights in such prepublication drafts.

Refer to the Copyright Crash Course section on Copyright Management (<http://www.utsystem.edu/ogc/intellectualproperty/1-schpub.htm>) for more information on this subject.

On some occasions when a component institution hires a professional, faculty member, nonfaculty researcher or student specifically to create a work that the author would otherwise own under Subsection 2.3 of the Intellectual Property Policy (Part Two, Chapter XII, Section 2, Regents' Rules and Regulations), it may be unclear that this is a work for hire. If this is ever the case, the author should execute an acknowledgment that the Board will own copyright in the work to avoid later confusion over ownership.

2. Works authored by employees other than professionals, faculty, nonfaculty researchers and students and therefore owned by the Board or jointly owned by the Board and other authors

Component institutions should manage copyrights owned by the Board under the Intellectual Property Policy to further the goals and mission of the U. T. System and the Board.

In many cases, wide and free distribution will achieve institutional, U. T. System and Board goals.

Component institutions should carefully consider the consequences of commercial marketing of scholarly and educational works. Commercial publication or distribution may severely limit access to works for others in the university community or the public generally.

For certain works, use of the copyright notices above or retention of rights in prepublication drafts may be appropriate.

5. U. T. System: Report of Summary of Gift Acceptance and Related Administrative Actions Conforming to Board Policy for September 1, 1997 Through November 30, 1997.--Vice Chancellor for Development and External Relations Perry reviewed the Summary of Gift Acceptance and Related Administrative Actions Conforming to Board Policy for The University of Texas System for the period September 1, 1997 through November 30, 1997, as set forth on Pages 26 - 30.

Vice Chancellor Perry reported that during this period 145 items conforming to Board policy were approved including the acceptance of \$14,322,143 in gifts. Other matching contributions from previously accepted Board-held matching funds totaled \$1,165,000. Previously reported gifts totaled \$102,370 and transfers of endowment funds totaled \$1,012,550.

Mrs. Perry reported that items which are exceptions to Board policy or involve decisions which are discretionary in nature are submitted as agenda items, and one such item is included in the Health Affairs Committee agenda for this meeting. See Page 159 regarding the acceptance of a pledge to establish the Floyd and Kathleen Cailloux Research Center in Human Cancer Genetics at The University of Texas M.D. Anderson Cancer Center.

Mrs. Perry noted that this report includes only those funds which relate to endowments, estates, and other such funds which are managed by the U. T. System Office of Development and External Relations.

ACCEPTANCE OF GIFTS HELD BY BOARD

ALL ITEMS	COMPONENT INSTITUTION	ASSET TYPES							MATCHING FUNDS	TOTAL VALUE						
		CASH	SECURITIES	REAL ESTATE	PLEDGES	OTHER	TRANSFERS									
5	U. T. Arlington	\$ 1,030,334	s	\$	\$ 5,000	s	\$	\$	\$	1,035,334						
63	U. T. Austin	\$ 1,479,968	s	1188,083	\$ 1,480,050	s	\$ 177,601	s	\$	3,958,202 •						
9	U. T. Brownsville	\$ 2,000	s	\$	\$ 8,000	s	\$	\$	s	10,000						
2	U. T. Dallas	\$ 250,000	s	s	\$ -	\$ -	\$ -	\$ -	\$ -	250,000						
10	V. T. El Paso	\$ 1,526,413	S	1,074,804	\$ 187,785	s	\$ 15,000	s	\$	2,701,633 •						
5	U. T. Permian Basin	\$ 76,120	s	\$	\$ 35,000	S	\$ 1,650	S	\$	112,770						
5	U. T. San Antonio	\$ 73,730	s	3216	\$ 9,647	s	\$	\$	\$	86,593						
2	U. T. Tyler	\$ 40,000	s	\$	\$	s	\$ -	\$ -	\$ -	40,000						
6	U. T. SWMC-Dallas	\$ 534,286	S	s	\$ 25,000	s	\$	\$ 1,165,000	S	559,286 •						
9	U. T. M.B.-Galveston	\$ 1,012,826	S	290,581	\$ 325,000	S	\$ 632,174	S	\$	2,260,581						
6	UTHSC-Houston	\$ 446	s	99.354	\$ 700,000	s	\$ 210,000	s	\$	810,000 •						
9	UTHSC-San Antonio	\$ 250,000	•	•	\$ 750,000	s	\$	\$	\$	1,000,000						
30	UTMDACC	\$ 712,615	S	338,114	s	\$ 250,000	s	942,064	s	1,497,744 •						
145	TOTAL	\$ 6,988,739	S	2,694,353	S	512,785	S	3,012,697	S	250,000	s	1,978,489	S	1,165,000	S	14,322,143 •

- Not included in total: U. T. Austin - \$67,500 of transfers of endowment funds;
- U. T. El Paso - \$102,370 of previously accepted gifts;
- U. T. SWMC-Dallas - \$1,165,000 of Board-held matching funds;
- UTHSC-Houston \$200,000 transfer of endowment funds; and
- UTMDACC - \$745,050 of transfers of endowment funds.

NOTE: Compiled by Office of Development and External Relations

CLASSIFICATION OF GIFTS AND OTHER ACTIONS

<u>COMPONENT INSTITUTION</u>	<u>ENDOWMENTS</u>	<u>CHARITABLE REMAINDER TRUSTS</u>	<u>POOLED INCOME FUND</u>	<u>REMAINDER INTERESTS</u>	<u>HELD IN TRUST BY OTHERS</u>	<u>CURRENT PURPOSE</u>	<u>OTHER</u>
U. T. Arlington	5		---	---	---	---	---
U. T. Austin							
U. T. Brownsville	1		---	---	---	---	---
U. T. Dallas	2	---	---	---	---	---	---
U. T. El Paso	5	3	---	2	---	---	---
U. T. Permian Basin	5	---		---	---	---	---
U. T. San Antonio	5	---	---	---	---	---	---
U. T. Tyler	2			---	---	---	---
U. T. SWMC-Dallas	5	---	---	---	1	1	
U. T. M.B.-Galveston	8		---	---	1	---	---
UTHSC-Houston	3	---	---	---	3	---	---
UTHSC-San Antonio	1		---	---	---	---	---
UTMDACC	24	1			1	5	---
TOTAL	119	5	1	2	17	6	0

PURPOSES OF GIFTS HELD BY BOARD AND OTHERS

COMPONENT INSTITUTION	ENDOWMENT								CURRENT PURPOSE	OTHER PURPOSE
	DIST. CHAIR	CHAIR	DIST. PROF'SHIP	PROF'SHIP	FACULTY FELLOWSHIP	GRADUATE FELLOWSHIP	SCHOLARSHIP	OTHER		
U. T. Arlington	---	1	---	---	---	---	3	---	---	---
U. T. Austin	---	2	---	2	---	1	45	7	---	1
U. T. Brownsville	---	---	---	---	---	---	---	1	---	---
U. T. Dallas	---	---	---	1	---	---	---	1	---	---
U. T. El Paso	---	---	---	---	---	---	3	2	---	5
U. T. Permian Basin	---	---	---	---	---	---	5	---	---	---
U. T. San Antonio	---	---	---	---	---	---	5	---	---	---
U. T. Tyler	---	---	---	---	---	---	2	---	---	---
U. T. SWMC-Dallas	---	---	---	---	1	---	---	4	1	---
U. T. M.B.-Galveston	1	---	1	1	---	---	5	---	---	1
UTHSC-Houston	---	2	---	---	---	---	1	---	---	---
UTHSC-San Antonio	1	---	---	---	---	---	---	---	---	---
UTMDACC	---	1	---	3	---	---	---	3	5	2
TOTAL	2	6	1	7	1	1	69	18	6	9

Total purposes may not equal the total number of items because some items pertain to multiple purposes.

OTHER ADMINISTRATIVE ACTIONS

<u>COMPONENT INSTITUTION</u>	<u>ESTABLISH ENDOWMENT</u>	<u>REDESIGNATE ENDOWMENT LEVEL</u>	<u>OTHER REDESIGNATION</u>	<u>DISSOLVE ENDOWMENT</u>	<u>APPROVE/ALLOCATE MATCHING</u>	<u>ACCEPT TRUSTEESHIP</u>	<u>OTHER</u>
U. T. Arlington	4	1		---	---	---	---
U. T. Austin	56	1	4	---	---	---	1
U. T. Brownsville	1	---		---	---		---
U. T. Dallas	2		---		---	---	
U. T. El Paso	5			---		3	---
U. T. Permian Basin	5	---			---	---	---
U. T. San Antonio	5			---		---	---
U. T. Tyler	2	---		---	---	---	---
U. T. SWMC-Dallas	5	---	---		4	---	
U. T. M.B.-Galveston	8			---	1	---	---
UTHSC-Houston	3	3	---		7	---	---
UTHSC-San Antonio	1		---		---		
UTMDACC	6	16	1	1		1	---
TOTAL	103	21	5	1	7	4	1

COMPARATIVE SUMMARY OF GIFTS ACCEPTED VIA THE OFFICIAL ADMINISTRATIVE PROCESS

COMPONENT INSTITUTION	FY 1997		FISCAL YEAR ,998			
	FULL YEAR		9/1/97 - 11/30/97	12/1/97 - 2/28/98	3/1/98 - 5/31/98	FULL YEAR
u. T. System	\$	---	\$	---		
u. T. Arlington	\$	467,160	\$	1,035,334		
U. T. Austin	\$	12,596,223	\$	3,958,202		
U. T. Brownsville	\$	25,000	\$	10,000		
u. T. Dallas	\$	67,313	\$	250,		
U. T. El Paso	\$	2,713,341	\$	2,701,633		
U. T. Pm American	\$	643,151	\$	---		
U. T. Permian Basin	\$	641,000	\$	112,770		
U. T. San Antonio	\$	380,500	\$	86,593		
U. T. Tyler	\$	65,000	\$	40,000		
U. T. SWMC-Dallas	\$	12,392,401	\$	559,286		
U. T. M.B.-Galveston		8,403,150		2,260,581		
UTHSC-Houston	\$	4,584,653	\$	810,000		
UTHSC-San Antonio	\$	2,489,807	\$	1,000,000		
UTMDACC	\$	1,977,697	\$	1,497,744		
U. T. HC-Tyler	\$	140,910	\$	---		
UTEP and UTMB	\$	---	\$	---		
U. T. Austin/UTMDACC	\$	28,048	\$	---		
TOTAL	\$	47,615,354	\$	14,322,143		

MATTERS RELATED TO THE UNIVERSITY OF TEXAS
INVESTMENT MANAGEMENT COMPANY (UTIMCO)

1. U. T. System: Report on Investments for the Fiscal Quarter Ended November 30, 1997.--On behalf of The University of Texas Investment Management Company (UTIMCO), Regent Hicks, Chairman of the UTIMCO Board, summarized the Report on Investments for The University of Texas System for the fiscal quarter ending November 30, 1997, for the Permanent University Fund, Long Term Fund, Short/Intermediate Term Fund, and Separately Invested Assets.

Report by Regent Hicks on Behalf of UTIMCO

Mr. Chairman and members of the Board, I am pleased to summarize on behalf of UTIMCO the investments for The University of Texas System for the fiscal quarter ending November 30, 1997.

Item a on Page 34 presents the summary report for Permanent University Fund (PUF) Investments. The PUF began the quarter with a market value of \$6.368 billion. During the quarter, contributions of mineral income from PUF Lands equaled \$25.8 million versus \$23.9 million for the first quarter of the preceding fiscal year. In addition, total investment return was \$284.1 million of which \$63.1 million was income return and \$221 million was price return. Cash distributed to the Available University Fund (AUF) was \$89.6 million. Of this total, \$42.3 million represented a portion of accrued income and \$47.3 million represented a onetime payment resulting from the change from cash to accrual based distributions. PUF market value ended the quarter at \$6.615 billion.

During the quarter, UTIMCO continued to fund the alternative equities program by investing \$33.9 million in this asset class. Of this total, \$20.6 million was funded from new contributions and \$13.3 million was funded by recycling realized gains within the portfolio. Also, UTIMCO closed two externally managed value equity portfolios and redistributed the proceeds to two internally managed equity value and real estate investment trust portfolios. Quarter-end asset allocation was

virtually unchanged from fiscal year end; 63% broadly defined equities and 37% fixed income versus an unconstrained neutral allocation of 80% equities and 20% fixed income. Within equities, period-end allocation to equities was 44% U. S. large and mid cap stocks, 6% U. S. small cap stocks, 6% non-U. S. equities and 7% alternative equities.

PUF distributions to the AUF of \$89.6 million increased by a nominal rate of 30% versus the first quarter of the prior fiscal year due to the conversion to accrual based distributions. Excluding this onetime adjustment, accrued investment income declined by a nominal 3.1% and by an inflation adjusted rate of 3.5%. The decline in income was attributable to a 4.9% decline in interest income from fixed income securities which accounts for 70% of total income paid to the AUF. During the quarter, interest rates declined sharply as evidenced by the decline in the 30-year U. S. Treasury bond yield from 6.60% at the beginning of the quarter to 6.00% at quarter-end. The inability to replace distributable coupon rates was particularly pronounced as \$126.7 million of bonds ran off during the quarter at an average yield of 8.73%.

Accrued income of \$63.1 million for the quarter was under the \$64 million level budgeted by \$900,000. Achievement of budgeted income distributions of \$256 million for Fiscal Year 1998 will constitute a major challenge if interest rates stabilize at current levels or decline further.

Total investment return for the quarter was 4.5%. Fixed income as an asset class continued to perform relatively poorly versus equities with the Salomon Broad Bond Index generating a total return of 3.4%. The Fund's fixed income portfolio at 4.2% outperformed this index. Equities, as an asset class, continued to generate higher relative returns with the S&P 500 Index and Russell 3000 Index posting returns of 6.7% and 6.0%, respectively. The PUF's equity portfolios (including non-U. S. portfolios) produced a 4.1% return. Finally, alternative equities produced a 9.4% return for the quarter.

Item b on Page 35 reports summary activity for the Long Term Fund (LTF). During the quarter, net contributions totaled \$20.5 million. Investment return was \$71.9 million, of which \$20.7 million was paid to the 4,539 endowment and other accounts underlying the LTF at quarter-end. Total payout increased by 6.1% over the previous November quarter, reflecting both the increase in the number of Fund units

outstanding and the increase in payout per unit to \$0.18. The Fund's market value closed the quarter at \$2.195 billion, up \$70 million from the prior quarter. The LTF's value per unit also increased, ending the quarter at \$4.78 versus \$4.67 on August 31, 1997.

Asset allocation at quarter-end was 24% fixed income and 76% broadly defined equities. Within equities, U. S. small cap and non-U. S. equities were roughly neutral weighted at 11% and 13%, respectively. U. S. large and mid cap equities were overweighted at 47% vs. 30% while alternative equities were underweighted at 5% versus a neutral weighting of 25%. Total investment return for the quarter was 3.4% and net 1.9% after expenses of 0.1%, inflation of 0.4% and payout of 1.0%.

Item c on Page 36 presents quarterly activity for the Short/Intermediate Term Fund. During the quarter, the Fund funded net withdrawals of \$26.9 million. It earned \$40.4 million in total return and incurred expenses of \$100 thousand. Distributions to the U. T. System component institutions equaled \$25.1 million resulting in a quarter-end Fund value of \$1.619 billion. Total return on the Fund was 2.5% for the quarter versus the Fund's performance benchmark of 1.8%.

Item d on Page 37 presents book and market value of cash, fixed income, equity and other securities held in funds outside of internal investment pools. Total cash and equivalents, consisting primarily of component operating funds held in the Dreyfus money market fund, decreased by \$75 million to \$546 million during the quarter. Asset values for the remaining asset classes were fixed income securities: \$61 million vs. \$52 million at previous quarter-end; equities: \$34 million vs. \$36 million at previous quarter-end; and other investments of \$6 million.

a.

Summary Investment Report at November 30, 1997.--

**PERMANENT UNIVERSITY FUND (1)
INVESTMENT SUMMARY REPORT
(\$ millions)**

	<u>FY96-97</u>	<u>FY97-98</u>
	Full Year	1st Qtr
Beginning Market Value	<u>5,292.1</u>	<u>6,368.3</u>
PUF Lands Receipts (2)	85.2	25.8
Investment Income (3)	263.0	63.1
Change in Undistributed Income Payable to the Available University Fund (4)	2.2	
Investment Income Distributed (4)	<u>(265.2)</u>	(63.1)
Realized Gains	251.0	123.3
Change in Unrealized Gains	<u>740.0</u>	<u>97.7</u>
Ending Market Value	<u>6,368.3</u>	<u>6,615.1</u>
AUF Income:		
Investment Income	263.0 (5)	63.1
Surface Income	<u>5.3</u>	<u>1.2</u>
Total	<u>268.3</u>	<u>64.3</u>

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

- (1) Excludes PUF Lands mineral and surface interests with estimated June 30, 1997 values of \$550.5 million and \$151.8 million, respectively.
- (2) As of November 30, 1997: 921,503 acres under lease; 523,561 producing acres; 3,002 active leases; and 2,062 producing leases.
- (3) Investment income includes amortization of discount and premium bonds in accordance with statutory requirements.
- (4) For FY96-97, cash investment income was distributed to AUF. Effective FY97-98, accrued investment income is distributed to AUF.
- (5) Restated to present on an accrual basis for comparative purposes.

b. LONG TERM FUND

Summary Investment Report at November 30, 1997.--

**LONG TERM FUND
SUMMARY REPORT
(\$ millions)**

	<u>FY96-97</u>	<u>FY97-98</u>
	Full Year	1st Qtr
Beginning Net Assets	1,712.1	2,125.0
Net Contributions	66.1	20.5
Investment Return	433.0	71.9
Receipt of Funds from System for UTIMCO Fee		0.5
Expenses	(4.5)	(1.4)
Distributions (Payout)	(79.1)	(20.7)
Distribution of Gain on Participant Withdrawals	(3.4)	(0.1)
Ending Net Assets	<u>2,125.0</u>	<u>2,195.7</u>
Net Asset Value per Unit	4.672	4.782
No. of Units (End of Period)	454,803,889	459,182,234
Distribution Rate per Unit	0.175	0.0450

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

C. SHORT/INTERMEDIATE TERM FUND

Summary Investment Report at November 30, 1997.--

**SHORT/INTERMEDIATE TERM FUND
SUMMARY REPORT
(\$ millions)**

	<u>FY96-97</u>	<u>FY97-98</u>
	<u>Full Year</u>	<u>1st Qtr</u>
Beginning Net Assets	1,332.1	1,631.4
Contributions (Net of Withdrawals)	274.3	(26.9)
Investment Return	115.4	40.4
Expenses	(0.4)	(0.1)
Distributions of Income	<u>(90.0)</u>	<u>(25.1)</u>
Ending Net Assets	1,631.4	1,619.7

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.

d. **SEPARATELY INVESTED ASSETS**

Summary Investment Report at November 30, 1997.--

SEPARATELY INVESTED ASSETS
SUMMARY REPORT
(\$ thousands)

ASSET TYPES	FUND TYPE												TOTAL	
	CURRENT PURPOSE				ENDOWMENT & ANNUITY & LIFE				AGENCY FUNDS		OPERATING FUNDS			
	DESIGNATED		RESTRICTED		SIMILAR FUNDS		INCOME FUNDS		BOOK	MARKET	BOOK	MARKET	BOOK	MARKET
Cash & Equivalents:	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET	BOOK	MARKET
Beginning value 9/1/97	15,279	15,279	1,578	1,578	34,728	34,728	637	637	.	.	569,320	569,320	621,542	621,542
Increase/(Decrease)	(7,184)	(7,184)	1,682	1,682	(18.9%)	(16,958)	1,673	1,673	.	.	(52,647)	(52,647)	(75,434)	(75,434)
Ending value 11/30/97	8,095	8,095	3,260	3,260	15,770	15,770	2,310	2,310	.	.	516,673	516,673	546,108	546,108
Debt Securities:														
Beginning value 9/1/97	3,700	3,700	7	4	39,088	39,950	8,424	8,753	.	1	.	.	51,219	52,408
Increase/(Decrease)	(3,200)	(3,200)	-	-	11,093	11,755	321	527	.	(1)	.	.	6,214	9,081
Ending value 11/30/97	500	500	7	4	50,181	51,705	8,745	9,280	.	.	.	.	59,433	61,489
Equity Securities:														
Beginning value 9/1/97	52	4,987	1,346	1,316	16,348	24,548	4,127	4,764	.	.	.	.	21,673	35,615
Increase/(Decrease)	(10)	(2,125)	(1,145)	(1,116)	176	744	998	1,080	.	.	.	.	19	(1,417)
Ending value 11/30/97	42	2,862	201	200	16,524	25,292	5,125	5,844	.	.	.	.	21,892	34,198
Other:														
Beginning value 9/1/97	-	-	730	730	(730)	(730)	5,213	6,075	.	.	.	.	5,213	6,075
Increase/(Decrease)	-	-	(186)	(186)	298	298	(76)	6,48	.	.	.	.	5,249	6,215
Ending value 11/30/97	-	-	544	544	(432)	(432)	5,137	123	.	.	.	.	10,462	12,290

Report prepared in accordance with Sec. 51.0032 of the Texas Education Code.
Details of individual assets by account furnished upon request.

2. U. T. Board of Regents: Approval of Amendments to the Investment Policy Statements for the Permanent University Fund, Long Term Fund, Short/Intermediate Term Fund, Short Term Fund, and Separately Invested Endowment, Trust, and Other Accounts.--Section 3(a) of the Investment Management Services Agreement dated March 1, 1996, between the Board of Regents of The University of Texas System and The University of Texas Investment Management Company (UTIMCO) provides that UTIMCO shall review the investment policies for the assets under its management and recommend any changes in such policies for approval by the U. T. Board of Regents. The proposed amendments to the investment policy statements which were before the Board are the result of an annual review and were approved by the UTIMCO Board of Directors on December 15, 1997.

Upon recommendation of the Board of Directors of The University of Texas Investment Management Company, the U. T. Board of Regents approved amendments to the following Investment Policy Statements which are set out in their entirety:

- a. Permanent University Fund Investment Policy Statement, Pages 40 - 50
- b. Long Term Fund Investment Policy Statement, Pages 51 - 62
- c. Short/Intermediate Term Fund Investment Policy Statement, Pages 63 - 69
- d. Short Term Fund Investment Policy Statement, Pages 70 - 76
- e. Separately Invested Endowment, Trust, and Other Accounts Investment Policy Statement, Pages 77 - 84.

General amendments to the investment policies are the consolidation of the alternative equities asset class into marketable and nonmarketable subclasses, expansion of the use of derivatives to adjust asset allocation and in hedge fund strategies, subject to UTIMCO Board approval, and the placement of additional limits when investing in repurchase agreements and other short-term

cash and cash equivalent securities. Specific amendments are the upgrading of the credit quality standard for PUF fixed income investments and the redefinition of Long Term Fund eligible fixed income investments to conform to the Lehman Brothers Aggregate Bond Index and to restrict non-U. S. dollar fixed income investments to no more than 7% of Fund assets.

**THE UNIVERSITY OF TEXAS SYSTEM
PERMANENT UNIVERSITY FUND
INVESTMENT POLICY STATEMENT**

Purpose

The Permanent University Fund (the "Fund") is a public endowment contributing to the support of institutions of The University of Texas System (other than The University of Texas-Pan American and The University of Texas at Brownsville) and institutions of The Texas A&M University System (other than Texas A&M University--Corpus Christi, Texas A&M International University, Texas A&M University--Kingsville, West Texas A&M University, Texas A&M University-Commerce, Texas A&M University--Texarkana, and Baylor College of Dentistry).

Fund Organization

The Permanent University Fund was established in the Texas Constitution of 1876 through the appropriation of land grants previously given to The University of Texas at Austin plus one million acres. The land grants to the Permanent University Fund were completed in 1883 with the contribution of an additional one million acres of land. Today, the Permanent University Fund contains **2,109,190** acres of land (the "PUP Lands") located in 24 counties primarily in West Texas.

The 2.1 million acres comprising the PUF Lands produce two streams of income: a) mineral income, primarily in the form of oil and gas royalties and b) surface income, in the form of surface leases and easements. Under the Texas Constitution, mineral income, as a non-renewable source of income, remains a non-distributable part of PUF corpus, and is invested in securities. Surface income, as a renewable source of income, is distributed to the Available University Fund, (the "AUF") as received.

The Constitution prohibits the distribution and expenditure of mineral income contributed to the Fund and the realized and unrealized gains earned from Fund investments. The Constitution also requires the distribution of all PUP investment income to the AUF to be expended for certain authorized purposes.

The expenditure of PUF income distributed to the AUF is subject to a prescribed order of priority:

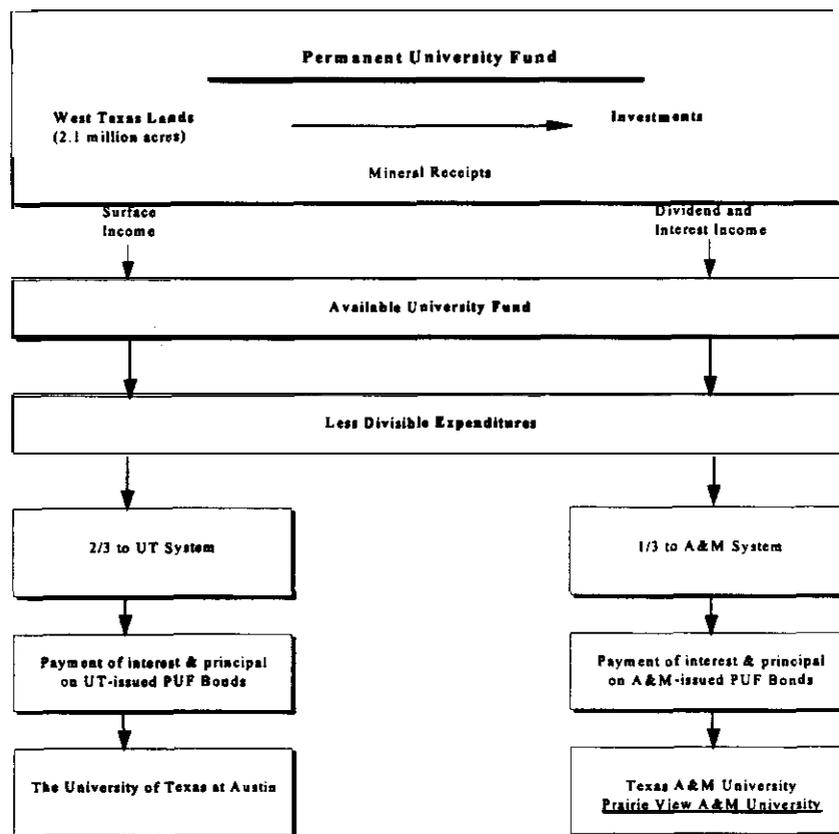
First, expenses incurred **in** the administration of PUF Lands and Investments. Resolutions adopted by the U. T. Board of Regents (the "U. T. Board") require that administrative expenses of the PUF be restricted to a minimum consistent with prudent business judgment. Second, following a **2/3rds** and **1/3rd** allocation of distributed PUF income (net of **administrative** expenses) to the U. T. System and Texas A&M University System,

respectively, expenditures for debt service on PUF bonds. Article VII of the Texas Constitution authorizes the U. T. Board and the Texas A&M University System (the “**TAMUS** Board”) to issue bonds payable from their respective interests in distributed PUF income to finance permanent improvements and to refinance outstanding PUF obligations. The Constitution limits the amount of bonds and notes secured by each System’s interest in divisible PUF income to 20% and 10% of the book **value** of PUF investment securities, respectively. Bond resolutions adopted by both Boards also prohibit the issuance of additional PUF parity obligations unless the projected interest in PUF net income for each System covers projected debt service at least 1.5 times.

Thud, expenditures to fund a) excellence programs specifically at U. T. Austin, Texas A&M University and Prairie View **A&M** University and b) the administration of the university systems.

The distribution of income and expenditures from the PUF to the AUF is depicted below in Exhibit 1:

Exhibit 1



Fund Management

Article **VII** of the Texas Constitution assigns fiduciary responsibility for managing and investing the Fund to the U. T. Board. Article VII authorizes the U. T. Board, subject to procedures and restrictions it establishes, to invest the Fund in any kind of investments and in amounts it considers appropriate, provided that it adheres to the prudent person investment standard. This standard requires that the U. T. Board, in making investments, shall exercise the judgment and care under the circumstances then prevailing which persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

Ultimate fiduciary responsibility for the Fund rests with the Board. Section 66.08 of the Texas Education Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in investment of the PUF. The Fund shall be managed through The University of Texas Investment Management Company (“UTIMCO”) which shall a) recommend investment policy for the Fund, b) determine specific asset allocation targets, ranges and performance benchmarks consistent with Fund objectives, and c) monitor Fund performance against Fund objectives. UTIMCO shall invest the Fund’s assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Fund’s return and risk characteristics. Such, managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Fund Administration

UTIMCO shall employ an administrative **staff** to ensure that all transaction and accounting records are complete and prepared on a timely basis. **Internal** controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of Fund assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Fund Investment Objectives

The primary investment objective shall be to preserve the purchasing power of Fund assets and annual distributions by earning an average **annual** total return after inflation of 5.5% over rolling ten-year periods or longer. The Fund’s success in meeting its objectives depends upon its ability to generate high returns in periods of low **inflation** that will offset lower returns generated in years when the capital markets **underperform** the rate of inflation.

The secondary fund objective is to generate a fund return in excess of the Policy Portfolio benchmark over **rolling five-year** periods or longer. The Policy Portfolio benchmark will be established by UTIMCO and will be comprised of a blend of asset class indices weighted to reflect Fund asset allocation policy targets.

The U. T. Board recognizes that achievement of Fund investment objectives is substantially hindered by the inability to make distributions on a total return basis and current distribution rates in excess of long-term equilibrium levels.

Asset Allocation

Asset allocation is the primary determinant of investment performance and subject to the asset allocation ranges specified herein is the responsibility of UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment outlook.

Fund assets shall be allocated among the following broad asset classes based upon their individual **return/risk** characteristics and relationships to other asset classes:

1. Cash Equivalents • are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide good liquidity under both deflation and inflation conditions.
2. Fixed Income Investments • offer the best protection for hedging against the threat of deflation by providing a dependable and predictable source of Fund. Such bonds should be high quality, and intermediate to long-term maturity with reasonable call protection in order to ensure the generation of current income and preservation of nominal capital even during periods of severe economic contraction.
3. Equities • provide both current income and growth of income, but their principal purpose is to provide appreciation of the Fund. Historically, returns for equities have been higher than for bonds over all extended periods. As such, equities represent the best chance of preserving the purchasing power of the Fund.
4. Alternative Equities • generally consist of alternative marketable investments and alternative non-marketable investments. Alternative equity investments shall be expected to earn superior equity type returns over extended periods. The advantages of alternative equity investments are that they enhance long-term returns through investment in inefficient, complex markets. They offer reduced volatility of Fund asset values through their characteristics of low correlation with listed equities and fixed income instruments. The disadvantages of this asset class are that they may be illiquid, require higher and more complex fees, and are frequently dependent on the

quality of external managers. In addition, they possess a limited return history versus traditional **stocks** and bonds. The risk of alternative equity investments shall be controlled with extensive due diligence and diversification.

Alternative Marketable Equities ▪

These investments are broadly defined to include hedge funds, arbitrage and special situation funds, high yield bonds, distressed debt, market neutral, commodities and other non-traditional investment strategies whose underlying securities are traded on public exchanges or are otherwise readily marketable. As such, they offer faster **drawdown** of committed capital and earlier realization potential than alternative non-marketable investments. Alternative marketable investments may be made through partnerships, but they will generally provide investors with liquidity at least annually.

Alternative Non-Marketable Investments ▪

These investments are held either through limited partnership or as direct ownership interests. They include special equity, mezzanine venture capital, oil and gas, real estate and other investments that are privately held and which are not registered for sale on public exchanges. In partnership form, these investments require a commitment of capital for extended periods of time with no liquidity.

Asset Allocation Policy

The asset allocation policy and ranges herein recognize that the Fund's return/risk profile can be enhanced by diversifying the Fund's investments across different types of assets whose returns are not closely correlated. The targets and ranges seek to protect the Fund against both routine illiquidity in normal markets and extraordinary illiquidity during a period of extended deflation.

The long-term **asset** allocation policy for the Fund must recognize that the 5.5% real return objective requires a high allocation to broadly defined equities, including domestic, international stocks, and alternative equity investments of 50% to 90%. The allocation to Fixed Income should therefore not exceed 50% of the Fund.

The Board delegates authority to UTIMCO to establish specific neutral asset allocations and ranges within the broad policy guidelines described above. UTIMCO may establish specific asset allocation targets and ranges for large and **small** capitalization U. S. stocks, established and emerging market international stocks, marketable and non-marketable alternative equity investments, and other asset classes as well as the specific performance objectives for each asset class. Specific asset allocation policies shall be decided by UTIMCO and reported to the U. T. Board.

Performance Measurement

The investment **performance** of the Fund will be measured by an unaffiliated organization, with recognized expertise in this field and reporting responsibility to the UTIMCO Board, and compared against the stated investment benchmarks of the Fund. Such measurement will occur at **least** annually, and evaluate the results of the total Fund, major classes of investment assets, and individual portfolios.

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the “Prudent Person Rule.”

Investment guidelines include the following:

General

- All investments will be U. S. dollar denominated assets unless held by an internal or external portfolio manager with discretion to invest in foreign currency denominated securities.
- Investment policies of any unaffiliated liquid investment fund must be reviewed and approved by the chief investment **officer** prior to investment of Fund assets in such liquid investment fund.
- No securities may be purchased or held which would jeopardize the Fund’s **tax-**exempt status.
- No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.
- The Fund may utilize Derivative Securities with the approval of the UTIMCO Board to; a) simulate the purchase or sale of an underlying market index while retaining a cash balance for fund management purposes; b) to facilitate trading; c) to reduce transaction costs; d) to seek higher investment returns when a Derivative Security is priced more **attractively** than the underlying security; e) to index or to hedge risks associated with Fund investments; or **f)** to adjust the market exposure of the asset allocation, including long and short strategies; provided that: i) no leverage is employed in the implementation of such Derivative purchases or sales, ii) no more than 5% of Fund assets are required as an initial margin deposit for such contracts; iii) the Fund’s investments in warrants shall not exceed more than 5% of the Fund’s net assets or 2% with respect to warrants not listed on the New York or American Stock Exchanges. Notwithstanding the above, leverage strategies are permissible within the alternative equities investment class with the approval of the UTIMCO Board, if the investment strategy is uncorrelated to the Fund as a whole, the manager has demonstrated skill in the strategy, the strategy implements systematic risk control techniques, value at risk measures, and pre-defined risk parameters.

- Such Derivative Securities shall be defined to be those instruments whose value is derived, in **whole** or part, from the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to minimize the risk of an illiquid secondary market for a Derivative Security contract and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. The net market value of exposure of Derivative Securities purchased or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index such as MSCI EAFE, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt to reduce any tracking error from the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

UTIMCO shall **minimize** the risk that a party will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less frequently than monthly and where the counterparty is an investment grade credit. UTIMCO also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the counterparty by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.

The Fund may be invested in foreign currency forward and foreign currency futures contracts in order to maintain the same currency exposure as its respective index or to protect against anticipated adverse changes in exchange rates among foreign currencies and between foreign currencies and the U. S. dollar.

Cash and Cash Equivalents

Holdings of cash and cash equivalents may include internal short term pooled investment funds managed by **UTIMCO**.

- Unaffiliated liquid investment **funds** must be approved by the chief investment officer.
- Deposits of the Texas State Treasury.

- Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (**P1** or **P2**) or Standard & Poor's Corporation (**A1** or **A2**).
- Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by **Duff & Phelps**.
- Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by **Duff & Phelps**.
- Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by **Duff & Phelps**.
- Repurchase Agreements shall be collateralized to 102% of their market value marked to market on a daily basis.
- Reverse Repurchase Agreements and their coincident re-investment will be entered into on a matched book basis. The re-investment vehicles for the matched book transactions shall be the same Cash **and** Cash Equivalent instruments listed above. The rules for trading Repurchase Agreements and Reverse Repurchase Agreements shall follow the Public Securities Association standard industry terms.
- Mortgage Backed Securities (MBS) Dollar Rolls shall be executed as matched book transactions in the same manner as Reverse Repurchase Agreements above. As above, the rules for trading MBS Dollar Rolls shall follow the Public Securities Association standard industry terms.

Fixed Income

Holdings of domestic **fixed** income securities shall be limited to those securities a) issued by or **fully guaranteed** by the U. S. Treasury, U. S. Government-Sponsored Enterprises, or U. S. Government Agencies and b) issued by corporations and municipalities. Within this overall limitation:

- Not less than 50% of the market value of domestic fixed income securities shall be invested in direct obligations of the U. S. Treasury.
- Not more than 5% of the market value of domestic fixed income securities may be invested in corporate and municipal bonds of a single issuer provided that such bonds, at the time of purchase are rated, not less than Baa or BBB, or the equivalent, by any two **nationally-recognized** rating services, such as Moody's Investors Service, Standard & Poor's Corporation, or Fitch Investors Service.
- The weighted average maturity of the domestic fixed income portfolio shall be not less than ten years unless approved in advance by the UTIMCO Board.

These guidelines shall not require the sale of any fixed income investments prior to their scheduled maturities unless the credit quality of the fixed income portfolio shall decline below Aa2.

Equities

- The Fund shall:
 - hold no more than 25% of its equity securities in any one industry or industries (as defined by the standard industry classification code and supplemented by other reliable data sources) at market
 - hold no more than 5% of its equity securities in the securities of one corporation at cost unless authorized by the chief investment officer.

Alternative Equities

Investments in alternative equities may be made through management contracts with unaffiliated organizations (including but **not** limited to limited partnerships, trusts, and joint ventures) so long as such organizations:

- possess specialized investment skills
- possess full investment discretion subject to the management agreement
- are managed by principals with a demonstrated record of accomplishment and performance in the investment strategy being undertaken
- align the interests of the investor group with the management as closely as possible
- charge fees and performance compensation which do not exceed prevailing industry **norms** at the time the terms are negotiated.

Investments in alternative equities also may be made **directly** by UTIMCO in co-investment transactions sponsored by and invested in by a management **firm** or partnership in which the Fund **has** invested **prior** to the co-investment or in transactions sponsored by investment **firms** well-known to UTIMCO management, provided that such direct investments shall not exceed 25% of the market value of the alternative assets portfolio at the time of the direct investment.

Members of UTIMCO management, with the approval of the UTIMCO Board, may serve as directors of companies in which UTIMCO has directly invested Fund assets. In such event, any and all compensation paid to UTIMCO management for their services as directors shall be endorsed over to UTIMCO and applied against UTIMCO management fees. Furthermore, UTIMCO Board approval of UTIMCO management's service as a director of an investee company shall **be** conditioned upon the extension of **UTIMCO's** Directors and Officers Insurance Policy coverage to UTIMCO management's service as a director of an investee company.

Fund Distributions

The Fund shall balance the needs and interests of present beneficiaries with those of the future. Fund spending policy objectives shall be to:

- a) provide a predictable, stable stream of distributions over time
- b) ensure that the inflation adjusted value of distributions is maintained over the long-term
- c) ensure that the **inflation** adjusted value of Fund assets **after** distributions is maintained over the long-term.

The goal is for the Fund's average spending rate over time not to exceed the Fund's average annual investment return after inflation in order to preserve the purchasing power of Fund distributions and underlying assets.

The Texas Constitution requires that all dividends, interest and other income earned from Fund investments be distributed to the AUF. At the same time, the Constitution prohibits the distribution of mineral income contributed to the Fund and any realized and unrealized gains earned on such contributions.

UTIMCO shall be responsible for the establishment of the Fund's asset allocation so as to produce an **annual** income distribution that balances the needs of current beneficiaries with those of **future** beneficiaries. The Board explicitly recognizes that the generation of income under the Constitutional provisions governing the Fund is highly dependent upon the level of interest rates over which the UTIMCO Board has no control. It also recognizes that the distribution rate as a percentage of the Fund's assets is above average and that the maintenance of current levels of distributed income reduces the UTIMCO Board's ability to grow income over time.

Fund Accounting

The fiscal year of the Fund shall **begin** on September 1st and end on August 31st. Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, industry guidelines, and state statutes, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

As of the close of business on the last business day of each month, UTIMCO shall determine the fair market value of all Fund net assets. Such valuation of Fund assets shall be based on the bank trust custody agreement in effect at the date of valuation. Valuation of alternative assets shall be determined in accordance with the UTIMCO Valuation Criteria for Alternative Assets.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation. Such valuation shall be **final** and conclusive.

Securities Lending

The Fund may participate in a securities lending contract with a bank or **nonbank** security lending agent for either short-term or long-term purposes of realizing additional income. Loans of securities by the Fund shall be collateralized by cash, letters of credit or securities issued or guaranteed by the U. S. Government or its agencies. The collateral will equal at least 100% of the current market value of the loaned securities. The contract shall state acceptable collateral for securities loaned, duties of the borrower, delivery of loaned securities and collateral, acceptable investment of collateral and indemnification provisions. The contract may include other provisions as appropriate. The securities lending program will be evaluated from time to time as deemed necessary by the UTIMCO Board. Monthly reports issued by the agent shall be reviewed by UTIMCO to insure compliance with contract provisions.

Investor Responsibility

As a shareholder, the Fund has the right to a voice in corporate affairs consistent with those of any shareholder. These include the right and obligation to **vote** proxies in a manner consistent with the unique role and mission of higher education as well as for the economic benefit of the Fund. Notwithstanding the above, the UTIMCO Board shall discharge its fiduciary duties with respect to the Fund solely in the interest of Fund unitholders and shall not invest the Fund so as to achieve temporal benefits for any purpose including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement **as** it deems necessary or advisable.

Effective Date

The effective date of this policy shall be **February 12, 1998**.

**THE UNIVERSITY OF TEXAS SYSTEM
LONG TERM FUND
INVESTMENT POLICY STATEMENT**

Purpose

The Long Term Fund (the "Fund"), succeeded the Common Trust Fund in February, 1995, **and** was established by the Board of Regents of The University of Texas System (the "Board") as a pooled fund for the collective investment of private endowments and other long-term funds supporting various programs of The University of Texas System. The Fund provides for greater diversification of investments than would be possible if each account were managed separately.

Fund Organization

The Fund is organized as a **mutual** fund in which each eligible account purchases and redeems Fund units as provided herein. The ownership of Fund assets shall at all times be vested in the Board. Such assets shall be deemed to be held by the Board, as a fiduciary, regardless of the name in which the assets may be registered.

Fund Management

Ultimate fiduciary responsibility for the Fund rests with the Board. Section 163 of the Property Code authorizes the U. T. Board to delegate to its committees, **officers** or employees of the U. T. System and other agents the authority to act for the U. T. Board in the investment of the Fund. The Fund shall be governed through The University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Fund, b) determine specific asset allocation targets, ranges, and performance benchmarks consistent with Fund objectives, and c) monitor Fund performance against Fund objectives. UTIMCO shall invest the Fund assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Fund's return and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Fund Administration

UTIMCO shall employ an administrative staff to ensure that all transaction and accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of Fund assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Funds Eligible to Purchase Fund Units

No fund shall be eligible to purchase units of the Fund unless it is under the sole control, with full discretion as to investments, by the Board and/or UTIMCO.

Any **fund** whose governing **instrument** contains provisions which conflict with this Policy Statement, whether initially or as a result of amendments to either document, shall not be eligible to purchase or hold units of the **Fund**.

The funds of a foundation which is structured as a supporting organization described in Section 509(a) of the Internal Revenue Code of 1986, which supports the activities of the U. T. System and its component institutions, may purchase units in the Fund provided that:

- A. the purchase of Fund **units** by foundation funds is approved by the chief investment officer
- B. all members of the foundation's **governing** board are also members of the Board
- C. the foundation has the same fiscal year as the Fund
- D. a contract between the **Board** and the foundation has been executed authorizing investment of foundation funds in the Fund
- E. no officer of such foundation, other than members of the Board, the Chancellor, the chief investment officer or his or her delegate shall have any control over the management of the Fund other **than** to request purchase **and** redemption of Fund units.

Fund Investment Objectives

The primary investment objective shall be to preserve the purchasing power of Fund assets and annual distributions by earning an average **annual** total **return** after inflation of 5.5% over rolling ten year periods or longer. The Fund's success in meeting its objectives depends upon its ability to generate high returns in periods of low **inflation** that will offset lower returns generated in years when the capital markets underperform the rate of inflation.

The secondary fund objectives are to generate a fund return in excess of the Policy Portfolio benchmark and the average median return of the universe of the college and university endowments as reported annually by Cambridge Associates **and** NACUBO over rolling **five-**year periods or longer. The Policy Portfolio benchmark will be established by UTIMCO and will be comprised of a blend of asset class indices weighted to reflect Fund's asset allocation policy targets.

Asset Allocation

Asset allocation is the primary determinant of investment performance and, subject to the asset allocation ranges specified herein, is the responsibility of UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment

outlook. Fund assets shall be allocated among the following broad asset classes based upon their individual return/risk characteristics and relationships to other asset classes:

1. Cash Equivalents - are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide good liquidity under both deflation and inflation conditions.
2. Fixed Income Investments - offer the best protection for hedging against the threat of deflation by providing a dependable and predictable source of Fund income. Such bonds should be high quality, and intermediate to long-term duration with reasonable call protection in order to ensure the generation of current income and preservation of nominal capital even during periods of severe economic contraction.
3. Equities - provide both current income and growth of income, but their principal purpose is to provide appreciation of the Fund. Historically, returns for equities have been higher than for bonds over all extended periods. Therefore, equities represent the best chance of preserving the purchasing power of the Fund.
4. Alternative Equities - generally consist of alternative marketable investments and alternative non-marketable investments. Alternative equity investments shall be expected to earn superior equity type returns over extended periods. The advantages of alternative equity investments are that they enhance long-term returns through investment in inefficient, complex markets. They offer reduced volatility of Fund asset values through their characteristics of low correlation with listed equities and fixed income instruments. The disadvantages of this asset class are that they may be illiquid, require higher and more complex fees, and are frequently dependent on the quality of external managers. In addition, they possess a limited return history versus traditional stocks **and** bonds. The risk of alternative equity investments shall be controlled with extensive due diligence and diversification.

Alternative Marketable Equities -

These investments are broadly **defined** to include hedge funds, arbitrage and special situation funds, high yield bonds, distressed debt, market neutral, commodities and other non-traditional investment strategies whose underlying securities are traded on public exchanges or are otherwise readily marketable. As such, they offer faster **drawdown** of committed capital and earlier realization potential than alternative non-marketable investments. Alternative marketable investments may be made through partnerships, but they will generally provide investors with liquidity at least **annually**.

Alternative Non-Marketable Investments -

These investments are held through either limited partnership or as direct ownership interests. They include special equity, mezzanine venture capital, oil and gas, real estate and other investments that are privately held and which are not registered for sale on public exchanges. In partnership form, these investments require a commitment of capital for extended periods of time with no liquidity. They also generally require an extended period of time to achieve targeted investment levels.

Asset Allocation Policy

The asset allocation policy and ranges herein recognize that the Fund's return/risk profile can be enhanced by diversifying the Fund's investments across different types of assets whose returns are not closely correlated. The targets and ranges seek to protect the Fund against both routine illiquidity in normal markets and extraordinary illiquidity during a period of extended deflation.

The long-term asset allocation policy for the Fund must **recognize** that the 5.5% real return objective requires a high allocation to broadly **defined** equities, including domestic, international stocks, and alternative equity investments, of 68% to 90%. The allocation to fixed income investments should therefore not exceed 32% of the Fund.

The Board delegates authority to UTIMCO to establish specific neutral asset allocations and ranges within the broad policy guidelines described above. UTIMCO may establish specific asset allocation targets and ranges for large and small capitalization U. S. stocks, established and emerging market international stocks, marketable and non-marketable alternative equity investments, and other asset classes as well as the specific performance objectives for each asset class. Specific asset allocation policies shall be decided by UTIMCO and reported to the U. T. Board.

Performance Measurement

The investment performance of the Fund will be **measured** by an unaffiliated organization, with recognized expertise in this field and reporting responsibility to the UTIMCO Board, and compared against the stated investment benchmarks of the Fund. Such measurement will occur at least annually, and evaluate the results of the total Fund, major classes of investment assets, and individual portfolios.

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the "Prudent Person Rule."

Investment guidelines include the following:

General

- All investments will be U. S. dollar denominated assets unless held **by** an internal or external portfolio manager with discretion to invest in foreign currency denominated securities.
- Investment policies of any unaffiliated liquid investment fund must be reviewed and approved by the chief investment **officer** prior to investment of Fund assets in such liquid investment fund.
- No securities may be purchased or held which jeopardize the Fund's tax exempt **status**.
- No investment strategy **or program** may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.
- The Fund may utilize Derivative Securities with the approval of the **UTIMCO** Board to; a) simulate the purchase or sale of an underlying market index while retaining a cash balance for fund management purposes; b) to facilitate trading; c) to reduce transaction costs; d) to seek higher investment returns when a Derivative Security is priced more attractively than the underlying security; e) to index or to hedge risks associated with Fund investments; or **f)** to adjust the market exposure of the asset allocation, including long and short strategies; provided that; i) no leverage is employed in the implementation of such Derivative purchases or sales; ii) no more than 5% of Fund assets are required as an initial margin deposit for such contracts; iii) the Fund's investments **in** warrants shall not exceed more than 5% of the Fund's net assets or 2% with respect to warrants not listed on the New York or American Stock Exchanges. **Notwithstanding** the above, leverage strategies are permissible within the alternative equities investment class with the approval of the UTIMCO Board, if the investment **strategy** is uncorrelated to the Fund as a whole, the manager has demonstrated skill in the strategy, the strategy implements systematic risk control techniques, value at risk measures, and **pre-defined** risk **parameters**.
- Such Derivative Securities shall be defined to be those instruments whose value is derived, in whole or part, **from** the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to minimize the risk of an illiquid secondary market for a Derivative Security contract

and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. The net market value of exposure of Derivative Securities purchased or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index such as MSCI EAFE, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt to reduce any tracking error **from** the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

UTIMCO shall minimize the risk that a party will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less frequently than monthly and where the counterparty is an investment grade credit. UTIMCO also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the **counterparty** by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.

The Fund may be invested in foreign currency forward and foreign currency futures contracts in order to maintain the same currency exposure as its respective index or to protect against anticipated adverse changes in exchange rates among foreign currencies and between foreign currencies and the U. S. dollar.

Cash and Cash Equivalents

Holdings of cash and cash equivalents may include internal short term pooled investment funds managed by UTIMCO.

- . **Unaffiliated** liquid investment funds must be approved by the chief investment officer.
- . Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (**P1** or **P2**) or Standard **&** Poor's Corporation (**A1** or **A2**).
- . Negotiable **certificates** of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- . Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff **&** Phelps.
- . Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a **holding** company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff **&** Phelps.

- Repurchase Agreements shall be collateralized to 102% of their market value marked to market on a daily basis.
- . Reverse Repurchase Agreements and their coincident re-investment will be entered into on a matched book basis. The re-investment vehicles for the matched book transactions shall be the same Cash and Cash Equivalent instruments listed above. The **rules** for trading Repurchase Agreements and Reverse Repurchase Agreements shall follow the Public Securities Association standard industry terms.
- . Mortgage Backed Securities (MBS) Dollar Rolls shall be executed as matched book transactions in the same manner as Reverse Repurchase Agreements above. As above, the rules for trading MBS Dollar Rolls shall follow the Public Securities Association standard industry terms.

Fixed Income

Domestic Fixed Income

Holdings of domestic fixed income securities shall be limited to those securities a) issued by or **fully guaranteed** by the U. S. Treasury; U. S. Government-Sponsored Enterprises, or U. S. Government Agencies, and b) issued by corporations and municipalities. Within this overall limitation:

- . Permissible securities for investment include the components of the Lehman Brothers Aggregate Bond Index (LBAGG): investment grade government and corporate securities, agency mortgage pass-through securities, and asset-backed securities. These sectors are divided into more specific sub-indices; 1) Government: Treasury and Agency; 2) Corporate: Industrial, Finance, Utility, and Yankee; 3) Mortgage-backed securities: GNMA, FHLMC, and FNMA; and 4) Asset-backed securities. In addition to the permissible securities listed above, the following securities shall be permissible: a) floating rate securities with periodic coupon changes in market rates issued by the same entities that are included in the LBAGG as issuers of fixed rate securities; b) medium term notes issued by investment grade corporations; c) zero coupon bonds and stripped Treasury and Agency securities created from coupon securities; **and** d) structured notes issued by LBAGG qualified entities.
- U.S. Domestic Bonds must be rated investment grade, Baa3 or better by Moody's Investors Services, BBB+ by Standard & Poor's Corporation, or an equivalent rating by a nationally recognized rating agency at the time of acquisition.
- . Not more than 5% of the market value of domestic fixed income securities may be invested in corporate and municipal bonds of a single issuer provided that such bonds, at the time of purchase, are rated, not less than Baa or BBB, or the equivalent, by any two nationally-recognized rating services, such as Moody's Investors Service, Standard & Poor's Corporation, or Fitch Investors Service.

Non-U.S. Fixed Income

- . Not more than 35% of the Fund's fixed income portfolio may be invested in **non-** U. S. dollar bonds. Not more than 15% of the Fund's fixed income portfolio may be invested in bonds denominated in any one currency.
- Non-dollar bond investments shall be restricted to bonds rated equivalent to the same credit standard as the U.S. Fixed Income Portfolio.
- . Not more than 7.5% of the Fund's **fixed** income portfolio may be invested in Emerging Market debt.
- International currency exposure may be hedged or unhedged at **UTIMCO's** discretion or delegated by **UTIMCO** to an external investment manager.

Equities

I. The Fund shall:

- A. hold no more than 25% of its equity securities in any one industry or industries (as defined by the standard industry classification code and supplemented by other reliable data sources) at market
- B. hold no more than 5% of its equity securities in the securities of one corporation at cost unless authorized by the chief investment **officer**.

Alternative Assets

Investments in alternative assets may be made through management contracts with unaffiliated organizations (including but not limited to limited partnerships, trusts, and joint ventures) so long as such organizations:

- II. possess specialized investment skills
- III. possess full investment discretion subject to the management agreement
- IV. are managed by principals with a demonstrated record of accomplishment and performance in the investment strategy being undertaken
- V. align the interest⁹ of the investor group with the management as closely as possible
- VI. charge fees and performance compensation which do not exceed prevailing industry norms at the time the terms are negotiated.

Investments in alternative assets also may be made directly by **UTIMCO** in co-investment transactions sponsored by and invested in by a management **firm** or partnership in which the Fund has invested prior to the co-investment or in transactions sponsored by investment **firms** well known to **UTIMCO** management, provided that such direct investments shall not exceed 25% of the market value of the alternative assets portfolio at the time of the direct investment.

Members of UTIMCO management, with the approval of the UTIMCO Board, may serve as directors of companies in which UTIMCO has directly invested Fund assets. In such event, any and all compensation paid to UTIMCO management for their services as directors shall be endorsed over to UTIMCO and applied against UTIMCO management fees. Furthermore, UTIMCO Board approval of UTIMCO management's service **as** a director of an investee company shall be conditioned upon the extension of **UTIMCO's** Directors and **Officers** Insurance Policy coverage to UTIMCO management's service **as** a director of an investee company.

Fund Distributions

The Fund shall balance the needs and interests of present beneficiaries with those of the future. Fund spending policy objectives shall be to:

- a) provide a predictable, stable stream of distributions over time
- b) ensure that the **inflation** adjusted value of distributions is maintained over the long-term
- c) ensure that the inflation adjusted value of Fund assets after distributions is maintained over the long-term.

The goal is for the Fund's average spending rate over time not to exceed the Fund's average **annual** investment return after **inflation** in order to preserve the purchasing power of Fund distributions and underlying assets.

Pursuant to the Uniform Management of Institutional Funds Act, a governing board may distribute, for the uses and purposes for which the **fund** is established, the net realized **appreciation** in the fair market value of the assets of an endowment **fund** over the historic dollar value of the fund to the extent prudent under the standard provided by the Act. In addition, income may be distributed for the purposes associated with the endowments/foundations.

UTIMCO shall be responsible for establishing the Fund's distribution percentage and determining the equivalent per unit rate for any given year. Unless otherwise established by UTIMCO and approved by the Board or prohibited by the Act, fund distributions shall be based on the following criteria:

The **annual** unit distribution amount shall be adjusted **annually** based on the following formula:

- A. Increase the prior year's per unit distribution amount (cents per unit) by the average **inflation** rate (C.P.I.) for the previous twelve quarters. This will be the per unit distribution amount for the next fiscal year. This amount may be rounded to the nearest **\$.0005** per unit.

- B. If the inflationary increase in Step A. results in a distribution rate below **3.5%**, (computed by taking the proposed distribution amount per unit divided by the previous twelve quarter average market value price per unit) the UTIMCO Board, at its sole discretion, may grant an increase in the distribution amount as long as such increase does not result in a distribution rate of more than 4.5%.
- C. If the distribution rate exceeds **5.5%**, (computed by taking the proposed distribution amount per unit divided by the previous twelve quarter average market value price per unit) the UTIMCO Board at its sole discretion, may reduce the per unit distribution amount.

Notwithstanding any of the foregoing provisions, the Board of Regents may approve a per unit distribution amount that, in their judgment, would be more appropriate than the rate calculated by the policy provisions.

Distributions **from** the Fund to the unitholders shall be made quarterly as soon as practicable on or after the last business day of November, February, May, and August of each fiscal year.

Fund Accounting

The fiscal year of the Fund shall begin on September 1st and end on August 31st. Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, or industry guidelines, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

As of the close of business on the last business day of each month, UTIMCO shall determine the fair market value of all Fund net assets and the net asset value per unit of the Fund. Such valuation of Fund assets **shall** be based on the bank trust custody agreement in effect at the date of valuation. Valuation of alternative assets shall be determined in accordance with the UTIMCO Valuation Criteria for Alternative Assets.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation date and the value of each unit thereof shall be its proportionate part of such net value. Such valuation shall be **final** and conclusive.

Purchase of Fund Units

Purchase of Fund units may be made on any quarterly purchase date (September 1, December 1, March 1, and June 1 of each fiscal year or the first business day subsequent thereto) upon payment of cash to the Fund or contribution of assets approved by the chief investment officer, at the net asset value per unit of the Fund as of the most recent quarterly valuation date.

In order to permit complete investment of funds and to avoid **fractional** units, any purchase amount will be assigned a whole number of units in the Fund based on the appropriate per unit value of the Fund. Any fractional amount of purchase funds which exceeds the market value of the units assigned will be transferred to the Fund but no units shall be issued. Each fund whose monies are invested in the Fund shall own an undivided interest in the Fund in the proportion that the number of units invested therein bears to the total number of all units comprising the Fund.

Redemption of Fund Units

Redemption of Units shall be paid in cash **as** soon as practicable **after** the quarterly valuation date of the Fund. If the withdrawal is greater than \$10 million, advance notice of 30 business days shall be **required** prior to the quarterly **valuation** date. If the withdrawal is for less than \$10 million, advance notice of five business days shall be required prior to the quarterly valuation date. If the aggregate amount of redemptions requested on any redemption date is equal to or greater than 10% of **the** Fund's net asset value, the Board may redeem the requested units in installments **and** on a pro-rata basis over a reasonable period of time that takes into consideration **the** best interests of all Fund unitholders. Withdrawals from the Fund shall be at the market value price per unit determined for the period of the withdrawal except as follows: withdrawals to correct administrative errors shall be calculated at the per unit value at the time the error occurred. To be considered an administrative error, the contribution shall have been invested in the Fund for a period less than or equal to one year determined **from** the date of the contribution to the Fund. This provision does not apply to transfer of units between endowment unitholders.

Securities Lending

The Fund may participate in a securities lending contract with a bank or **nonbank** security lending agent for either short-term or long-term purposes of realizing additional income. Loans of securities by the Fund shall be **collateralized** by cash, letters of credit, or securities issued or guaranteed by the U. S. Government or its agencies. The collateral will equal at least 100% of the current market value of the loaned securities. The contract shall state acceptable collateral for securities loaned, duties of the borrower, delivery of loaned securities and collateral, acceptable investment of collateral and indemnification provisions. The contract may include other provisions as appropriate. The securities lending program will be evaluated **from** time-to-time **as** deemed necessary by the UTIMCO Board. Monthly reports issued by the agent shall be reviewed by UTIMCO to insure compliance with contract provisions.

Investor Responsibility

As a shareholder, the Fund has the right to a voice in corporate affairs consistent with those of any shareholder. These include the right and obligation to vote proxies in a manner consistent with the unique role **and** mission of higher education as well as for the economic benefit of the Fund. Notwithstanding the above, the **UTIMCO** Board shall discharge its

fiduciary duties with respect to the Fund solely in the interest of Fund unitholders and shall not invest the Fund so **as** to achieve temporal benefits for any purpose including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February **12, 1998**.

THE UNIVERSITY OF TEXAS SYSTEM SHORT/INTERMEDIATE TERM FUND INVESTMENT POLICY STATEMENT

Purpose

The Short/Intermediate Term Fund (the "Fund"), was established by the Board of Regents of The University of Texas System (the "U. T. Board) as a pooled fund for the collective investment of operating funds and other short and intermediate term funds held by U. T. System component institutions and System Administration with an investment horizon greater than one year.

Fund Organization

The Fund is organized as a mutual fund in which each eligible account purchases and redeems Fund units as provided herein. **The** ownership of Fund assets shall at all times be vested in the Board. Such assets shall be deemed to be held by the Board, as a fiduciary, regardless of the name in which the assets may be registered.

Fund Management

Ultimate fiduciary responsibility for the Fund rests with the Board. Section 163 of the Property Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in the investment of the Fund. The Fund shall be governed through **The** University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Fund, b) determine specific asset allocation targets, ranges and performance benchmarks consistent with Fund objectives, and c) monitor Fund performance against Fund objectives. UTIMCO shall invest the Fund assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Fund's **return** and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Fund Administration

UTIMCO or its agent shall employ an administrative **staff** to ensure that all transaction and accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of Fund assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Funds Eligible to Purchase Fund Units

No fund shall be eligible to purchase units of the Fund unless it is under the sole control, with full discretion as to investments, by the Board and/or UTIMCO.

Any **fund** whose governing instrument contains provisions which conflict with this Policy Statement, whether initially or as a result of amendments to either document, shall not be eligible to purchase or hold units of the Fund.

The funds of a foundation which is structured as a supporting organization described in Section 509(a) of the Internal Revenue Code of 1986 which supports the activities of the U. T. System and its component institutions, may purchase units in the Fund provided that:

- A. the purchase of Fund units by foundation funds is approved by the chief investment officer
- B. all members of the foundation's governing board are also members of the Board
- C. the foundation has the same fiscal year as the Fund
- D. a contract between the Board and the foundation has been executed authorizing investment of foundation funds in the Fund
- E. no **officer** of such foundation, other than members of the Board, the Chancellor, the chief investment **officer** or his or her delegate shall have any control over the management of the Fund other than to request purchase and redemption of Fund units.

Fund Investment Objectives

The primary investment objective shall be to provide both income through investment in high grade **fixed** income and floating rate obligations and capital appreciation when consistent with income generation, reasonable preservation of capital and maintenance of adequate Fund liquidity. In seeking to achieve its objectives, the Fund shall attempt to minimize the probability of a negative total return over a **one-**year period. Within the exposure limits contained herein, investments shall be diversified among authorized asset classes and issuers (excluding the U. S. Government) in order to minimize portfolio risk for a given level of expected return.

Achievement of this objective shall be defined by a fund return in excess of the Policy Portfolio benchmark and the average return of the median manager of the **MorningStar** universe of government bond funds restricted to an average maturity of less than or equal to three years. The Policy Portfolio benchmark will be established by UTIMCO and will be comprised of a blend of asset class indices weighted to reflect Fund asset allocation policy targets.

Asset Allocation

Asset allocation is the primary determinant of investment performance and subject to the asset allocation ranges specified herein is the responsibility of UTIMCO. Specific asset allocation targets may be changed **from** time to time based on the economic and investment outlook.

Fund assets shall be allocated among the following broad asset classes based upon their individual return/risk characteristics and relationships to other asset classes:

1. Cash and Cash Equivalents ▪ are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide the best combination of income and liquidity under both deflation and **inflation** conditions.
2. Fixed Income Investments ▪ offer predictable income streams without the remarketing risk often associated with cash and cash equivalents.
3. Floating rate securities ▪ offer protection from unanticipated inflationary pressures.

Asset Allocation Policy

The asset allocation policy and ranges herein seek to protect the Fund against illiquidity in both normal and extraordinary markets.

The Board delegates authority to UTIMCO to establish specific asset allocation targets and ranges within the broad policy guidelines described above. UTIMCO may establish specific asset allocation targets and ranges for or within the asset classes listed above as well as the specific performance objectives for each asset class. Specific asset allocation policies shall be decided by UTIMCO and reported to the Board.

Performance Measurement

The investment performance of the Fund will be measured by an unaffiliated organization, with recognized expertise in this field and reporting responsibility to the UTIMCO Board, and compared against the **stated** investment objectives of the Fund. Such **measurement** will occur at least **annually**, and evaluate the results of the total Fund, major classes of investment assets, and individual portfolios.

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the “Prudent Person Rule.”

Investment guidelines include the following:

General

- . All investments will be U. S. dollar denominated assets unless held by an internal or external portfolio manager with discretion to invest in foreign currency denominated securities.
- . Investment policies of any unaffiliated liquid investment fund must be reviewed and approved by the chief investment **officer** prior to investment of Fund assets in such liquid investment fund.
- . No securities may be purchased or held which would jeopardize the Fund's tax-exempt status.
- . No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- . No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.
- . The Fund may utilize Derivative Securities with the approval of the UTIMCO Board to; a) simulate the purchase or sale of an underlying market index **while** retaining a cash balance for fund management purposes; b) to facilitate trading; c) to reduce transaction costs; d) to seek higher investment returns when a Derivative Security is priced more attractively than the underlying security; e) to index or to hedge risks associated with Fund investments; or **f)** to adjust the market exposure of the asset allocation, including long and short strategies; provided that; i) no leverage is employed in the implementation of such Derivative purchases or sales; ii) no more than 5% of Fund assets are required as an initial margin deposit for such contracts; iii) the Fund's investments in warrants shall not exceed more than 5% of the Fund's net assets or 2% with respect to warrants not listed on the New York or American Stock Exchanges.
- . Such Derivative Securities shall be defined to be those instruments whose value is derived, in whole or part, **from** the value of any one or more underlying assets, or index of assets (such **as** stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to minimize the risk of an illiquid secondary market for a Derivative Security contract and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. The net market

value of exposure of Derivative Securities **purchased** or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt to reduce any tracking error from the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

- UTIMCO shall minimize the risk that a party will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less frequently than monthly and where the counterparty is an investment grade credit. UTIMCO also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the counterparty by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.

The Fund may be invested in foreign currency forward and foreign currency futures contracts in order to maintain the same currency exposure as its respective index or to protect against anticipated adverse changes in exchange rates among foreign currencies and between foreign currencies and the U. S. dollar.

- The option adjusted duration of the portfolio shall be not less than one and not more than four years unless approved in advance by the UTIMCO Board.

Cash and Cash Equivalents

Holdings of cash and cash equivalents may include internal short term pooled investment **funds** managed by UTIMCO.

- **Unaffiliated** liquid investment funds must be approved by the chief investment officer.
- Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (P1 or P2) or Standard & Poor's Corporation (A1 or A2).
- Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.
- Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company

meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff& Phelps.

Fixed Income

Holdings of domestic fixed income securities shall be limited to those securities issued by or fully guaranteed by the U. S. Treasury, U. S. Government-Sponsored Enterprises, or U. S. Government Agencies.

Fund Distributions

Distributions of income from the Fund to the unitholders shall be made as soon as practicable on or after the last day of each month.

Fund Accounting

The fiscal year of the Fund shall begin on September 1 **st** and end on August 31 **st**. Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, or industry guidelines, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

UTIMCO shall determine the fair market value of all Fund net assets and the net asset value per unit of the Fund no less than once a week and on the last business day of each month. Such valuation of Fund assets shall be based on the bank trust custody agreement in effect at the date of valuation.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation date and the value of each unit thereof shall be its proportionate part of such net value. Such valuation shall be final and conclusive.

Purchase of Fund Units

Purchase of Fund units may be made no less than once a week and on the last business day of each **month** upon payment of cash to the Fund or contribution of assets approved by the chief investment **officer**, at the net asset value per unit of the Fund as of the most recent weekly or end of month valuation date.

Each fund whose monies are invested in the Fund shall own an undivided interest in the Fund in the proportion that the number of units invested therein bears to the total number of all units comprising the Fund.

Redemption of Fund Units

Redemption of Units **shall** be paid in **cash as** soon as practicable **after** the most recent weekly or end of month valuation date of the Fund.

Securities Lending

The Fund may not participate in a securities lending contract with a bank or **nonbank** security lending agent.

Investor Responsibility

The UTIMCO Board shall discharge its fiduciary duties with respect to the Fund solely **in** the interest of Fund unitholders and shall not invest the Fund so as to achieve temporal benefits for any purpose including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February **12, 1998**.

**THE UNIVERSITY OF TEXAS SYSTEM
SHORT TERM FUND
INVESTMENT POLICY STATEMENT**

Purpose

The Short Term Fund (the "Fund") was established by the Board of Regents of The University of Texas System (the "U. T. Board") as a pooled fund for the collective investment of operating funds and other short and intermediate term **funds** held by U. T. System component institutions and System Administration with an investment horizon less than one year.

Fund Organization

The Fund is organized as a mutual fund in which each eligible account purchases and redeems **Fund** units as provided herein. The ownership of Fund assets shall at **all** times be vested in the Board. Such assets shall be deemed to be held by the Board, as a fiduciary, regardless of the name in which the assets may be registered.

Fund Management

Ultimate fiduciary responsibility for the Fund rests with the Board. Section 163 of the Property Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in the investment of the Fund. The Fund shall be governed through The University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Fund, b) determine specific asset allocation targets, ranges and performance benchmarks consistent with Fund objectives, and c) monitor Fund performance against Fund objectives. UTIMCO shall invest the Fund assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Fund's **return** and risk characteristics. **Such** managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Fund Administration

UTIMCO or its agent shall employ an administrative **staff to** ensure that all transaction and accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties **and** adequacy of an audit trail. Custody of Fund assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Funds Eligible to Purchase Fund Units

No fund shall be eligible to purchase units of the Fund unless it is under the sole control, with full discretion as to investments, by the Board and/or UTIMCO.

Any **fund** whose governing instrument contains provisions which conflict with this Policy Statement, whether initially or as a result of amendments to either document, shall not be eligible to purchase or hold units of the Fund.

The funds of a foundation which is structured as a supporting organization described in Section 509(a) of the Internal Revenue Code of 1986 which supports the activities of the U. T. System and its component institutions, may purchase units in the Fund provided that:

- A. the purchase of Fund units by foundation funds is approved by the chief investment **officer**
- B. all members of the foundation's governing board are also members of the Board
- C. the foundation has the same fiscal year as the Fund
- D. a contract between the Board and the foundation has been executed authorizing investment of foundation **funds** in the Fund
- E. no officer of such foundation, other than members of the Board, the Chancellor, the chief investment **officer** or his or her delegate shall have any control over the management of the Fund other than to request purchase and redemption of Fund units.

Fund Investment Objectives

The primary investment objective shall be to maximize current income consistent with the absolute preservation of capital and maintenance of adequate Fund liquidity. The Fund shall seek to maintain a net asset value of \$1 .00.

Achievement of this objective shall be defined as a fund return in excess of the average gross return of the median manager of the Donoghue's universe of institutional only money market funds.

Asset Allocation

Asset allocation is the primary determinant of investment performance and subject to the asset allocation ranges specified herein is the responsibility of UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment outlook.

Fund assets shall be allocated among the following broad asset class:

Cash and Cash Equivalents • are highly reliable in protecting the purchasing power of current income streams but historically have not provided a reliable return in excess of inflation. Cash equivalents provide the best combination of income and liquidity under both deflation and **inflation** conditions.

Performance Measurement

The investment performance of the Fund will be measured by an **unaffiliated** organization, with recognized expertise in this field and reporting responsibility to the UTIMCO Board, and compared against the stated investment objectives of the Fund. Such measurement will occur at least **annually**, and evaluate the results of the total Fund, major classes of investment assets, and individual portfolios.

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the “Prudent Person Rule.”

Investment guidelines include the following:

General

- All investments will be U. S. dollar denominated assets.
- Investment policies of any **unaffiliated** liquid investment fund must be reviewed and approved by the chief investment officer prior to investment of Fund assets in such liquid investment fund.
- No securities may be purchased or held which would jeopardize the Fund’s tax-exempt status.
- No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- No investment strategy or program employing short sales may be made unless specifically **authorized** by the UTIMCO Board.
- The **Fund** may utilize Derivative Securities with the approval of the UTIMCO Board to; a) simulate the purchase or sale of an underlying market index while retaining a cash balance for fund management purposes; b) to facilitate trading; c) to reduce transaction costs; d) to seek higher investment returns when a Derivative Security is priced more attractively than the underlying security; e) to index or to hedge risks associated with Fund investments; or f) to adjust the market exposure of the asset allocation, including long and short strategies; provided that; i) no leverage is employed in the implementation of such Derivative purchases or sales; ii) no more than 5% of Fund assets are required

as an initial margin deposit for such contacts; iii) the Fund's investments in warrants shall not exceed more than 5% of the Fund's net assets or 2% with respect to **warrants** not listed on the New York or American Stock Exchanges. Such Derivative Securities shall be defined to be those instruments whose value is derived, in whole or part, from the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) **and** evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to minimize the risk of an illiquid secondary market for a Derivative Security contract and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. Derivative Securities purchased or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt to reduce any tracking error from the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

UTIMCO shall minimize the risk that a **party** will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less **frequently** than monthly and where the counterparty is an investment grade credit. UTIMCO also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the counterparty by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.

The Fund may be invested in foreign currency forward and foreign currency futures contracts in order to maintain the same currency exposure as its respective index or to protect against anticipated adverse changes in exchange rates among foreign currencies and between foreign currencies and the U. S. dollar.

The **weighted** average maturity of the portfolio shall not be more than 90 days. Individual securities shall have a remaining maturity not longer than 397 days.

Cash and Cash Equivalents

- . Unaffiliated liquid investment funds must be approved by the chief investment **officer**.
- . Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (P1 or P2) or Standard & Poor's Corporation (A1 or A2).
- . Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- . Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.
- . Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- . The weighted average maturity of the portfolio shall be not be more than 90 days. Individual securities shall have a remaining maturity not longer than 397 days. The maturity of a portfolio security shall be deemed to be the period **remainin**g (calculated from the trade date or such other date on which the Fund's interest in the security is subject to market action) until the date noted on the face of the security as the date on which the principal amount must be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except that a) a variable rate security, the principal amount of which is scheduled on the face of the security to be paid in 397 days or less, shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate; b) a variable rate security that is subject to a demand feature shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand, c) a floating rate security that is subject to a demand feature shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand; d) a repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where no date is specified, but the agreement is subject to a demand, the notice period applicable to a demand for the repurchase of the securities. A demand feature shall mean a put that entitles the holder to receive the principal amount of the underlying security or securities and that may be exercised either at any time on no more than 30

days notice or at specified intervals not exceeding 397 days and upon no more than 30 days notice.

Fund Distributions

Distributions of income from the Fund to the unitholders shall be made as soon as practicable on or after the last day of each month.

Fund Accounting

The fiscal year of the Fund shall begin on September 1st and end on August 31st. Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, or industry guidelines, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

As of the close of business on each business day, UTIMCO shall determine the fair market value of all Fund net assets. Such valuation of Fund assets shall be based on the bank trust custody agreement in effect at the date of valuation.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation date **and** the value of each unit thereof shall be its proportionate part of such net value. Such valuation shall be final and conclusive.

Purchase of Fund Units

Purchase of Fund units may be made on each business day upon payment of cash to the Fund or contribution of assets approved by the chief investment officer, at \$1 .00 per unit of the Fund as of the most recent valuation date.

Each fund whose monies are invested in the Fund shall own **an** undivided interest in the Fund in the proportion that the number of units invested therein bears to the total number of all units comprising the Fund.

Redemption of Fund Units

Redemption of Units may be made on each business day at \$1 .00 per unit.

Securities Lending

The Fund may not participate in a securities lending contract with a bank or **nonbank** security lending agent.

Investor Responsibility

The **UTIMCO** Board shall discharge its fiduciary duties with respect to the Fund solely in the interest of Fund unitholders and shall not invest the Fund so as to achieve temporal benefits for any purpose, including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of **this policy** shall be February 12, 1998.

THE **UNIVERSITY** OF TEXAS SYSTEM
**SEPARATELY INVESTED ENDOWMENT, TRUST, AND OTHER
ACCOUNTS INVESTMENT POLICY STATEMENT**

Purpose

The Separately Invested Endowment, Trust, and Other Accounts are Accounts established in the name of the Board of Regents of The University of Texas System (the "Board") as trustee, and are Accounts which are not invested in one of the pooled investment vehicles. These Accounts are not invested in the pooled investment vehicle because a) they are charitable trusts; b) of investment restrictions incorporated into the endowment document; c) of inability to sell the gifted investment asset; or d) they are assets being migrated upon liquidation into a pooled investment vehicle.

Investment Management

Ultimate fiduciary responsibility for the assets of the Accounts rests with the Board. Section 163 of the Property Code authorizes the U. T. Board to delegate to its committees, officers or employees of the U. T. System and other agents the authority to act for the U. T. Board in the investment of the institutional assets for the Account (endowment and operating accounts). The applicable trust instrument will apply to the management of trust investments. The assets for the Account shall be governed through The University of Texas Investment Management Company ("UTIMCO") which shall a) recommend investment policy for the Accounts, b) determine specific asset allocation targets, ranges and performance benchmarks consistent with the Account objectives, and if appropriate c) monitor the Account's performance against Account objectives. UTIMCO shall invest the Account's assets in conformity with investment policy.

Unaffiliated investment managers may be hired by UTIMCO to improve the Account's return and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

Account Administration

UTIMCO shall employ an administrative **staff to** ensure that all transaction and Accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of assets in the Account shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Investment Objectives

Endowment Accounts-The primary investment objective shall be to invest the Account in assets that comply with the terms of the applicable endowment agreement, taking into consideration the investment time horizon of the Account.

Trust Accounts-Trust Accounts are defined as either Foundation Accounts or Charitable Trusts (Charitable Remainder Unitrusts (**CRUT**), Charitable Remainder Annuity Trusts (**CRAT**), Pooled Income Funds (PIF), Charitable Trusts (CT), or Charitable Lead Trusts (CLT)). The Board recognizes that the investment objective of a trust is dependent on the terms and conditions as defined in the trust document of each trust. The conditions that will affect the investment strategy are a) the trust payout provisions; b) the ages of the income beneficiaries; c) the ability to sell the gifted assets that were contributed to the trust; d) and consideration to investment preferences of the income beneficiaries. Taking these conditions into consideration, the fundamental investment objectives of the trust will be to generate a low to moderate growth in trust principal and to provide adequate liquidity in order to meet the payout provisions of the trust.

Operating Accounts- These are separately invested securities of component institutions' operating funds that were purchased prior to the creation of the **S/ITF**. These securities are guaranteed by the government or federally sponsored agencies. Once these securities mature, the component institutions have the option to invest them in one of the pooled investment fund vehicles.

Asset Allocation

Asset allocation is **the primary** determinant of investment performance and subject to the asset allocation ranges specified by UTIMCO. Specific asset allocation targets may be changed from time to time based on the economic and investment outlook.

If appropriate, the Account's assets shall be allocated among the following broad asset classes based upon their individual return/risk characteristics and relationships to other asset classes:

1. **Cash Equivalents** - are highly reliable in protecting the purchasing power of current **income** streams but historically have not provided a reliable return in excess **of inflation**. Cash equivalents provide good liquidity under both deflation and inflation conditions.
2. **Fixed Income Investments** - offer the best protection for hedging against the threat of deflation by providing a dependable and predictable source of income for the Account. Such bonds should be high quality, with reasonable call protection in order to ensure the generation of current income and

preservation of nominal capital even during periods of severe economic contraction. This classification shall include fixed income mutual funds.

3. Equities - provide both current income and growth of income, but their principal purpose is to provide appreciation for the Account. Historically, returns for equities have been higher than for bonds over all extended periods. Therefore, equities represent the best chance of preserving the purchasing power of the Account. This classification shall include equity mutual funds.

Variable Annuities- These are insurance contracts purchased on the life or lives of the income beneficiaries and for which the funds underlying the contract are invested in various mutual funds which offer diversification of the Account's assets. These contracts offer some downside market risk protection in case of the income beneficiary's death in the early years of the contract. These investment assets are only appropriate for the charitable remainder trusts.

Asset Allocation Policy

The asset allocation policy and ranges for each trust or endowment herein is dependent on the terms and conditions of the endowment or trust document. If possible, the Account's assets shall be diversified among different types of assets whose returns **are not** closely correlated in order to enhance the return/risk profile of the Account.

The Board delegates authority to UTIMCO to establish specific asset allocation targets and ranges for each trust or endowment Account.

Performance Measurement

The investment performance of the actively managed Accounts, where cost effective, will be calculated and evaluated **annually**.

Investment Guidelines

The Accounts must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the "Prudent Person Rule."

Investment guidelines include the following:

General

- . All investments will be U. **S.** dollar denominated assets unless held by an internal or external portfolio manager with discretion to invest in foreign currency denominated securities.

- Investment policies of any unaffiliated liquid investment Fund must be **reviewed and** approved by the chief investment officer prior to investment of Account's assets in such liquid investment Fund.
- . No securities may be purchased or held which would jeopardize, if applicable, the Account's tax-exempt status.
- . No investment strategy or program may purchase securities on margin or use leverage unless specifically authorized by the UTIMCO Board.
- . No investment strategy or program employing short sales may be made unless specifically authorized by the UTIMCO Board.
- . The Fund may utilize Derivative Securities with the approval of the UTIMCO Board to; a) simulate the purchase or sale of an underlying market index while retaining a cash **balance** for fund management purposes; b) to facilitate trading; c) to reduce transaction costs; d) to seek higher investment returns when a Derivative Security is priced more attractively than the underlying security; e) to index or to hedge risks associated with Fund investments; or f) to adjust the market exposure of the asset allocation, including long and short strategies; provided that; i) no leverage is employed in the implementation of such Derivative purchases or sales; ii) no more than 5% of Fund assets are required as an initial margin deposit for such contracts; iii) the Fund's investments in warrants shall not exceed **more** than 5% of the Fund's net assets or 2% with respect to warrants not listed on the New York or American Stock Exchanges.
- . Such Derivative Securities shall be defined to be those instruments whose value is derived, in whole or part, from the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts.

UTIMCO shall attempt to minimize the risk of an imperfect correlation between the change in market value of the securities held by the Fund and the prices of Derivative Security investments by investing in only those contracts whose behavior is expected to resemble that of the Fund's underlying securities. UTIMCO also shall attempt to minimize the risk of an illiquid secondary market for a Derivative Security contract and the resulting inability to close a position prior to its maturity date by entering into such transactions on an exchange with an active and liquid secondary market. The net market value of exposure of Derivative Securities purchased or sold over the counter may not represent more than 15% of the net assets of the Fund.

In the event that there are no Derivative Securities traded on a particular market index, the Fund may utilize a composite of other Derivative Security contracts to simulate the performance of such index. UTIMCO shall attempt

to reduce any tracking error from the low correlation of the selected Derivative Securities with its index by investing in contracts whose behavior is expected to resemble that of the underlying securities.

UTIMCO shall minimize the risk that a party will default on its payment obligation under a Derivative Security agreement by entering into agreements that mark to market no less frequently than monthly and where the counterparty is an investment grade credit. **UTIMCO** also shall attempt to mitigate the risk that the Fund will not be able to meet its obligation to the counterparty by investing the Fund in the specific asset for which it is obligated to pay a return or by holding adequate short-term investments.

The Fund may be invested in foreign currency forward and foreign currency futures contracts in order to maintain the same currency exposure as its respective index or to protect against anticipated adverse changes in exchange rates among foreign currencies and between foreign currencies and the U. S. dollar.

Cash and Cash Equivalents

Holdings of cash and cash equivalents may include internal short term pooled investment funds managed by UTIMCO.

- Unaffiliated **liquid** investment funds must be approved by the chief investment officer.
- Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (**P1** or P2) or Standard & Poor's Corporation (A1 or A2).
- Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.
- Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
- Repurchase Agreements shall be collateralized to 102% of their market value marked to market on a daily basis.
- Reverse Repurchase Agreements and their coincident re-investment will be entered into on a matched book basis. The re-investment vehicles for the matched book transactions shall be the same Cash and Cash Equivalent

instruments listed above. The rules for trading Repurchase Agreements and Reverse Repurchase Agreements shall follow the Public Securities Association standard industry terms.

Mortgage Backed Securities (MBS) Dollar Rolls shall be executed as matched book transactions in the same manner as Reverse Repurchase Agreements above. As above, the rules for trading MBS Dollar Rolls shall follow the Public Securities Association standard industry terms.

Fixed Income

Domestic Fixed Income

Holdings of domestic fixed income securities shall be limited to those securities a) issued by or fully guaranteed by the U. S. Treasury, U. S. Government-Sponsored Enterprises, or U. S. Government Agencies, and b) issued by corporations and municipalities. Within this overall limitation:

- Permissible securities for investment include the components of the **Lehman** Brothers Aggregate Bond Index (LBAGG): investment grade government and corporate securities, agency mortgage pass-through securities, and asset-backed securities. These sectors are divided into more specific sub-indices; 1) Government: Treasury **and** Agency; 2) Corporate: Industrial, Finance, Utility, and Yankee; 3) Mortgage-backed securities: GNMA, FHLMC, and **FNMA**; and 4) Asset-backed securities. In addition to the permissible securities listed above, the following securities shall be permissible: a) floating rate securities with periodic coupon changes in market rates issued by the same entities that are included in the LBAGG as issuers of **fixed** rate securities; b) medium term notes issued by investment grade corporations; c) zero coupon bonds and stripped Treasury and Agency securities created from coupon securities; and d) structured notes issued by LBAGG qualified entities.
- U.S. Domestic Bonds must be rated investment grade, Baa3 or better by Moody's Investors Services, BBB+ by Standard **&** Poor's Corporation, or an equivalent rating by a nationally recognized rating agency at the time of acquisition.
- Not more than 5% of the market value of domestic fixed income securities may be invested in corporate and municipal bonds of a single issuer provided that such bonds, at the time of purchase, are rated, not less than Baa or BBB, or the equivalent, by any two nationally-recognized rating services, such as Moody's Investors Service, Standard **&** Poor's Corporation, Fitch Investors Service.

Non-U.S. Fixed Income

- Not more than 35% of the Funds fixed income portfolio may be invested in non-U. S. dollar bonds. Not more than 15% of the Fund's fixed income portfolio may be invested in bonds denominated in any one currency.

- Non-dollar bond investments shall be restricted to bonds rated equivalent to **the same** credit standard as the U.S. Fixed Income Portfolio.
- Not more than 7.5% of the Fund's **fixed** income portfolio may be invested in Emerging Market debt.
- International currency exposure may be hedged or unhedged at **UTIMCO's** discretion or delegated by UTIMCO to an external investment manager.

Distributions

Distributions of income or amounts **from** the Accounts to the beneficiaries shall be made as soon as practicable, either a) based on the terms of the trust instrument; b) following the fiscal quarter end for endowments; c) on or after the last day of the month for operating Accounts.

Accounting

The fiscal year of the Accounts shall begin on September 1 st and end on August 3 1 st. Trusts will also have a tax year end which may be different than August 3 1 st. Market value of the Accounts shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, industry guidelines, or federal income tax laws, whichever is applicable. Significant asset write-offs or write-downs shall be approved by the chief investment officer and reported to the UTIMCO Board.

Valuation of Assets

As of the close of business for each month, UTIMCO shall determine the fair market value of all assets in the Accounts. Such valuation of assets shall be based on the bank trust custody agreement in effect or other external source if not held in the bank custody account at the date of valuation.

Securities Lending

The Account may participate in a securities lending contract with a bank or **nonbank** security lending agent for either short-term or long-term purposes of realizing additional income. Loans of securities by the Accounts shall be collateralized by cash, letters of credit or securities issued or guaranteed by the U. S. Government or its agencies. The collateral will equal at least 100% of the current market value of the loaned securities. The contract shall state acceptable collateral for securities loaned, duties of the borrower, delivery of loaned securities and collateral, acceptable investment of collateral and indemnification provisions. The contract may include other provisions as appropriate. The securities **lending** program will be evaluated from time to time as deemed necessary by the UTIMCO Board. Monthly reports issued by the agent shall be reviewed by UTIMCO to insure compliance with contract provisions.

Investor Responsibility

As a shareholder, the Account has the right to a voice in corporate affairs consistent with those of any shareholder. These include the right and obligation to vote proxies in a manner consistent with the unique role and mission of higher education as well as for the economic benefit of the Account. Notwithstanding the above, the UTIMCO Board shall discharge its fiduciary duties with respect to the Account solely in the interest of the beneficiaries and shall not invest the Account so as to achieve temporal benefits for any purpose, including use of its economic power to advance social or political purposes.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the Investment Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February 12, 1998.

3. U. T. Board of Regents: Approval of Restatement of The University of Texas Investment Management Company Code of Ethics.--Upon recommendation of the Board of Directors of The University of Texas Investment Management Company (UTIMCO), the U. T. Board of Regents approved the restatement of the UTIMCO Code of Ethics as set out on Pages 86 - 99.

Section 66.08 of the Texas Education Code requires that the U. T. Board of Regents approve the UTIMCO Code of Ethics (the "Code") and any amendments thereto. Restatement of the Code was undertaken in order to define further and consolidate policies regarding conflicts of interest, use of confidential information, gifts and entertainment, financial disclosure, designation of key employees, training and other issues relating to director and employee conduct. The restated Code was reviewed by UTIMCO's legal counsel, Vinson & Elkins, and was approved by the UTIMCO Board of Directors on December 15, 1997.

THE UNIVERSITY OF TEXAS INVESTMENT MANAGEMENT COMPANY

CODE OF ETHICS

Code of Conduct

This Code of Ethics sets forth the basic principles and guidelines for directors and employees of The University of Texas Investment Management Company (“UTIMCO”). In addition to strict compliance with legal requirements, all directors and employees are expected to be guided by the basic principles of honesty and fairness in the conduct of UTIMCO’s affairs and to comply with the policies contained in this Code. Pursuant to an Investment Management Services Agreement (as amended, the “Agreement”), between the Board of Regents of The University of Texas System (the “U. T. Board”) and UTIMCO, the U. T. Board has appointed UTIMCO as its investment manager with respect to those funds for which the U. T. Board has investment responsibility (the “Accounts”). Pursuant to the Agreement, UTIMCO has acknowledged that it will be acting as a fiduciary with respect to managing the investment of the Accounts. Accordingly, all directors and employees must develop an awareness of and respond to UTIMCO’s obligations to the U. T. Board.

Specific Policy Statement

Although the general principles outlined above shall apply in the conduct of all UTIMCO activities, UTIMCO’s directors and employees are also bound by the following specific policies.

Definitions

In this Code the following definitions apply unless the context requires otherwise:

- (1) “Audit and Ethics Committee of the Board” means a standing committee of the Board under the UTIMCO by-laws.
- (2) “Board” means the Board of Directors of UTIMCO.
- (3) “Code” means this Code of Ethics.
- (4) “Director” means a member of the Board of UTIMCO.
- (5) “Employee” means, a person working for UTIMCO in an employer-employee relationship.
- (6) “Key employee” means an employee who has been designated by the Board as one who

exercises **significant** decision-making authority by virtue of the position he or she holds with UTIMCO.

- (7) “Personal securities transactions” means (1) transactions for a director’s or employee’s own account, including IRA’s, and (2) transactions for an account in which a director or employee has indirect beneficial ownership, unless the director or employee has no direct or indirect influence or control over the account.

A director or employee has “indirect beneficial ownership” of an account if (i) the director or employee has a beneficial interest (such as a trust of which he or she is an income or principal beneficiary) or (ii) the director’s or employee’s family (including husband, wife, minor children or other dependent relatives) has a beneficial interest. A person has a “beneficial interest” in an account if **the** person is an income or principal beneficiary or other equity owner; provided that a person does not have a beneficial interest in an account solely because the account is managed by the person for the benefit of people other than such person or his or her family.

- (8) “Relative” means a person related in **the** third degree by consanguinity (blood relative) or affinity (marriage) determined in accordance with Texas Government Code 573.021-025. Examples of relatives by consanguinity are a child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, niece or nephew. A person adopted into a family is considered a relative on the same basis as a natural born family member.

Examples of a relative by affinity are a spouse, any person related to the spouse within the third degree by consanguinity, or any spouse of a relative by consanguinity or affinity. A person is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.

- (9) “UTIMCO” means The University of Texas Investment Management Company.
- (10) “U. T Board” means The Board of Regents of The University of Texas System.

I. General Standards

The following general ethical principles apply to directors and employees:

A. Directors and employees may not:

- (1) accept or solicit any **gift**, favor, or service that might reasonably tend to influence the director or employee in the discharge of his or her duties for UTIMCO or that the director or employee knows or should know is being offered with the intent to influence the director’s or employee’s conduct on behalf of UTIMCO;

- (2) accept other employment or engage in a business or professional activity that the director or employee might reasonably expect would require or induce the director or employee to disclose confidential information acquired by reason of his or her position with UTIMCO;
 - (3) accept other employment or compensation that could reasonably be expected to impair the director's or employee's independence of judgment in the performance of his or her duties for UTIMCO;
 - (4) make personal investments that could reasonably be expected to create a substantial conflict between the director's or employee's private interest and the interests of UTIMCO; or
 - (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the director's or employee's authority or performed the director's or employee's duties at UTIMCO in favor of another.
- B. Directors and employees must also comply with all applicable laws. They should specifically be knowledgeable of Texas Education Code 66.08 (Permanent University Fund • Composition, Investment, and Use ▪ Investment Management).
 - C. Directors and employees must be honest in the exercise of their duties and must not take actions which will discredit UTIMCO.
 - D. Directors and employees should be loyal to the interests of UTIMCO to the extent that such loyalty is not in **conflict** with other duties which legally have priority. Directors and employees should avoid personal, employment, or business relationships that create **conflicts** of interest. Should directors or employees become aware of any conflict of interest, they have an affirmative duty to disclose and to cure the **conflict** in a manner provided for in this Code.
 - E. Directors and employees may not use their relationship with UTIMCO to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of UTIMCO as a reference or the communication to others of the fact that a relationship with UTIMCO exists, provided that no misrepresentation is involved.

II. **Conflict of Interest**

- A. *Definition:* A conflict of interest exists for a director or employee whenever the director or employee has a personal or private commercial or business relationship that could reasonably be expected to diminish the director's or employee's independence of judgment in the performance of the director's or employee's responsibilities to UTIMCO. For example, a person's independence of

judgment is diminished when the person is in a position to take action or not take action with respect to UTIMCO or its business and such act or failure to act is or reasonably appears to be influenced by considerations of personal gain or benefit rather than motivated by the interests of UTIMCO.

It shall not be considered a conflict solely because a director or employee has an investment in the stock of a publicly traded company which is owned, purchased, sold, or otherwise dealt with by UTIMCO; provided that the affected person's interest in the stock of the publicly traded company is not more than 5 % of any class and the person is not a director or **officer** of the publicly traded company.

B. **Duty to Cure:** Directors and employees who become aware, or reasonably should have become aware, of a conflict of interest have a duty to cure it. A person normally cures a conflict of interest by promptly eliminating it. If a director or employee may prudently withdraw from action on a particular matter in which a conflict exists, he or she may cure the conflict in that **manner** provided that:

- (1) the person may be and is effectively separated from influencing the action taken;
- (2) the action may properly be taken by others;
- (3) the nature of the conflict is not such that the person must regularly and consistently withdraw from decisions which are normally his or her responsibility with respect to UTIMCO; and
- (4) the conflict is not a prohibited transaction resulting from a director having a pecuniary interest in a business entity as described in III(A) below.

Directors must disclose any conflicts regarding matters which are before the Board, absent themselves from any relevant deliberations, and not vote on the matter. Employees must disclose any **conflicts** and refrain from giving advice or making decisions about matters affected by the conflict unless the Board, after consultation with the General Counsel, expressly waives this prohibition. The Board will decide whether to waive any disclosed conflict at an official meeting. To assist it in deciding whether to grant waivers, the Board may develop criteria for determining the kinds of relationships that do not constitute material conflicts. Any waiver of a conflict, including the reasons supporting the waiver, must be included in the minutes of the meeting. Records of all waivers granted with the supporting reasons will be maintained by the Chief Compliance **Officer**.

Persons who **cannot** or do not wish to eliminate or cure the conflict must terminate his or her relationship with UTIMCO as quickly as responsibly and legally possible.

- C. *Duty to Disclose:* Directors must disclose conflicts in writing to the General Counsel prior to the Board meeting. If disclosure is made at a Board meeting, the minutes of the meeting must include the disclosure of the conflict.

Employees must promptly disclose conflicts of interest in writing to the Chief Compliance Officer through the UTIMCO conflict of interest disclosure statement. The Chief Compliance Officer will report to the Audit and Ethics Committee of the Board regarding the conflict of interest disclosure statements which he or she receives. Should a person with a duty to disclose conflicts have reasonable cause to believe disclosure to the Chief Compliance Officer will be ineffective, the person should disclose the conflict to the Audit and Ethics Committee of the Board. Disclosure to the Audit and Ethics Committee of the Board is accomplished through written disclosure to the Chairman of the Committee, whose address may be obtained **from** the UTIMCO **Office** Manager. Whether disclosure is to the Chief Compliance Officer or the Audit and Ethics Committee of the Board, a copy of the disclosure statement should be provided to the employee's supervisor unless the person with the conflict believes that such disclosure would be detrimental to the resolution of the conflict.

III. Prohibited Transactions and Interests

- A. *UTIMCO:* UTIMCO may not enter into an agreement or transaction with:
- (1) a director or employee acting in other than an official capacity on behalf of UTIMCO;
 - (2) a business entity in which a director or employee has any pecuniary interest; or
 - (3) a former director or employee, or a business entity in which a former director or employee has a pecuniary interest, on or before the **first** anniversary of the date the person ceased to be a director or employee.

A director or employee shall not be deemed to have a pecuniary interest in a publicly traded company if the director or employee:

- (i) owns less than **five** percent of the voting stock or shares of the publicly traded company;
- (ii) owns less **than five** percent of the fair market value of the publicly traded company; and
- (iii) received less than **five** percent of his or her gross income for the preceding calendar year **from** the publicly traded company.

Prior to consideration by the Board of an agreement or transaction with a business entity, each director shall certify that he or she does not have any pecuniary interest in the associated business entity.

- B. **Directors:** Directors may buy or sell a publicly traded security of an issuer which is held by UTIMCO but may not engage in a personal securities transaction when they have actual knowledge that UTIMCO is trading such securities. UTIMCO is trading securities of an issuer when a buy/sell order has been placed by a UTIMCO internal portfolio manager for execution.
- C. **Directors and Employees:** No director or employee may:
- (1) participate in a matter before UTIMCO which involves a business, contract, property or investment held by such person if it is reasonably foreseeable that UTIMCO action on the matter would confer a benefit to such person by or through the business, contract, property or investment;
 - (2) have stock or other ownership or profit sharing interest in any brokerage **firms** or consultants selected by such director or employee for UTIMCO business if such director or employee has (i) the discretion to direct trading, and therefore the discretion to select brokerage firms, or (ii) the discretion to select consultants. Directors shall not direct trades or exercise discretion over the selection of brokerage firms;

This restriction applies to stock or other ownership or profit sharing interests held by a director's or employee's spouse. This restriction also applies to stock held for a director's or employee's own account or an account in which he or she has a beneficial interest (unless the director or employee has no direct or indirect **influence** or control over the account.) For this purpose, a director's or employee's own account or an account over which he or she has a beneficial interest includes accounts involving immediate family members (spouse, minor children, or other dependent relatives). However, this restriction shall not prohibit the ownership of stock in a company that may own stock in such entities, provided such entities are not the dominant or primary business of the parent company.

If a director or employee holds such stock or other ownership interest in a brokerage **firm** or consultant prior to the time UTIMCO commences doing business with the **firm**, or if a new director or employee holds such stock or other ownership interest at the time he or she is appointed or hired, the director or employee has a reasonable period of time to dispose of such stock or other ownership interest. Thirty to sixty days is deemed reasonable.

- (3) recommend or cause discretionary UTIMCO business to be transacted with or for the benefit of a relative;
- (4) under any circumstances accept offers by reason of their position with UTIMCO to trade in any security or other investment on terms more favorable than available to the general investing public;
- (5) borrow from investment managers, outside service providers, professional advisors or consultants, banks or other financial institutions with which UTIMCO has a business relationship, unless such entities are normally engaged in such lending in the usual course of their business, and then only on customary terms offered to others under similar circumstances to finance proper and usual activities;
- (6) represent any person in any action or proceeding before or involving the interests of UTIMCO except as a duly authorized representative or agent of UTIMCO;
- (7) use UTIMCO information, resources, or facilities, nor use information or resources paid for by UTIMCO, for personal gain or the gain of anyone other than UTIMCO. This prohibition means that directors and employees may not use information paid for by UTIMCO to assist or benefit private clients of the directors or employees; or
- (8) take action personally or on behalf of UTIMCO which will result in a reasonably foreseeable **conflict** of interest. Should there be action which a director or employee believes to be in the best interest of UTIMCO but which could foreseeably result in a **conflict** of interest, the director or employee must disclose such fact to the Chief Compliance Officer prior to taking such action.

D. Employees: No employee may:

- (1) engage in outside employment, business, or other activities which detract from the ability to **fulfill** the full-time responsibilities to UTIMCO;

Key employees must obtain advance written approval from the President for any outside employment or business, including service as director, officer, or investment consultant or manager for another person or entity. Any outside employment by the President must be approved in advance by the Board.

Employees, with the prior approval of the Board, may serve as directors of companies in which UTIMCO has directly invested Account assets. In such event, any and all compensation paid to employees for their services

as directors shall be endorsed to UTIMCO and applied against UTIMCO's fees. Furthermore, Board approval of any employee's service as a director of an investee company shall be conditioned upon the extension of UTIMCO's Directors and **Officers** Insurance Policy coverage to the employee's service as a director of the investee company.

- (2) engage in a personal securities transaction without obtaining preclearance for each such transaction with the Chief Compliance Officer.

The Chief Compliance Officer shall verify that no buy/sell order has been placed by a UTIMCO internal manager. If a buy/sell order has been placed, no employee may conduct a personal securities transaction until one trading day after the buy/sell order has been completed or canceled. Preclearances will be documented by the Chief Compliance Officer in a personal securities transaction log for each employee, which will provide a record of all requests and approvals or denials of preclearances for personal securities transactions. Preclearance for personal securities transactions is effective for one trading day only.

An employee who engages in personal securities transaction must also provide transactional disclosure for each such transaction. Transactional disclosure forms must be completed for all personal securities transactions and given to the Chief Compliance **Officer** within ten calendar days of the trade date. The transactional disclosure form must contain the following information: name and amount of the security involved, date and nature of the transaction, price at which the transaction was effected, and name of the broker through whom the transaction was effected.

The preclearance and transactional disclosure requirements for personal securities transactions apply only to equity or equity-related transactions, including stocks, convertibles, preferreds, options on securities, warrants, rights, etc., for domestic and foreign securities, whether publicly traded or privately placed. The preclearance and transactional disclosure requirements do not apply to bonds (with the exception of convertible bonds), mutual funds, co-mingled trust funds, financial futures, and options on futures.

- E. **Former Directors and Employees:** A former director or employee may not make any communication to or appearance before a present director or employee before the first anniversary of the date the former director or employee ceased to be a director or employee if the communication is made (a) with the intent to influence and (b) on behalf of any person in connection with any matter on which the former director or employee seeks action by UTIMCO.

If a director or employee knowingly communicates with a former director or

employee in violation of this prohibition, the director or employee will be subject to disciplinary action including, with respect to a director, removal from serving as a director of UTIMCO.

IV. Confidential Information

- A. Directors and employees may not disclose confidential information, except when duly authorized personnel determine such disclosure is either permitted or required by law. Confidential information must be used by directors and employees for UTIMCO purposes and not for their own personal gain or for the gain of third parties.
- B. Information derived from a relationship with UTIMCO which might reflect favorably or adversely upon the value of any investment or contemplated investment may not be used by directors and employees in any manner for the purpose of personal advantage or to provide advantage to others.

V. Nepotism

- A. UTIMCO may not employ a person who is a relative of a director. This does not prevent the continued employment of a person who has already been working for UTIMCO for thirty consecutive days prior to the date of the related director's appointment.
- B. UTIMCO may not employ a person who is a relative of (1) a key employee, (2) a consultant, or (3) any owners, directors, or **officers** of consultants. This does not prohibit the continued employment of a person who has already been working for UTIMCO for thirty consecutive days at the time of the selection of a new key employee or consultant. Nor does this prevent the continued employment of persons who have been working for UTIMCO for thirty days prior to becoming relatives.
- C. No employee may exercise discretionary authority to hire, evaluate or promote a relative. No employee may supervise a relative, either directly or indirectly. As used herein, "supervise" means to oversee with the powers of direction and decision-making the implementation of one's own or another's intentions: Supervision normally involves assigning duties, overseeing and evaluating work, and approving leave.

VI. Decision-Making Based on Merit

UTIMCO business transactions are to be based on professional integrity and competence,

financial merit and benefit to UTIMCO and, whenever required or prudent, on a competitive basis. Directors and employees may not base any UTIMCO business decisions on family or personal relationships.

VII. Observance of UTIMCO Controls and Policies

Directors and employees will observe the accounting and operating controls established by law and UTIMCO policies, including restrictions and prohibitions on the use of UTIMCO property for personal or other non-UTIMCO purposes.

VIII. Gifts and Entertainment

- A. A director or employee is prohibited from soliciting or accepting a **gift** because of or through use of the employee's or director's position with UTIMCO if the gift is from a person other than an employee or a director and the employee or director knows or should have known that the gift would not have been solicited, offered, or given had the employee or director not held his or her position as an employee or director. This prohibition applies not only to gifts solicited or given for the personal benefit of the director or employee but also to gifts to third parties.
- B. The prohibitions in this article do not apply to the following **gifts**, provided that acceptance of such gifts violates no law:
- (1) **gifts** given on special occasions between employees and/or directors;
 - (2) books, pamphlets, articles or other such materials which contain information directly related to the job duties of an employee or director and are accepted by the -employee or director on behalf of UTIMCO for use in performing his or her job duties;
 - (3) **gifts** from relatives of employees or directors which are based solely on a personal relationship between the director or employee and his or her relative;
 - (4) business meals and receptions when the donor or a representative of the donor is present;
 - (5) ground transportation in connection with business meetings, meals, or receptions;
 - (6) seminar or conference fees when the seminar relates to the director's or employee's job duties and is sponsored by **UTIMCO's** consultants or agents, prospective consultants or agents, or persons or entities whose

interests **may** be affected by UTIMCO;

(7) items with a value of less than \$50, excluding cash or negotiable instruments, and other gifts of nominal value. Examples of gifts of nominal value are (a) modest items of food and refreshments on infrequent occasions and (b) unsolicited advertising or promotional material such as plaques, certificates, trophies, paperweights, calendars, note pads, pencils, and other items of nominal intrinsic value.

C. Attendance by directors or employees at seminars or conferences sponsored and paid for by **UTIMCO's** consultants or agents, prospective consultants or agents, or persons or entities whose interests may be affected by UTIMCO that involve entertainment or recreation may in some cases be in the best interest of UTIMCO.

Employees must obtain specific written approval of their attendance at such events from the President or Chief Compliance **Officer**. Approval may be withheld for elaborate entertainment events such as ski trips, hunting trips, or stays at expensive resorts.

D. Under no circumstances may directors or employees accept a gift if the source of the gift is not identified or if the director or employee knows or has reason to know that the gift is being offered through an intermediary.

E. If a prohibited **gift** is received by a director or employee, he or she should attempt to return the gift to its source. If that is not possible or feasible, the gift should be donated to charity.

IX. Compliance with Professional Standards

UTIMCO representatives who are members of professional organizations which promulgate standards of conduct, such as the Association for Investment Management and Research, must comply with those standards.

X. Financial Disclosure

A. Directors and employees must file financial disclosure statements with the Chief Compliance **Officer**, and for directors who file disclosure statements with the Texas Ethics Commission, in the form prescribed by law for such disclosure statements.

B. Directors and employees must file their financial disclosure statements within 30 days of their date of employment and by January 31st of each year. The President may postpone a filing deadline for not more than 60 days on written request or for

an additional period for good cause, as determined by the Chairman of the Board. A financial disclosure statement must be maintained by UTIMCO for at least 5 years after the date of its tiling.

XI. Key Employees

- A. The Board shall designate by position with UTIMCO the employees who exercise significant decision-making authority. By virtue of their position with UTIMCO, these persons are “key employees.
- B. Employees designated as key employees must acknowledge their key employee status in writing through the **annual** ethics compliance statement.
- C. Requirements of this Code which are specifically applicable to key employees are the following:
 - (1) disciplinary action disclosure; and
 - (2) advance approval of outside employment, including service as a director, officer, investment consultant, or manager for another person or entity.

XII. Ethics Training and Advice

- A. The President will appoint an Employee Ethics Committee composed of UTIMCO personnel which will have responsibility for:
 - (1) providing ethics training for UTIMCO personnel; and
 - (2) issuing opinions on the proper interpretation of this Code.
- B. Employees may file a written request with the Employee Ethics Committee for an opinion on the proper interpretation of this Code and may rely upon that opinion with respect to compliance with the Code.
- C. The Chairman of the Employee Ethics Committee will be the Chief Compliance Officer.

XIII. Compliance and Enforcement

- A. The Board will enforce this Code through the President, who is responsible for its implementation with respect to employees.,

- B. The **full** range of disciplinary options under UTIMCO personnel policies and practices may be used with respect to employees who violate this Code, up to and including termination.
- C. The Board is responsible for the enforcement of this Code with respect to violations by individual directors through resolutions of reprimand, censure, or other appropriate parliamentary measures, including requests for resignation.
- D. Directors with knowledge of a violation of this Code must report such violation to the General Counsel. Employees with knowledge of a violation of this Code must report such violation to the Chief Compliance Officer or to a member of the Audit and Ethics Committee of the Board. No retaliatory action will be taken against the reporting person for any such report involving another person made in good faith.
- E. Within sixty days of their employment or appointment, employees and directors must sign and date financial disclosure and ethics compliance statements that they have received and read this Code, that they will comply with its provisions, that it is their duty to report any acts by other directors or employees when they have knowledge of violations of this Code, and, for employees, that adherence to this Code is a condition of their employment. The statement will also include a disclosure of any conflicts of interest or violations of the Code of which they are aware and a reminder that they are required to update their statements if a change in circumstances occurs which would require reporting under this Code. Persons employed by UTIMCO on the date of adoption of this Code must sign and date the statement within thirty days of the adoption of this Code. The signed statements will be maintained in the employee's personnel file. Persons serving as directors on the date of the adoption of this Code must also sign the financial disclosure and ethics compliance statement within 45 days of the adoption of this Code.
- F. Directors and employees, including acting or interim employees, must sign and date financial disclosure and ethics compliance statements as described above each year. The **annual** financial disclosure and ethics compliance statements must be submitted to the Chief Compliance **Officer** by January 31. Any person who is a director or employee on December 31 of any year must file an annual financial disclosure and ethics compliance statement for that year. Directors' financial disclosure and ethics compliance statements will be maintained by the Chief Compliance Officer.
- G. Directors and key employees must also file disciplinary action disclosure statements setting forth any proceedings, actions, or hearings by any professional organization or other entity involving the director or key employee. Disciplinary action disclosure statements must be submitted to the Chief Compliance Officer by January 31 of the first year of designation as a director or key employee or, for

those persons already serving as directors or designated as key employees on the effective date of this Code, on January 31 following the effective date. Disciplinary action disclosure statements must be promptly updated if any action occurs which would cause a director's or a key employee's answers to change.

- H. The custodian for open records purposes of the disclosure statements required under this Code is the Chief Compliance Officer.
- I. The President will notify the Audit and Ethics Committee of the Board in writing by February 15 of each year of the following:
 - (1) any approval given for outside employment by key employees, including the nature of the employment; and
 - (2) any disciplinary action disclosed by directors or key employees.

RECESS FOR COMMITTEE MEETINGS AND COMMITTEE REPORTS TO THE BOARD.--At 10:00 a.m., the Board recessed for the meetings of the Standing Committees, and Chairman Evans announced that at the conclusion of each committee meeting the Board would reconvene to approve the report and recommendations of that committee.

The meetings of the Standing Committees were conducted in open session and the reports and recommendations thereof are set forth on the following pages.

REPORTS AND RECOMMENDATIONS OF STANDING COMMITTEES

REPORT OF EXECUTIVE COMMITTEE (Pages 101 - 102).--In compliance with Sections 7.14 and 9.5 of Chapter I of Part One of the Regents' Rules and Regulations, Chairman Evans reported to the Board that the following action had been taken by the Executive Committee since the last meeting:

U. T. System - Lower Rio Grande Valley Regional Academic Health Center: Authorization to Enter into a Consulting Contract with the Kaludis Consulting Group, Washington, D. C., to Conduct the Site Selection Process, Allocation of Funds Therefor, and Authorization for the Executive Vice Chancellor for Business Affairs to Execute All Documents Related Thereto.--The Executive Committee reported that it met in Open Session on December 10, 1997, and upon recommendation of the Chancellor, the Executive Vice Chancellors for Health and Business Affairs, and The University of Texas System Consultant Review Committee, authorized the following actions with regard to the Lower Rio Grande Valley Regional Academic Health Center in accordance with Senate Bill 606, 75th Texas Legislature:

- a. Retained on behalf of the U. T. System the Kaludis Consulting Group, Washington, D. C., effective December 1, 1997, and at a cost not to exceed \$375,000, as a consultant to recommend to the U. T. Board of Regents the best site for the Regional Academic Health Center to be located in the Lower Rio Grande Valley
- b. Appropriated funds in the amount of \$375,000 for the consulting contract and \$10,000 for direct expenses by U. T. System Administration for printing, advertising, and distribution of the Request for Proposal (RFP) from Undistributed Interest on Service Departments and Revolving Funds Local Funds Investments
- c. Authorized the Executive Vice Chancellor for Business Affairs to execute all documents related thereto following approval by the Executive Vice Chancellor for Health Affairs and the Office of General Counsel.

Following issuance of Request for Proposal (RFP) RE-01, a committee of U. T. System and component administrators appointed by the Chancellor interviewed and rated the six respondents and unanimously recommended that the Kaludis Consulting Group, Washington, D. C., be retained to perform the tasks outlined in the RFP. The consultant will be responsible for preparing an additional resource specific RFP and conducting the process to select the best site for the Regional Academic Health Center to be located in the Lower Rio Grande Valley (Cameron, Hidalgo, Starr, and Willacy Counties). The consultant will present the findings and a recommendation for the best site to the U. T. Board of Regents for final approval at a future meeting.

REPORT AND RECOMMENDATIONS OF THE BUSINESS AFFAIRS AND AUDIT COMMITTEE (Pages 103 - 119).--Committee Chairman Riter reported that the Business Affairs and Audit Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Business Affairs and Audit Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. System: Approval of Chancellor's Docket No. 92 (Catalog Change).--Upon recommendation of the Business Affairs and Audit Committee, the Board approved Chancellor's Docket No. 92 in the form distributed by the Executive Secretary. It is attached following Page 262 in the official copies of the Minutes and is made a part of the record of this meeting.

It was expressly authorized that any contracts or other documents or instruments approved therein had been or shall be executed by the appropriate officials of the respective institution involved.

It was ordered that any item included in the Docket that normally is published in the institutional catalog be reflected in the next appropriate catalog published by the respective institution.

2. U. T. System: Adoption of 1999 Budget Preparation Policies and Limitations for General Operating Budgets, Auxiliary Enterprises, Contracts and Grants, Restricted Current Funds, Designated Funds, and Service and Revolving Funds Activities and Calendar for Budget Operations.--The Business Affairs and Audit Committee recommended and the Board adopted the Budget Preparation Policies and Limitations and Calendar for preparation of the 1999 Operating Budgets for The University of Texas System as set forth on Pages 104 - 106.

U. T. System 1999 Budget Preparation Policies

General Guidelines - The regulations and directives included in the General Appropriations Act enacted by the 75th Texas Legislature serve as the basis for these guidelines and policies. In preparing the draft of the 1999 Operating Budget, the Chief Administrative Officer of each component institution should adhere to guidelines and policies as detailed below and as included in the General Appropriations Act.

Overall budget totals, including reasonable reserves, must be limited to the funds available for the year from General Revenue Appropriations, Estimates of Educational and General Income, and limited use of institutional unappropriated balances.

Salary Guidelines - Recommendations regarding salary policy are subject to the following directives.

1. Salaries Proportional by Fund - Unless otherwise restricted, payment for salaries, wages, and benefits paid from appropriated funds, including local funds and educational and general funds as defined in V.T.C.A., Education Code, Sec. 51.009 (a) and (c), shall be proportional to the source of funds.
2. Merit Increases - Subject to available resources and resolution of any major salary inequities, institutions should give priority to implementing merit salary increases for faculty and staff, keeping in mind the 1998 - 1999 biennium goal of at least an average 5% merit salary increase for faculty and staff.

Merit increases or advances in rank for faculty are to be on the basis of teaching effectiveness, research, and public service.

Merit increases or promotions for administrative and professional staff and classified staff are to be based on evaluation of performance in areas appropriate to work assignments.

To be eligible for a merit increase, classified staff must have been employed by the institution for at least six months as of August 31, 1998.

3. Other Increases - Equity adjustments, competitive offers, and increases to accomplish contractual commitments may also be granted in this budget and should be considered merit where appropriate, subject to available resources. Such increases should be noted and explained in the supplemental data accompanying the budget.
4. New Positions - New administrative and professional, classified staff and faculty positions are to be requested only when justified by work loads or to meet needs for developing new programs.
5. It is the expectation that Fiscal Year 1999 increases for merit, equity, or other reasons be included in the Operating Budgets.

Staff Benefits Guidelines - Recommendations regarding the state contribution for employees staff benefits such as group insurance premiums, teacher retirement, and optional retirement are subject to legislative directives included in the General Appropriations Act. The Chancellor will issue supplemental instructions regarding group insurance premiums and premium sharing rates at a later date.

Other Employee Benefits - Employer contributions to the self-insured Unemployment Compensation Fund are \$.68 per \$100 of the first \$9,000 of salary paid per employee. Workers' Compensation Insurance rates have been experience rated for each component.

Other Operating Expenses Guidelines - Increases in Maintenance, Operation, Equipment, and Travel are to be justified by expanded work loads, development of new programs, or correction of past deferrals or deficiencies.

1999 Operating Budget Calendar

February 12, 1998	U. T. Board of Regents approve budget policies
April 6-15, 1998	Budget policy/resource allocation hearings with System Administration
May 8, 1998	Draft copies of budgets, salary rosters, and supplemental data due to System Administration
May 11-16, 1998	Technical budget hearings with System Administration
May 29, 1998	Final copies of budgets, salary rosters, and supplemental data due to System Administration
July 6-7, 1998	U. T. Board of Regents' Committee Briefings/ Meetings
August 13, 1998	U. T. Board of Regents approve budget
August 21, 1998	Budgets due to System Administration for copying and binding

The U. T. System 1999 Budget Preparation Policies track the regulations and directives included in the General Appropriations Act enacted by the 75th Texas Legislature.

3. U. T. System: Establishment of Partial Cost Recovery Procedures for Information Technology Initiatives Effective for the Fiscal Year 1998-1999 and Authorization for an Incidental Fee for Distance Learning Costs.--The Board, upon recommendation of the Business Affairs and Audit Committee:

a. Authorized the Executive Vice Chancellor for Business Affairs to establish partial cost recovery procedures for the following three Information Technology Initiatives for The University of Texas System to be effective for the Fiscal Year 1998-1999:

1. Enterprise Telecommunications Infrastructure
2. Knowledge Management Services
3. Distance Education Leading to a Virtual University (U. T. TeleCampus)

The procedures may include proportional assessments to the U. T. System component institutions with the specific amounts to be included in Fiscal Year 1998-1999 budgets.

b. Authorized the U. T. System component institutions to impose, as needed, an incidental fee for distance education costs not to exceed \$25 per semester credit hour subject to established procedures for administrative approval.

The Executive Vice Chancellor for Business Affairs and the Vice Chancellor for Telecommunications and Information Technology have worked with representatives of the U. T. System component institutions to establish procedures that will provide partial recovery of U. T. System Administration costs associated with establishment of the three U. T. System Information Technology Initiatives described below:

a. Enterprise Telecommunications Infrastructure - The estimated dollar amount to be recovered from the U. T. System component institutions is indicated in the table set forth on

Page 110 titled "Cost Recovery Goals." The institutional share will be prorated on the basis of an institution's total institutional expenditures as reported in the latest audited annual financial report.

- b. Knowledge Management Services - Costs for operating the Knowledge Management Center, as estimated in the table on Page 110, will also be recovered through a proportional assessment on each U. T. System component. The shares will be based on full-time equivalent (FTE) student enrollment and FTE faculty positions (50%) and total budget expenditures (50%).

- c. Distance Education Leading to a Virtual University (U. T. TeleCampus) - The U. T. System Office of Telecommunications and Information Technology through the U. T. TeleCampus will provide centralized administrative and technical services for all distance education courses delivered between two or more component institutions. Use of distance education services from the U. T. TeleCampus will be optional for distance learning courses delivered exclusively through a U. T. System component institution's local network. Costs for delivery of distance education courses or use of other services administered by the U. T. TeleCampus will be funded as follows:
 - 1. The U. T. TeleCampus will receive from the originating or sender institution 100% of the designated tuition up to a maximum of \$25 per semester credit hour for all semester credit hours of enrollment in a TeleCampus course. (Designated tuition is the amount authorized by the U. T. Board of Regents over and above the statutory tuition rate but which may not exceed the amount of the statutory tuition rate. The maximum rate for the 1998-1999 academic year is \$36 per semester credit hour and \$38 for the 1999-2000 academic year.) For the Fiscal Year 1998-1999 and Fiscal Year 1999-2000 budgets, the U. T. System

Administration will recommend an allocation of two times the amount collected from the designated tuition assessment, matching dollars to be returned to the component institutions in the form of competitive grants for innovative distance education projects.

2. Sender U. T. System institutions, which collect the designated tuition for a TeleCampus course, will transfer the balance of the designated tuition (the amount over and above the \$25 assessment for the TeleCampus) to the receiver institution for those students accessing the course at the receiver U. T. System institution. The procedures will also permit a receiver institution to negotiate an interagency agreement with the sender institution for additional reimbursement up to the total receipts from regular tuition paid by students at the receiver institution.

U. T. System institutions which originate distance learning courses will receive regular formula funding and all tuition and fees except designated tuition as described above. These institutions will also be authorized to recover their additional costs associated with distance learning by imposing an incidental fee for distance learning courses of up to \$25 per semester credit hour. Like other incidental fees the amount of the fee cannot be greater than the amount required to cover costs. By previous U. T. Board of Regents' action, the component institutions are authorized to waive fees for services such as parking which are not available to students taking courses exclusively by distance education. Thus, the imposition of a distance education fee can be offset to some extent by waiving other fees.

The table below provides information about the amounts expected to be generated from the institutional assessments for the Fiscal Year 1998-1999 and the estimated amounts for the following three fiscal years. The Executive Vice Chancellor for Business Affairs, after appropriate consultation with the component institutions, is authorized to approve changes in the partial cost recovery plan for telecommunications and information technology services with subsequent U. T. Board of Regents' approval of the institutional budgets.

Cost Recovery Goals

	<u>FY 1998-1999</u>	<u>FY 1999-2000</u>	<u>FY 2000-2001</u>	<u>FY 2001-2002</u>
Telecommunications				
Infrastructure	\$ 40,000	\$ 80,000	\$ 120,000	\$ 160,000
Knowledge Management Center	320,000	320,000	320,000	320,000
Distance Education (U. T. TeleCampus)	<u>140,000</u>	<u>280,000</u>	<u>400,000</u>	<u>500,000</u>
TOTAL	\$ 500,000	\$ 680,000	\$ 840,000	\$ 980,000

4. U. T. Austin - Harry Hunt Ransom General Endowment Fund for the Harry Ransom Humanities Research Center: Approval to Sell Approximately 192 Acres of Land and Improvements Located 4.5 Miles Southwest of Dripping Springs at the Southwest Corner of County Road 220 and County Road 245 in Hays County, Texas, from the Estate of Hazel H. Ransom, Austin, Texas, and Authorization for the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to Execute All Documents Related Thereto.--On behalf of The University of Texas at Austin, the Board authorized The University of Texas System Real Estate Office to sell approximately 192 acres of land and improvements including a small residential structure, a barn, and two storage sheds located 4.5 miles southwest of Dripping Springs at the southwest corner of County Road 220 and County Road 245 in Hays County, Texas. The property will be marketed through a competitive offer process and sold with all remaining minerals for the best offer at or above the appraised value of \$922,000. The inclusion of mineral rights will enhance the attractiveness and value of the property.

Further, the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate was authorized to execute all documents, instruments, and other agreements and take all such further actions deemed necessary, advisable, or proper to carry out the purpose and intent of the foregoing action.

This property was received as part of the residual bequest from the Estate of Hazel H. Ransom, Austin, Texas. The net proceeds from the sale of the property will be added to the Harry Hunt Ransom General Endowment Fund at U. T. Austin for general support of operations and collection development within the Harry Ransom Humanities Research Center.

5. U. T. Dallas: Authorization to Negotiate a Long Term Ground Lease of Approximately 7.7 Acres of Land Located in the City of Richardson, Collin County, Texas, in Exchange for Construction of a New Southern Entrance Road to the Campus to be Named "University Parkway" and Approval for the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to Execute All Documents Related Thereto.--The Board, upon recommendation of the Business Affairs and Audit Committee:
 - a. Authorized The University of Texas System Real Estate Office, on behalf of The University of Texas at Dallas, to complete negotiations for a long term ground lease with the City of Richardson, Collin County, Texas, of an approximately 7.7 acre tract of land near the U. T. Dallas campus in exchange for construction, at the City of Richardson's expense, of a new southern entrance road to the campus which will be named "University Parkway"
 - b. Authorized the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to execute all documents, instruments, and other agreements and take all such further actions deemed necessary, advisable, or proper to carry out the purpose and intent of the foregoing action.

U. T. Dallas has made arrangements with the City of Richardson to construct a new southern entrance to the U. T. Dallas campus from Campbell Road. The transaction involves the dedication of the right-of-way for the new road (University Parkway), the granting of associated drainage easements, the abandonment of an existing road (Armstrong Parkway), and the granting of a lease for approximately 7.7 acres of land to be used by the City of Richardson as the location for a new technology incubator. The value of the roadway improvements exceeds the market value of the ground lease of the 7.7 acre tract of land.

6. U. T. System: Approval to Exceed the Full-Time Equivalent (FTE) Limitation on Employees as Required by the General Appropriations Act of the 75th Legislature, Article IX, Section 35.--Mr. R. D. Burck, Executive Vice Chancellor for Business Affairs, reported that Article IX, Section 35 of House Bill 1 (General Appropriations Act) passed by the 75th Legislature, Regular Session, places a limit on the number of full-time equivalent (FTE) employees that an institution may employ without written approval of the Governor and the Legislative Budget Board. In order to exceed the FTE limitation, a request must be submitted by the governing board and must include the date on which the board approved the request, a statement justifying the need to exceed the limitation, the source of funds to be used to pay the salaries, and an explanation as to why the functions of the proposed additional FTEs cannot be performed within current staffing levels.

Mr. Burck noted that ten (10) institutions within The University of Texas System will exceed the FTE limitations established for those institutions in the General Appropriations Act.

Upon recommendation of the Business Affairs and Audit Committee, the Board authorized those U. T. System institutions set forth in the table on Page 114 to exceed the number of FTE employees authorized in the General Appropriations Act.

Further, the Board directed that a request to the Governor's Office and the Legislative Budget Board to grant approval for these institutions to exceed the authorized number of FTE employees be forwarded at the earliest possible date.

Executive Secretary's Note: On February 16, 1998, the U. T. Board of Regents submitted the [required letter](#) and [supporting materials](#) to the Governor's Office and the Legislative Budget Board and a copy of same is on file in the Office of the Board of Regents.

**The University of Texas System
REQUEST TO EXCEED FULL-TIME EQUIVALENT LIMITATION
(House Bill No. 1, Article IX, Section 35)**

Component	H. B. 1 FTE Limitation	Estimated Average FTE for 4 Quarterly Reports	Requested Increase in Number of FTEs	By Fund Source	
				Appropriated Funds	All Other Funds
U. T. Dallas	1,351.5	1,411.5	60.0	43.0	17.0
U. T. El Paso	2,107.5	2,318.9	211.4	27.8	183.6
U. T. Pan American	1,502.0	1,576.0	74.0	63.0	11.0
U. T. Brownsville	280.0	812.0	532.0	409.0	123.0
U. T. Permian Basin	216.5	263.0	46.5	28.0	18.5
U. T. San Antonio	1,932.0	2,033.0	101.0	101.0	
U. T. MB - Galveston	12,942.0	15,040.4	2,098.4	550.0	1,548.4
U. T. HSC - San Antonio	3,990.0	4,266.0	276.0	123.5	152.5
U. T. MDA Cancer Center	6,788.0	7,868.4	1,080.4	475.2	605.2
U. T. HC - Tyler	1,170.0	1,253.0	83.0	11.0	72.0

INFORMATIONAL REPORTS

1. U. T. System: Presentation of the December 1997 Monthly Financial Report.--Mr. R. D. Burck, Executive Vice Chancellor for Business Affairs, reviewed the December 1997 Monthly Financial Report for The University of Texas System and emphasized that in this four-month period there were no variances from budget which did not have reasonable explanations.

A copy of [The University of Texas System Monthly Financial Report](#) as of December 1997 is on file in the Office of the Board of Regents.

2. U. T. System: Presentation on the 1997 Cost Savings Report.--Executive Vice Chancellor for Business Affairs Burck presented an overview of the 1997 Cost Savings Report for The University of Texas System.

Mr. Burck noted that in order to maintain its competitive edge in the pursuit of excellence, the U. T. System examines opportunities to increase efficiencies and promote effectiveness. As a result, the U. T. System is committed to an ongoing review of the System's processes and procedures to achieve the optimum in cost savings and increased revenue.

Mr. Burck reported that total actual and projected net savings for the U. T. System for Fiscal Years 1996 through 2000 are estimated to be \$645.2 million as compared to the June 1996 estimate of \$360.8 million for Fiscal Years 1994 through 1998. The \$284.4 million increase is primarily due to 180 new initiatives implemented by the institutions (\$146.1 million) and the conservative estimates for savings previously identified (\$88.4 million). The remaining \$49.9 million is primarily due to the carrying forward of previous initiatives to 1998-2000.

Executive Vice Chancellor Burck highlighted the following in the 1997 Cost Savings Report:

- Cost savings initiatives totaled \$354 million
- Cost avoidance initiatives totaled \$114 million
- Revenue enhancement totaled \$210 million
- Investment, defined as expenditures necessary to implement cost saving measures, totaled \$34 million.

Mr. Burck noted that, through this commitment to cost savings, the U. T. System hopes to reduce the resources necessary to meet the challenges of increasing enrollments, managed health care, and the ever increasing demands on state funding.

Committee Chairman Riter commended Executive Vice Chancellor Burck and the component chief business officers for their continuing commitment to increase operating efficiencies and to identifying and recommending cost saving and revenue enhancement measures.

A copy of [The University of Texas System Cost Savings Report](#) dated December 1997 is on file in the Office of the Board of Regents.

3. U. T. System: Annual Presentation of the Reporting Package for the Board of Regents.--Mr. R. D. Burck, Executive Vice Chancellor for Business Affairs, reviewed the information contained in the updated University of Texas System "Reporting Package for the Board of Regents" dated February 1998. Information provided in the report includes financial, investment, and research data for the U. T. System institutions covering a five-year period ending August 31, 1997. The report also includes faculty, employee, and student demographics extending from the Fall 1993 through the Fall 1997 Semester.

A copy of the ["Reporting Package for the Board of Regents"](#) is on file in the Office of the Board of Regents.

4. U. T. System: Report on Results of the Historically Underutilized Business (HUB) Program Analyses for Fiscal Year 1997.--At the November 1997 U. T. Board of Regents' meeting, The University of Texas System Annual Report on the Historically Underutilized Business (HUB) Program for Fiscal Year 1997 showed a decline of some \$27 million in total expenditures with HUB firms between Fiscal Years 1996 and 1997. Following queries by the Board pertaining to explanations for the decline and actions that can be taken to achieve program goals, Chancellor Cunningham requested that the U. T. System component institutions analyze their HUB program results and provide information explaining the reasons for variations in purchases from HUB firms between Fiscal Years 1996 and 1997.

Chancellor Cunningham called on Mr. Lewis Wright, Associate Vice Chancellor for Business Affairs, to report on the results of the Fiscal Year 1997 Historically Underutilized Business (HUB) analyses.

Mr. Wright presented a comprehensive report on the U. T. System Historically Underutilized Business program and distributed to the members of the Board a report entitled ["The University of Texas System Historically Underutilized Business \(HUB\) Program Review Supplemental Report for Fiscal Year 1997"](#) dated February 12, 1998, a copy of which is on file in the Office of the Board of Regents.

Mr. Wright noted that while not all U. T. System component institutions experienced a decline in the level of purchases with HUB firms, a general statewide decline was experienced. He pointed out that following the November 1997 report to the Board Chancellor Cunningham directed that a System-wide HUB program evaluation be conducted to (1) determine causes for decline/increases in HUB purchases and (2) identify efforts to be undertaken to enhance progress toward achievement of adjusted good faith effort goals. Mr. Wright noted as a result of his analysis that a major cause for declining expenditures has been identified as HUB vendor failure to renew certification.

Mr. Wright also noted that to further emphasize the importance of this program Chancellor Cunningham sent a letter to the chief administrative officer of each component institution setting forth his expectation that HUB programs meeting all applicable standards of good

faith will be fully operational or on a definite course toward effective operation at the earliest possible date. At the conclusion of Mr. Wright's remarks, Committee Chairman Riter expressed appreciation to Chancellor Cunningham, Mr. Wright, and the chief administrative officers for their focus and effectiveness in making this project a priority.

5. U. T. System: Report on Year 2000 Information System Issues.--Mr. R. D. Burck, Executive Vice Chancellor for Business Affairs, distributed to the members of the Board a report entitled "[The University of Texas System: Preparing for the Year 2000,](#)" a copy of which is on file in the Office of the Board of Regents.

Executive Vice Chancellor Burck reviewed the Year 2000 Challenge (also called the Y2K Problem or the Millennium Bug) which is a set of issues all related to how computers have been programmed to store dates. The numbers used to represent years have been stored as two-digit (e.g. 98) rather than four-digit (e.g. 1998) numbers, and these two-digit numbers cause problems when calculations are made on dates that span centuries.

Mr. Burck noted that the problem is worldwide in scope and without historical precedence with cost estimates to address it ranging from \$280 billion to \$600 billion worldwide. The preliminary cost estimate to the U. T. System is approximately \$21 million. Since higher education did not receive any special appropriations to address Year 2000 issues, the costs associated therewith must be absorbed by the various component institutions. He pointed out that any application, program, or electronic device that contains arithmetic function, calculations, or dependencies on dates will produce incorrect results if it has not been updated to properly process Year 2000 dates. This includes accounting, insurance and financial systems, etc., as well as electronic devices contained in mechanical equipment. The problem impacts utilities, factory floors, physical facilities, as well as medical and research equipment.

Mr. Burck emphasized that there are a number of steps required to address the Year 2000 problem. These include: create awareness, inventory hardware and software, prioritize problems, devise a remediation plan for each priority item, implement the plan, test

remediation results, and place the remediated system into operation.

In summary, Mr. Burck stated that the U. T. System has a program in place to address the information system issues but every single problem related thereto will not be corrected by December 31, 1999.

Chancellor Cunningham expressed appreciation to Regent Sanchez for his commitment in urging the U. T. System to move into the new millennium in a manner wherein there will be no disruption to vital University operations.

6. U. T. System: Report on Deregulation of Utilities Issues - Summary of Utility Costs and Efficiency of Component Institutions.--At the request of Chairman Evans, Executive Vice Chancellor for Business Affairs Burck reported on the utility costs and efficiency of The University of Texas System component institutions and related deregulatory issues.

Mr. Burck noted that an ad hoc committee had been established to examine utility costs and to prepare the U. T. System to be in a competitive position when deregulation occurs. This committee will study utility costs and infrastructure issues and informational reports will be provided to the Board at future meetings.

Noting that the utility costs throughout the U. T. System are approximately \$38 million per year for electric power and \$15 million for natural gas, Mr. Burck pointed out that the U. T. System is focusing on energy conservation measures.

Executive Vice Chancellor Burck introduced Mr. John Allen Moore of Resource Management International, Inc., who distributed a handout entitled "[The Electric Industry in Transition,](#)" a copy of which is on file in the Office of the Board of Regents.

At the conclusion of Mr. Moore's report, Chairman Evans thanked Regent Sanchez for bringing into sharp focus the utility costs matter and expressed appreciation to Chancellor Cunningham and Mr. Burck for their efforts in reviewing the System's strategy as it moves toward anticipated energy and utility deregulation.

REPORT AND RECOMMENDATIONS OF THE ACADEMIC AFFAIRS COMMITTEE (Pages 120 - 139).--Committee Chairman Lebermann reported that the Academic Affairs Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Academic Affairs Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. System: Authorization to Adopt a Common Application Form for Undergraduate Admissions at the General Academic Component Institutions.--The 75th Texas Legislature adopted Senate Bill 150 (now in the Texas Education Code as Section 51.761 et seq.) which requires the governing board of a university system to adopt a common admission application. The statute also requires that the Texas Higher Education Coordinating Board adopt a statewide common undergraduate application form for use by applicants for the 1999-2000 academic year. This statewide form will also meet the requirement for a System-wide application form, will be available for electronic use, and will allow an applicant to designate one or more institutions to which he or she is applying.

In accordance therewith, the Board delegated authority to the Acting Vice Chancellor for Academic Affairs and the chief administrative officers of The University of Texas System general academic component institutions to adopt a common admissions application form that is consistent with a common form being adopted for all Texas public universities by the Coordinating Board for use by applicants for the 1999-2000 academic year.

2. U. T. System: Adoption of Guidelines for a Visiting Students Program Among Component Institutions Effective with the Fall Semester 1998 (Catalog Change).--Upon recommendation of the Academic Affairs and Health Affairs Committees, the Board adopted Guidelines for a Visiting Students Program Among Component Institutions of The University of Texas System effective with the Fall Semester 1998 as set forth on Pages 121 - 123 with appropriate catalog changes to be effected by each component when a new catalog is published.

GUIDELINES FOR A VISITING STUDENTS PROGRAM
AMONG COMPONENT INSTITUTIONS OF THE U. T. SYSTEM

I. INTRODUCTION

The component institutions of The University of Texas System (U. T. System) offer an impressive variety of outstanding academic programs and engage in significant world-class research activities. A cooperative visiting students program can help interested, qualified students take advantage of unique educational opportunities at other component institutions and can reduce procedural requirements for students who wish to participate.

II. PURPOSE

- A. The visiting students program is designed to allow upper-level and graduate or professional students enrolled in an institution of the U. T. System to take courses or engage in research at another institution within the System during a regular semester or summer session.
- B. The program guidelines provide for reporting of grades, payment of charges, and continuation of financial aid during the semester or summer session in attendance at another institution.

III. GUIDELINES

- A. The U. T. System visiting students program is limited to upper-level students (students with more than 60 semester credit hours of degree-related college level work) and graduate or professional students.
- B. Each U. T. System component institution with degree programs will establish requirements for eligibility for participation such as a minimum grade point average and completion of a minimum number of semester credit hours at the home institution. The requirements may vary among programs at an institution.

- C. Each institution will designate individuals to coordinate visiting student programs at home and host institutions. Coordinators will facilitate communication between the student and appropriate major advisors at both institutions. The advisor at the home institution will have final authority on courses which may receive credit under the visitation program.
- D. A student's proposed visitation should clearly relate to the student's program and academic interest and be approved by the designated program coordinator (undergraduate or graduate/professional) at both the home institution and the proposed host institution.
- E. Approval for a student's proposed visitation will be contingent on space and desired courses being readily available in the proposed visitation program and, for participation in a research laboratory, on approval of the director of the laboratory.
- F. For continuity of financial aid, the visiting student should be registered at the home institution, with grades for any course taken at the cooperating host institution reported to the home institution.
 - 1. The home institution will identify at the time of registration the course title/number under which the visitation course credit would be recorded.
 - 2. The designated visitation program coordinator at the host institution will report the student's grade(s) to the coordinator at the home institution at the end of each semester or summer session.
 - 3. The home institution will determine whether the grade earned at a host institution is to be treated as regular course credit for determining academic standing and grade point averages or as transfer credit.
- G. The visiting student will be subject to the rules and regulations of the host institution as well as the home institution.

- H. To maintain consistency and to assure the integrity of student financial aid requirements, charges for tuition and required fees (including course-specific fees and other required fees associated with enrollment at the host institution) are to be paid to the home institution. The host institution must provide the home institution with the list of fees to be charged and the home institution will transfer the amounts collected to the host institution.
- I. A student awarded a fellowship, stipend, or other financial assistance by the home institution will be eligible to receive such assistance while visiting the host institution.
 - 1. Acceptance of financial support from the visited institution will necessitate prior approval by the home institution.
 - 2. The usual eligibility requirements for financial aid at the home institution will apply to a visiting student.
- J. A visiting student will not be regularly admitted by the host institution for the period of the visitation and a student should not assume that he or she would be eligible for transfer to that institution.
 - 1. If a visiting student desires to transfer to the cooperating institution, the student must comply with the regular transfer admission requirements and procedures.
 - 2. Normally, a visitation may last no longer than one long session semester or a long session semester and a summer session; otherwise, the student should apply for and be admitted to the cooperating institution.
- K. Each institution shall include in the appropriate catalog(s) information which describes the U. T. System visiting students program, specifies eligibility requirements, and identifies the designated visiting students program coordinator(s) at that institution.

During the 1995-96 academic year, the U. T. System Student Advisory Group initiated discussions with the U. T. System Administration and the U. T. Board of Regents about expanding a graduate student exchange program between the U. T. System and The Texas A&M University System, which had been in existence since 1979, to allow for both graduate and undergraduate exchanges among the component institutions of the U. T. System.

Based on recommendations from members of the U. T. System Student Advisory Group, the guidelines now describe the program as a visiting students program and expand the concept to include eligibility to upper-level undergraduate students as well as graduate or professional students. Individual review and approval by designated administrators at each of the cooperating institutions is required for a student's proposed visitation.

The guidelines have been designed to minimize complexities for students regarding registration, grade reporting, financial aid, and student services. While the number of participants is not expected to be large, the guidelines present extraordinary educational opportunities within a cooperative framework.

3. U. T. Austin: Approval of a Patent and Technology License Agreement with JEMPAC International Corporation, Austin, Texas, and Authorization for Dr. Joel W. Barlow to Acquire Equity in and Serve as a Director of JEMPAC International Corporation.--The Academic Affairs Committee recommended and the Board:
 - a. Approved the Patent and Technology License Agreement set out on Pages 126 - 134 between the U. T. Board of Regents, for and on behalf of The University of Texas at Austin, and JEMPAC International Corporation, Austin, Texas
 - b. Approved the acquisition of equity in and temporary service as a director of JEMPAC International Corporation by Dr. Joel W. Barlow, Cullen Trust for Higher Education Endowed Professor in Engineering No. 5 at U. T. Austin.

Dr. Joel W. Barlow of U. T. Austin has created inventions including (1) "Composition of Material for Rapid Encapsulation," as described in Invention Disclosure #95-039 BAR, and (2) "Mixing and Dispensing Equipment for Rapidly Polymerizing Materials," as described in Invention Disclosure #95-055 BAR (collectively the "inventions").

Under the Patent and Technology License Agreement, JEMPAC International Corporation is granted a royalty-bearing, exclusive, worldwide license to manufacture, have manufactured, use and sell the inventions. JEMPAC International Corporation will pay the U. T. Board of Regents (1) an up-front nonrefundable royalty fee of \$30,000 and (2) a running royalty of four percent (4%) of net sales of licensed products designated as equipment or machines and two percent (2%) of net sales of licensed products designated as services or materials or \$25,000 per year whichever is greater. JEMPAC International Corporation will pay all patent prosecution and maintenance costs, including foreign filings, and will also support research at U. T. Austin with at least \$100,000 over a two-year period.

Dr. Barlow is an equity shareholder and temporary director of JEMPAC International Corporation. A license to a faculty-owned company is appropriate inasmuch as the activities by JEMPAC International Corporation involve applied research and the development of certain prototypes whereas Dr. Barlow's laboratory performs basic research and his status as director of JEMPAC ceased at the end of January 1998.

PATENT AND TECHNOLOGY LICENSE AGREEMENT

THIS AGREEMENT is made by and between the BOARD OF REGENTS (BOARD) OF THE UNIVERSITY OF TEXAS SYSTEM (SYSTEM), an agency of the State of Texas, whose address is 201 West 7th Street, Austin, Texas 78701, on behalf of THE UNIVERSITY OF TEXAS AT AUSTIN, and JEMPAC International Corporation (LICENSEE), a Texas corporation having a principal place of business located at 9228 Knollcrest Loop, Austin, TX 78759

RECITALS

A. BOARD owns certain PATENT RIGHTS and TECHNOLOGY RIGHTS related to LICENSED SUBJECT MATTER, which were developed at The University of Texas at Austin, a component institution of The University of Texas System.

B. BOARD desires to have the LICENSED SUBJECT MATTER developed and used for the benefit of LICENSEE. the inventor, BOARD, and the public as outlined in the Intellectual Property Policy promulgated by the BOARD.

C. LICENSEE wishes to obtain a license from BOARD to practice LICENSED SUBJECT MATTER.

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereto agree as follows:

I. EFFECTIVE DATE

This Agreement shall be effective as of September 1, 1997 (the "Effective Date"), subject to approval by BOARD.

II. DEFINITIONS.

As used in this Agreement, the following terms shall have the meanings indicated:

2.1 LICENSED SUBJECT MATTER shall mean inventions and discoveries covered by PATENT RIGHTS or TECHNOLOGY RIGHTS within LICENSED FIELD.

2.2 PATENT RIGHTS shall mean BOARDS rights in presently existing information or discoveries covered by patents and/or patent applications that have been filed or may be filed whether domestic or foreign, and all divisions, continuations, continuations-in-part, reissues, or reexaminations thereof, and any letters patent that issue thereon, which name Joel Barlow as either sole or joint inventor and which relate to the manufacture, use or sale of 'Composition of Material for Rapid Encapsulation', #95-039 BAR and "Mixing and Dispensing Equipment for Rapidly Polymerizing Materials", #95-055 BAR.

2.3 TECHNOLOGY RIGHTS shall mean BOARDS rights in any technical information, know-how, process, procedure, composition, device, method, formula, protocol, technique, software, design, drawing or data relating to Composition of Material for Rapid Encapsulation, #95-039 BAR and Mixing and Dispensing Equipment for Rapidly Polymerizing Materials, #95-055 BAR which is not covered by PATENT RIGHTS but which is necessary for practicing the invention at any time covered by PATENT RIGHTS.

2.4 LICENSED FIELD shall mean all commercial applications of the LICENSED SUBJECT MATTER.

2.5 LICENSED TERRITORY shall mean worldwide.

2.6 LICENSED PRODUCT shall mean any product SOLD by LICENSEE comprising LICENSED SUBJECT MATTER pursuant to this Agreement.

2.7 SALE or SOLD shall mean the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or a SUBSIDIARY.

2.8 SUBSIDIARY shall mean any business entity more than 50% owned by LICENSEE, any business entity which owns more than 50% of LICENSEE, or any business entity that is more than 50% owned by a business entity that owns more than 50% of LICENSEE.

2.9 NET SALES shall mean the gross revenues received by LICENSEE from the SALE of LICENSED PRODUCTS less sales **and/or** use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount).

III. REPRESENTATION; SUPERIOR-RIGHTS

3.1 Except for the rights, if any, of the Government of the United States, as set forth hereinbelow, BOARD represents to the best of its knowledge that it is the owner of the entire **right**, title, and interest in and to LICENSED SUBJECT MATTER, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

3.2 The LICENSED SUBJECT MATTER is provided by BOARD WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE BOARD MAKES NO REPRESENTATION OR WARRANTY THAT THE LICENSED PRODUCTS OR LICENSED SUBJECT **MATTER** WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

IV. LICENSE

4.1 BOARD hereby grants to LICENSEE a royalty-bearing, worldwide, exclusive license under LICENSED SUBJECT MATTER to manufacture, have manufactured, use, sell, import and offer for sale LICENSED PRODUCTS within LICENSED TERRITORY for use within LICENSED FIELD. This grant shall be subject to the payment by LICENSEE to BOARD of all consideration as provided in this Agreement, and shall be further subject to rights retained by BOARD to:

(a) Publish the general scientific findings from research related to LICENSED SUBJECT MATTER; and

(b) Use any information contained in LICENSED SUBJECT MATTER for research, teaching and other educationally-related purposes.

4.2 LICENSEE shall have the right to extend the license granted herein to any SUBSIDIARY provided that such SUBSIDIARY consents to be bound by this Agreement to the same extent as LICENSEE.

4.3 LICENSEE shall have the right to grant sublicenses consistent with this Agreement if LICENSEE has current exclusive rights under this Agreement. LICENSEE shall be responsible for the operations of its sublicensees relevant to this Agreement as if such operations were carried out by LICENSEE, including the payment of royalties whether or not paid to LICENSEE by a sublicensee. LICENSEE further agrees to deliver to BOARD a true and correct copy of each sublicense granted by LICENSEE, and any modification or termination thereof, within thirty (30) days after execution, modification, or termination. **Upon** termination of this Agreement, any and all existing sublicenses granted by LICENSEE shall be assigned to BOARD.

4.4 BOARD shall have the right at any time after two (2) years from the date of this Agreement, to terminate the exclusivity of the license granted herein within LICENSED TERRITORY if LICENSEE, within ninety (90) days after written notice from BOARD as to such intended termination of exclusivity, fails to provide written evidence that it has commercialized or is actively attempting to commercialize an invention hereunder. BOARD agrees to negotiate in good faith with LICENSEE for adjusting terms under such a non-exclusive arrangement. BOARD shall have the right at any time after three (3) years **from** the date of this Agreement to terminate the license completely in any national political jurisdiction if LICENSEE, within ninety days (90) after written notice **from** BOARD of such intended termination, fails to provide written evidence that **it** has commercialized or is actively attempting to commercialize an invention licensed hereunder for that jurisdiction. Evidence provided by LICENSEE that it has an ongoing and active research, development, manufacturing, marketing or licensing program as appropriate, directed toward production and SALE of services or LICENSED PRODUCT multi-nationally or in the same world region of that jurisdiction based on the invention disclosed and claimed in PATENTS RIGHTS or incorporating TECHNOLOGY RIGHTS within such jurisdiction shall be deemed satisfactory evidence.

V. PAYMENTS AND REPORTS

5.1 In consideration of rights granted by BOARD to LICENSEE under this Agreement, LICENSEE agrees to pay BOARD the following:

(a) A nonrefundable up-front royalty fee in the amount of thirty thousand dollars (\$30,000) which shall be due and payable when this Agreement is executed by LICENSEE;

(b) A running royalty equal to four percent (4%) of NET SALES of LICENSED PRODUCTS designated as equipment or machines plus two percent (2% of NET SALES OF LICENSED PRODUCTS designated as services and materials ("Running Royalty"); provided however, that beginning with the third year of the Agreement (September 1, 1999 - August 31, 2000), LICENSEE must pay the greater of the Running Royalty or a minimum royalty of twenty-five thousand dollars (\$25,090) per year.

(c) A minimum amount of one hundred thousand dollars (\$100,000) in sponsored research funding over a (2) year period, pursuant to a sponsored research agreement with University to be entered into no later than ninety (90) days after the Effective Date.

(d) Twenty-five percent (25%) of all consideration received by LICENSEE from any sublicensee ("Sublicense Consideration") provided, however, that beginning with the third year of the Agreement (September 1, 1999-August 31, 2000), LICENSEE must pay the greater of the Sublicensee Consideration or a minimum royalty of three thousand dollars (\$3000) per sublicensee.

(e) If minimum royalty payments are required pursuant to paragraphs 5.1 (b) or 5.1 (d), they shall be no later than thirty (30) days after the end of the year of the Agreement for which they are due. For example, minimum royalties for the third year of the Agreement (September 1, 1999 - August 31, 2000) would be due no later than September 30, 2000.

5.2 LICENSEE agrees BOARD may cancel this Agreement in its entirety if LICENSEE fails to obtain at least **five** hundred thousand dollars (\$500,000) in commercial funding within eighteen (18) months of the Effective Date of this Agreement

5.3 **During** the Term of this Agreement and for one (1) year thereafter, LICENSEE shall keep complete and accurate records of its and its sublicensees' SALES and NET SALES of LICENSED PRODUCTS under the license granted in this Agreement in sufficient detail to enable the royalties payable hereunder to be determined. LICENSEE shall permit BOARD, at BOARD'S expense, to periodically examine its books, ledgers, and records during regular business hours **for** the purpose of and to the extent necessary to verify any report required under this Agreement. In the event that the amounts due to BOARD are determined to have been underpaid, LICENSEE shall pay the cost of such examination, and accrued interest at a simple

annualized rate of ten percent (10%).

5.4 Within **thirty** (30) days after March 31, June **30**, September **30** and December 31, LICENSEE shall deliver to BOARD at the address listed in paragraph 5.6, below, a true and accurate report, giving such particulars of the business conducted by LICENSEE and its sublicensees, if any exist, during the preceding three (3) calendar months under this Agreement as are pertinent to an account for payments hereunder. Such report shall include at least (a) the quantities of LICENSED SUBJECT **MATTER** that it has produced; specifying which SALES are designated equipment or machines and which SALES are designated services and material; (b) the total SALES; (c) the calculation of royalties thereon; and (d) the total royalties so computed and due BOARD. Simultaneously with the delivery of each such report, LICENSEE shall pay to BOARD the amount, if any, due for the period of such report. if no payments are due, it shall be so reported.

5.5 Upon the request of BOARD but not more often than once per calendar year, LICENSEE shall deliver to BOARD a written report as to LICENSEES efforts and accomplishments during the preceding year in commercializing LICENSED SUBJECT MATTER in various parts of the LICENSED TERRITORY and its commercialization plans for the upcoming year.

5.6 All amounts payable hereunder by LICENSEE shall be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind. Checks shall be made payable to The University of Texas at Austin and mailed to: Executive Vice President and Provost, The University of Texas at Austin, Main Building 201, Austin, Texas, **78712-1111**, Attention: Patricia C. Ohlendorf.

VI. TERM AND TERMINATION

6.1 The term of this Agreement shall extend from the Effective Date set forth hereinabove to the full end of the term or terms for which PATENT RIGHTS have not expired, or if only TECHNOLOGY RIGHTS. are licensed and no PATENT RIGHTS are applicable, for a term of fifteen (15) years.

6.2 This agreement will earlier terminate:

(a) automatically if LICENSEE shall become bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of LICENSEE or otherwise:

(b) upon ninety (90) days written notice if LICENSEE shall breach or default on any obligation under this License Agreement; provided, however, LICENSEE may avoid such termination if before the end of such period LICENSEE notifies BOARD that such breach has been- cured and states the manner of such cure to the reasonable satisfaction of BOARD.

(c) Under the provisions of Paragraph 4.4 if invoked.

(d) Under the provisions of Paragraph 5.2 if invoked.

6.3 Upon termination of this Agreement for any cause, nothing herein shall be construed to release either party of any obligation matured prior to the effective date of such termination. LICENSEE may, after the effective date of such termination, sell all LICENSED PRODUCT and parts **therefor** that it may have on hand at the date of termination, provided that it pays earned royalty thereon as provided in this Agreement.

VII. INFRINGEMENT BY THIRD PARTIES

7.1 LICENSEE shall have the obligation of enforcing at its expense any patent exclusively licensed hereunder against infringement by third parties and shall be entitled to retain recovery from such enforcement. LICENSEE shall pay BOARD royalty on any monetary recovery to the extent that such monetary recovery by LICENSEE comprises damages, or a reasonable royalty in lieu thereof. In the event that LICENSEE does not file suit against a substantial infringer of such patents within six (6) months of knowledge thereof, then BOARD shall have the right to enforce any patent licensed hereunder on behalf of itself and LICENSEE (BOARD retaining all recoveries from such enforcement) and/or convert the license to nonexclusive.

7.2 In any suit or dispute involving an infringer, the parties shall cooperate fully, and upon the request and at the expense of the party bringing suit, the other party shall make available to the party bringing suit at reasonable times and under appropriate conditions all relevant personnel, records, papers, information, samples, specimens, and the like which are in its possession.

VIII. ASSIGNMENT

This Agreement may not be assigned by LICENSEE without the prior written consent of BOARD. Written consent shall not be unreasonably withheld.

IX. PATENT MARKING

LICENSEE agrees to mark permanently and legibly all products and documentation manufactured or sold by it under this Agreement with such patent notice as may be permitted or required under Title 35, United States Code.

X. INDEMNIFICATION

LICENSEE shall hold harmless and indemnify BOARD, SYSTEM, UNIVERSITY, its Regents, officers, employees and agents from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by LICENSEE, its SUBSIDIARIES or its officers, employees, agents or representatives.

XI. USE OF BOARD AND COMPONENT'S NAME

LICENSEE shall not use the name of The University of Texas at Austin, SYSTEM, BOARD, or Regents without express written consent.

XII. CONFIDENTIAL INFORMATION

12.1 BOARD and LICENSEE each agree that all information contained in documents marked "confidential" which are forwarded to one by the other shall be received in strict confidence, used only for the purposes of this Agreement, and not disclosed by the recipient party (except as required by law or court order), its agents or employees without the prior written consent of the other party, unless such information (a) was in the public domain at the time of disclosure, (b) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns, (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it, (d) was already known by the recipient party at the time of disclosure, (e) was independently developed or by recipient (f) is required by law or regulation to be disclosed.

12.2 Each party's obligation of confidence hereunder shall be fulfilled by using at least the same degree of care with the other party's confidential information as it uses to protect its own confidential information. This obligation shall exist while this Agreement is in force and for a period of three (3) years thereafter.

XIII. PATENTS AND INVENTIONS

LICENSEE shall reimburse BOARD for all expenses incurred by BOARD thus far and in the future in searching, preparing, filing, prosecuting and maintaining patent applications and patents relating to PATENT RIGHTS. If after consultation with LICENSEE it is agreed by BOARD and LICENSEE that a patent application should be filed for LICENSED SUBJECT MATTER, BOARD will prepare and file appropriate patent applications, and LICENSEE will pay the cost of searching, preparing, filing, prosecuting and maintaining same. If LICENSEE notifies BOARD that it does not intend to pay the cost of an application, or if LICENSEE does not respond or make an effort to agree with BOARD on the disposition of rights in the subject invention, then BOARD may file such application at its own expense and LICENSEE shall have no rights to such invention. BOARD will give LICENSEE a copy of any applications on which LICENSEE has paid the costs of filing, as well as copies of any documents received or filed during prosecution thereof. Reimbursements due BOARD hereunder shall be paid by LICENSEE within thirty (30) days of its receipt of a bill from BOARD.

XIV. GENERAL

14.1 This Agreement constitutes the entire and only agreement between the parties for LICENSED SUBJECT MATTER and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

14.2 Any notice required by this License Agreement, **excepty** royalty payments as specified in 5.6, shall be given by prepaid, first **class**, certified mail, return receipt requested, addressed in the case of BOARD to:

BOARD OF REGENTS
The University of Texas System
201 West 7th Street
Austin, Texas 76701
ATTENTION: Office of General Counsel

with a copy to:

Office of Technology Licensing & Intellectual Property
The University of Texas at Austin
3925 Braker Lane, Suite **1.9A**
Austin, Texas 76759
ATTENTION: Director

or in the case of LICENSEE to:

Jempac International Corporation
9226 Knollcrest Loop
Austin, TX 76759
ATTENTION: Steve **Kelley**

or such other address as may be given from time to time under the terms of this notice provision.

14.3 LICENSEE shall comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this Agreement.

14.4 This License Agreement shall be construed and enforced in accordance with the laws of the United States of America and of the State of Texas.

14.5 Failure of BOARD to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.

14.6 Headings included herein are for convenience only and shall **not** be used to construe this Agreement.

14.7 If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this AGREEMENT.

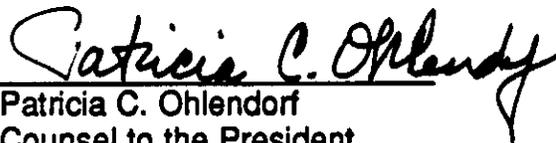
BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

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CORPORATION

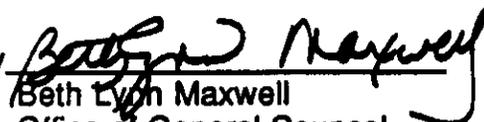
By 
Ray Farabee
Vice Chancellor and General Counsel

By 
Name: MIKE OLLA
Title: PRESIDENT

APPROVED AS TO CONTENT:

By 
Patricia C. Ohlendorf
Counsel to the President
Vice Provost
The University of Texas at Austin

APPROVED AS TO FORM:

By 
Beth Lynn Maxwell
Office of General Counsel

4. U. T. Austin - College of Pharmacy: Report on Changes in Pharmacy Education.--In response to changes in national accreditation standards and state licensing requirements, the College of Pharmacy at The University of Texas at Austin will begin the process of replacing the five-year Bachelor of Science in Pharmacy with the six-year Doctor of Pharmacy degree as the entry-level professional degree. At the present time, students are able to choose either option. The class entering in Fall 1998 is expected to be the last to have an option to pursue either the five-year Bachelor of Science or the six-year Doctor of Pharmacy. Because students will continue to have access to an entry-level professional degree, the replacement of the bachelor's degree with the professional doctorate does not appear to constitute academic program abandonment in the sense intended by the Regents' Rules and Regulations, Part One, Chapter III, Section 6, Subsection 6.(11), Subdivision 6.(11)1.

The six-year Doctor of Pharmacy degree curriculum includes more extensive clinical field work than is required for the five-year Bachelor of Science in Pharmacy degree. Consequently, larger and more formally structured off-site educational opportunities are required. The Dean of the College of Pharmacy, Dr. James Doluisio, anticipates completing formal cooperative agreements with at least the following institutions:

The University of Texas at El Paso
The University of Texas - Pan American
The University of Texas Medical Branch at Galveston
The University of Texas M.D. Anderson Cancer Center
Parkland Health and Hospital System, Dallas, Texas
Texas A&M University Health Science Center/
Scott & White Memorial Hospital, Temple, Texas.

Students who complete their clinical field work at one of these cooperating institutions will have noted on their diploma that the degree is awarded by U. T. Austin in cooperation with that particular institution. The program will remain strictly a U. T. Austin program, not a cooperative degree program, except for the currently existing joint Doctor of Pharmacy degree program with The University of Texas Health Science Center at San Antonio.

U. T. Austin's College of Pharmacy will continue to make the Doctor of Pharmacy available to students who already hold the Bachelor of Science degree. With the national phaseout of the bachelor's degree, a growing number of bachelor's degree holders are expected to seek a Doctor of Pharmacy degree. Consequently, the U. T. Austin College of Pharmacy is exploring nontraditional and cooperative ways of delivering the necessary additional instruction to practicing pharmacists. The Regents' Rules and Regulations currently authorize administrative approval for off-campus and distance delivery of instruction and delegate to the faculty the responsibility for establishing and maintaining standards regarding transfer of credit.

In summary, the U. T. Austin College of Pharmacy plans to make substantial changes in its curriculum in order to respond to the national trend towards offering only the Doctor of Pharmacy as the entry-level degree program. Although these changes may all be implemented under currently delegated authority, the U. T. Austin College of Pharmacy wishes to inform the U. T. Board of Regents of these changes.

5. U. T. Dallas: Establishment of a Master of Science Degree in Medical Management and Authorization to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change).--The Board, upon recommendation of the Academic Affairs Committee, established a Master of Science degree in Medical Management at The University of Texas at Dallas with the assistance of The University of Texas Southwestern Medical Center at Dallas and authorized submission of the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The Master's degree program is consistent with the approved Table of Programs for U. T. Dallas and institutional plans for offering quality degree programs to meet student needs.

The Master of Science in Medical Management is a 36 semester credit hour degree program to be administered by the U. T. Dallas School of Management Executive Education Program. The educational objective of the program is to prepare physicians and physician executives to assume a more effective role in the leadership and management of medicine and health care. The curriculum will be jointly taught by faculty of the U. T. Dallas

School of Management and School of Social Sciences and the U. T. Southwestern Medical Center - Dallas.

The curriculum in Medical Management will not be state-funded. Courses will be offered and taken sequentially. Each course, except the six credit hour research project, will be offered over a period of several weeks using distance learning technologies and an intensive period of classroom instruction in an off-campus residential setting. A minimum of two years will be required to complete all courses. Each individual course of the curriculum is designed also to qualify for continuing medical education credit through the U. T. Southwestern Medical Center - Dallas Department of Continuing Education. Initially, courses will be offered for continuing education without assurance that it will be applicable to a degree. Participants wishing to pursue the M.S. degree in Medical Management will be required to complete the entire 36 semester credit hour curriculum and will receive their degree from U. T. Dallas.

Based on an institutional survey, it is estimated that 67 students (50% of those who enroll for the first course) from the first cohort will complete the degree program and that 350 will complete the program in the first five years.

The program will be evaluated periodically by faculty in the School of Management and other U. T. Dallas faculty, by faculty at U. T. Southwestern Medical Center - Dallas, and by participants in the program.

The Master of Science in Medical Management program will be supported entirely by continuing education fees paid by enrolled participants. No state support will be used. A first year budget, based on an enrollment of 135 students, is expected to be \$229,500.

Upon approval by the Coordinating Board, the next appropriate catalog published at U. T. Dallas will be amended to reflect this action.

6. U. T. Dallas: Authorization to Establish a Bachelor of Science Degree and a Master of Science Degree in Telecommunications Engineering and to Submit the Degree Programs to the Coordinating Board for Approval (Catalog Change).--Approval was given to establish a Bachelor of Science degree and a Master of Science degree in Telecommunications Engineering at The University of Texas at Dallas and to submit the programs to the Texas Higher Education Coordinating Board for review and appropriate action. The degree programs are consistent with the approved Table of Programs for U. T. Dallas and the institutional strategic plan.

The Bachelor of Science and Master of Science degrees in Telecommunications Engineering will primarily use courses which now exist as a part of the Bachelor of Science and Master of Science degrees in Computer Science and in Electrical Engineering. The Bachelor of Science degree will require 130 semester credit hours, while the Master of Science degree will require a minimum of 33 semester credit hours.

Since most of the curriculum is based on existing courses which, in the future, will carry dual course listings, very little additional cost will be incurred in offering these programs. Additional enrollment, which is expected to result from more effectively meeting the needs of the students, will also reduce the unit cost of offering many of the courses.

Upon Coordinating Board approval, the next appropriate catalog published at U. T. Dallas will be amended to reflect this action.

7. U. T. Pan American: Establishment of an Office of Graduate Studies (Catalog Change).--The Board, upon recommendation of the Academic Affairs Committee, established an Office of Graduate Studies at The University of Texas - Pan American to centralize support for graduate studies and sponsored research.

U. T. Pan American has a sufficient number of master's degree programs and has awarded more than enough master's degrees to meet the U. T. Board of Regents' standard for a graduate school. However, the University is not yet ready to establish and provide staffing for a complete graduate school and wishes instead to establish an

"Office of Graduate Studies" which will provide centralized support for graduate programs, while leaving administrative responsibility with the separate colleges. The office, which will be directed by the Associate Vice President for Academic Affairs and Graduate Programs and Planning, will also absorb the responsibilities of the Office of Sponsored Projects.

It was ordered that the next appropriate catalog published at U. T. Pan American be amended to conform to this action.

REPORT AND RECOMMENDATIONS OF THE HEALTH AFFAIRS COMMITTEE (Pages 140 - 233).--Committee Chairman Loeffler reported that the Health Affairs Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Health Affairs Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. System: Approval to Decrease Premium Rates of The University of Texas System Professional Medical Liability Benefit Plan (Formerly The University of Texas System Plan for Professional Medical Liability Self-Insurance) Effective September 1, 1998.--Upon recommendation of the Health Affairs Committee, the premium rates for The University of Texas System Professional Medical Liability Benefit Plan (formerly The University of Texas System Plan for Professional Medical Liability Self-Insurance) were decreased for U. T. System faculty physicians and resident physicians effective September 1, 1998, with 50% of the premium reduction being based on the actuarially determined experience of each U. T. System health component by risk class as follows:

	<u>RISK CLASS 1</u>		<u>RISK CLASS 2</u>		<u>RISK CLASS 3</u>	
	<u>PREMIUM RATES</u>		<u>PREMIUM RATES</u>		<u>PREMIUM RATES</u>	
	<u>Staff</u>	<u>Resident</u>	<u>Staff</u>	<u>Resident</u>	<u>Staff</u>	<u>Resident</u>
UTMDACC	\$ 2,700	\$ 1,536	\$ 3,372	\$ 1,908	\$ 5,400	\$ 3,060
UTSMCDAL	2,556	1,452	3,192	1,812	5,112	2,892
UTMB	3,072	---	3,840	---	6,144	---
UTHSCHOU	2,844	1,608	3,552	2,016	5,688	3,216
UTHSCSA	2,796	1,584	3,492	1,980	5,592	3,168
UTHCTY	2,916	1,656	3,648	2,064	5,832	3,300

	<u>RISK CLASS 4</u>		<u>RISK CLASS 5</u>	
	<u>PREMIUM RATES</u>		<u>PREMIUM RATES</u>	
	<u>Staff</u>	<u>Resident</u>	<u>Staff</u>	<u>Resident</u>
UTMDACC	\$12,564	\$ 7,116	\$17,556	\$ 9,948
UTSMCDAL	11,880	6,732	16,608	9,408
UTMB	14,292	---	19,968	---
UTHSCHOU	13,224	7,488	18,480	10,476
UTHSCSA	12,996	7,368	18,180	10,296
UTHCTY	13,560	7,680	18,960	10,740

Pursuant to the authority of Chapter 59 of the Texas Education Code, the U. T. Board of Regents adopted the Professional Medical Liability Self-Insurance Plan to provide coverage for certain medical staff and medical students of the U. T. System. The original Plan went into effect on April 1, 1977, and is funded by the payment of premiums from the Medical Service, Research and Development Plans of the component health institutions of the U. T. System.

Currently, 3,876 staff and resident physicians and 3,200 medical students are enrolled in the Plan.

See Item 2 below related to the adoption of The University of Texas System Professional Medical Liability Benefit Plan.

2. U. T. System: Rescission of The University of Texas System Plan for Professional Medical Liability Self-Insurance; Adoption of The University of Texas System Professional Medical Liability Benefit Plan; and Authorization to Increase the Annual Aggregate for Claims Effective Immediately.--Pursuant to the authority of Chapter 59 of the Texas Education Code, the U. T. Board of Regents in April 1977 adopted The University of Texas System Professional Medical Liability Self-Insurance Plan to provide coverage for certain medical staff and medical students of the U. T. System funded with premiums paid from the Medical Service, Research and Development Plans of the component health institutions of the U. T. System.

In order to incorporate changes in Texas insurance law since the Plan's inception and to clarify certain ambiguous sections of the Plan document, the Board rescinded The University of Texas System Plan for Professional Medical Liability Self-Insurance and adopted The University of Texas System Professional Medical Liability Benefit Plan set forth on Pages 142 - 157 to include an increase in the Annual Aggregate for claims from \$20,000,000 to \$25,000,000 effective immediately.

See Page 140 related to premium rates for this Plan.

**THE UNIVERSITY OF TEXAS SYSTEM
PROFESSIONAL MEDICAL
LIABILITY BENEFIT PLAN**

(Effective February 12, 1998)

**ARTICLE I
PURPOSE**

The purpose of this Plan is to provide certain Medical Members and medical students of The University of Texas System with medical professional liability indemnity from and against medical liability claims pursuant to the authority granted to the Board of Regents of The University of Texas System by Senate Bill 391, Acts of the 65th Legislature, which Act became effective March 10, 1977, as amended.

**ARTICLE II
DEFINITIONS**

This Plan shall be known as the Professional Medical Liability Benefit Plan ("Plan"). Unless otherwise required by the context, the following terms shall control:

A. **Medical Members** shall mean:

1. Medical doctors, oral surgeons, oral pathologists, doctors of osteopathy, and podiatrists appointed to the full-time faculty of a medical school or hospital of the System, medical doctors employed full-time in health services at and by a general academic institution of the System, residents of such disciplines participating in a patient-care program in the System, and fellows whose salaries are paid by a System health component, who are duly licensed, credentialed, and registered to practice their profession;
2. Medical doctors, oral surgeons, oral pathologists, doctors of osteopathy, and podiatrists appointed to the faculty of a medical school or hospital of the System on a part-time or volunteer basis, and who either devote their total professional service to such appointments or provide services to patients by assignment from the department chairman. For purposes of the Plan, such persons are "Medical Members" only when providing services to patients in conjunction with supervision of medical students or resident physicians by assignment from the department

chairman and shall become participants in the Plan only as provided in Article IV, Section 2; and

3. Residents who work additional hours for additional compensation at a U. T. System health facility or facility affiliation with the U. T. System, will be provided coverage as long as the situation meets the requirements of the Accreditation Council for Graduate Medical Education (including requirements of supervision and restrictions on allowable number of work hours), and the work has previously been identified as part of the resident's general training program.
 4. Medical students of a medical school of the System and only when participating (with prior approval of such medical school) in a patient-care program of a duly accredited medical school under the direct supervision of a faculty member of the school conducting such program.
- B. **Participant** means any Medical Member qualifying under Article IV for participation in this Plan. The coverage afforded applies separately to each participant against whom claim is made or suit is brought, except with respect to the limits of the System's liability.
- C. **Medical Liability Claim** means a cause of action (arising within the Plan territory) based upon treatment, lack of treatment, or other claimed departure from accepted standards of medical care which proximately results in injury to or death of the participant's patient, whether the claim or cause of action sounds in tort or contract, subject to the exclusions described in Article V, Section 4, below.
- D. **System** means The University of Texas System.
- E. **Board** means the Board of Regents of The University of Texas System.
- F. **Fund** means the Medical Professional Liability Fund established by the Board.
- G. **Administrator** means the Vice Chancellor and General Counsel of The University of Texas System.
- H. **Damages** means all damages, including damages for death, which are payable because of injury to which the Plan

applies, but does not include exemplary or punitive damages.

- I. **Coverage** means the medical liability indemnity afforded participants by this Plan.
- J. **Plan territory** means
 - 1. The United States of America, its territories or possessions, or Canada; or
 - 2. Anywhere in the world for medical doctors, oral surgeons, oral pathologists, doctors of osteopathy, or podiatrists, provided the original suit for damages is brought within the United States of America, its territories or possessions, or Canada.
- K. **Annual period** means from April 1, 1977 through March 31, 1978, and each succeeding twelve-month period (from April 1, through March 31) or part thereof terminating with the termination of this Plan.
- L. **Certificate of Coverage** means that document issued to the Medical Member by The University of Texas System specifying the terms and conditions of the Plan benefits.
- M. **Professional services** means medical or health care and treatment.
- N. **Utilization review** means the review of the medical care of a patient by a physician for the purpose of determining quality of care, determining medical necessity of care or treatment or whether a specific medical treatment or consultation will be authorized, or determining in what setting or what type of health care provider will provide the treatment or consultation, in which the physician has had no contemporaneous personal involvement in the care being evaluated. This review may include a review of medical records, medical history or patient examinations in whatever form transmitted (oral, written or electronic).

ARTICLE III APPLICABILITY OF PLAN PROVISION

The coverage afforded by this Plan is subject to the particular terms, conditions, and limitations (including, but not limited to limits of liability) of this Plan and the interpretation thereby by the Board or the Plan Administrator. Notwithstanding any other language of the Plan, the coverage

afforded by the Plan applies only to Medical Liability Claims arising out of incidents, transactions or events occurring on or after April 1, 1977.

**ARTICLE IV
CONDITIONS FOR PARTICIPATION**

Section 1

Each person who is a Participant on the effective date of the Plan, and each person who becomes a Participant thereafter, as long as this Plan remains in effect, shall participate in the Plan provided, that

- A. Each medical student, as an additional condition of participation, must pay into the Fund a fee in such amount or amounts, and at such time or times, as may be required by the Board; and
- B. A medical doctor employed full-time in health services at and by a general academic institution of the System shall not become a participant unless and until:
 - 1. All medical doctors so employed by such institution elect to participate in the Plan,
 - 2. Such institution files with the Administrator a written application, on behalf of such medical doctors, for participation in the Plan, and
 - 3. Such application is approved and accepted by the Administrator.

Section 2

Medical Members as defined in Article IIA.2 above shall become participants in the Plan upon written designation by the chief administrative officer of the health care institution with the approval of the Administrator and the Executive Vice Chancellor for Health Affairs.

**ARTICLE V
COVERAGE OF PARTICIPANTS**

Section 1 -- Payments on Behalf of Participants

- A. Except as otherwise provided herein, the System will pay on behalf of each participant, from monies in the Fund, all sums which the participant shall become legally obligated to pay as damages because of a Medical Liability

Claim arising from the exercise of the participant's employment, duties or training with the System as a Medical Member, performed in the practice of his or her profession, including service by the participant as a member of a formal accreditation or similar professional board or committee of a hospital or professional society with respect to medical staff privileges, accreditation or disciplinary matters related to competency.

- B. Coverage for Medical Members as defined in Article IIA.2 above shall be limited to claims arising from assigned teaching activities and supervision of medical students and resident physicians performed within the course and scope of the participants' assignments as evidenced in writing.
- C. Coverage for Participants shall be subject to the conditions applicable to the Medical Member through his or her Certificate of Coverage.
- D. Peer review performed at the request of a credentialing body or a professional society for the purpose of determining quality of care is covered provided that any funds generated from the review are deposited into the practice plan as required by the practice plan bylaws. Utilization review decisions made by a participant that are pursuant to a contract with an insurance company or managed care organization as a provider of health services in which the physician has a contemporaneous personal involvement in the care of the patient care is covered.

Section 2 -- Defense of Lawsuits

The System shall have the right and duty to defend any claim or lawsuit against a participant seeking damages because of such injury even if any of the allegations of the claim or lawsuit are groundless, false or fraudulent. The System may make such investigation and settlement of any claim or suit as it deems expedient. The System shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the System's liability has been exhausted by payment of judgments or settlements, or monies in the Fund have been exhausted. The System has no duty to defend any claims not covered by this Benefit Plan.

Section 3 -- Supplementary Payments

The System will pay from the Fund, in addition to the applicable limit of liability:

- A. All expenses incurred by the System in investigating and defending any lawsuit, all costs taxed against the participant in any suit defended by the System, and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the System has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the System's liability thereon;
- B. Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this Plan, but the System shall have no obligation to apply for or furnish any such bonds.
- C. Reasonable, personal expenses incurred by a participant or former participant at the System's request in assisting the System in the investigation or defense of any claim or suit.

Section 4 -- Exclusions

The System will not defend or pay under this coverage for:

- A. Injury arising out of the performance by the participant of any illegal, dishonest, fraudulent, criminal, malicious act or omission by the participant unless participant had no reasonable cause to believe his conduct was unlawful or illegal;
- B. Any claims or lawsuits based upon the violation of state or federal law, including antitrust statutes, fraud and abuse, anti-kickback and illegal remuneration laws;
- C. Injury arising out of any sexual conduct of the participant, including but not limited to sexual harassment and sexual relations, and including, without limitation, when intentionally or negligently done in connection with any professional service, act or omission, and regardless of whether such conduct is alleged to constitute negligence;
- D. Any injury caused while participant is acting under the influence of alcohol or controlled substances or as a result of excessive use of therapeutic drugs;
- E. Any use, administration or prescription of any drug or pharmaceutical disapproved or not yet approved by the United States Food and Drug Administration for treatment for human beings; unless such use, administration or

prescription has been approved by the Institutional Review Board of the health care institution where such drug or pharmaceutical was used, administered or prescribed;

- F. Any liability arising out of any professional or licensed service, act or omission outside the scope of participant's employment with System;
- G. Injury for which the participant may be held liable as a proprietor, stockholder, owner, member of the board of directors, governors or trustees, superintendent, executive officer, department head or medical director of any non- System owned or managed hospital, sanitarium, laboratory, clinic with bed and board facilities, infirmary, nursing home, foundation, surgical center, blood bank, commercial or any other business enterprise whether or not related to patient care and/or treatment; but, this exclusion shall not be applied to responsibilities which require the special expertise or training of a physician or surgeon and which are not principally executive or administrative in nature;
- H. Injury, of an individual practitioner, arising out of the rendering of or failure to render professional services by any other person for whose acts or omissions the participant may be held liable as a member, partner, officer, director or stockholder of any professional partnership, association or corporation;
- I. Injury to any employee of the participant arising out of and in the course of that person's employment by the participant;
- J. Any obligation for which the participant or any carrier acting as insurer may be liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- K. Any liability or indemnity obligation assumed by the participant under contract or agreement, except to the extent endorsed hereto;
- L. Actual or alleged discrimination because of race, religion, color, sex, national origin, age or handicap against a part or present employee or any applicant for employment with any insured, any participant, or any patient;

- M. Damage to property:
 - 1. owned, occupied or rented by a participant;
 - 2. used by a participant;
 - 3. in any participant's care, custody or control; or
 - 4. over which a participant is exercising physical control for any reason;
- N. Any fines, penalties, the return or withdrawal of fees or government payments;
- O. Any award of punitive or exemplary damages, treble or multiple damages;
- P. Any claim arising out of professional services which occurred prior to the prior acts date of this Plan;
- Q. Any claim arising out of professional services which happened after the termination of faculty appointment, residency or medical student status with the System;
- R. Any claim arising out of professional services where the professional services were billed for by the participant and were not deposited in a System health component practice plan trust;
- S. Any claim arising out of professional services performed for professional fees, salaries or other compensation by Residents or Fellows at a non-System-owned health care facility (moonlighting); and
- T. Any claim arising out of a request by a managed care company or an insurance company for a participant to provide utilization review services in which the participant has no contemporary personal involvement in the care being evaluated.

**ARTICLE VI
PARTICIPANTS' OBLIGATIONS**

Section 1 -- Assistance and Cooperation of Participant

Upon the participant's becoming aware of an occurrence or incident involving an injury or death, or an alleged injury or death, to which this Plan applies, or may apply, written notice containing particulars sufficient to identify the participant

and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the patient and of available witnesses, shall be given by or for the participant to the Administrator as soon as practicable.

Section 2 -- Notice of Claim or Suit

The participant shall give written notice to the System as soon as practicable of any claim made against the participant. The notice shall identify the participant and contain reasonably obtainable information with respect to the time, place and circumstances of the injury, including the names and addresses of the injured and of available witnesses. If claim is made or suit is brought against the participant, the participant shall immediately forward to the Administrator every demand, notice, summons, or other process received by the participant in accordance with administrative regulations for the Plan prescribed or approved by the Administrator.

Section 3 -- Cooperation by Participant

The participant shall cooperate with the System and, upon the System's request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the participant because of injury or damage with respect to which coverage is afforded under this Plan. The participant shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The participant shall not, except at participant's own cost, and after informing the Administrator in writing, voluntarily make any payment, assume any obligation or incur any expense. The participant shall not take any affirmative act or omission which may reasonably prejudice the defense of the claim or lawsuit. The taking of any affirmative act or omission which prejudices the defense of the claim or lawsuit shall entitle the System, but not obligate the System, to deny indemnity for any or all claims or lawsuit so prejudiced.

Section 4 -- Nonassignability of Interest in Plan

The Participant's interest under this Plan is nonassignable. If any participant shall die or be adjudged incompetent, this Plan shall thereupon terminate automatically as to such participant, but shall cover the legal representative of such participant's estate as a participant with respect to liability previously incurred and covered by this Plan.

ARTICLE VII
LIMITS OF LIABILITY

- A. The Plan's liability shall not exceed the limits of liability stated below, and such stated limits shall be applied as follows:
1. The "per claim" limit of liability is the maximum liability the Plan can owe for a claim first made during an annual period of this Plan and covered by this Plan as a Plan Incident. A single "per claim" limit of liability shall be applicable to a Plan Incident regardless of the number of claims made or lawsuits filed, and regardless of the number of annual periods involved with any Plan Incident. If a Plan Incident involves injuries to more than one patient such as in obstetrical services to the mother and fetus/child or children, a single "per claim" limit of liability shall be applicable for all such claims and resulting lawsuits. Likewise, a single "per claim" limit of liability shall be applicable to all claims by both the patient and by the family members or the heirs or estate of such patient, including derivative claims, claims for loss of consortium, claims of beneficiaries under the Texas Wrongful Death Statute and claims for mental anguish and related injuries associated with bystander perception or reaction to the injuries sustained by the patient. Plan coverage limits of liability, therefore, will not be stacked, added or combined in any manner to increase liability under this Plan even though multiple claimants, multiple claims or injuries, multiple lawsuits, or annual periods may be involved within a Plan Incident.
 2. The "annual aggregate for all claims for all participants" limit of liability is the maximum liability the Plan can owe for the aggregate of all Plan Incidents for which claims are first made during an annual period of the Plan for all participants in the Plan.
- B. When a claim is first made during an annual period as to the Participant, and thereafter, during the same or a subsequent annual period, one or more additional claims or lawsuits are reported arising out of, directly or indirectly, the same Plan Incident, all such subsequent claims or lawsuits shall be considered to have been first made against such Participant at the same time and during the same annual period as such claim was initially

reported, and a single "per claim" limit of liability shall be applicable.

"First made" means a claim first reported in writing to the Plan during the annual period of the Plan.

"Plan Incident" means any and all injuries and compensatory damages arising out of: the same, connected or related patient services rendered by the Participant or by anyone for whom such Participant has coverage under the Plan for vicarious liability.

Limits of Liability Schedule

The following limits shall apply unless lower liability limits are set by law, in which case the lower limits shall apply:

Staff Physician.	\$500,000.00 per claim
.	\$1,500,000.00 per all claims
Resident and Fellows.	\$100,000.00 per claim
.	\$300,000.00 per all claims
Medical Student.	\$25,000.00 per claim
Annual Aggregate for all claims for all participants	\$25,000,000

**ARTICLE VIII
INSURANCE**

Section 1 -- Coverage

When the participant has professional liability insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the System's liability under this Plan shall not be reduced by the existence of such insurance.

Section 2 -- Insurance

When both this Plan and insurance apply to the loss on the same basis, whether primary, excess or contingent, the System shall not be liable under this Plan for a greater proportion of the loss than that stated in the applicable contribution provision below:

- A. **Contribution by Equal Shares.** If all such valid and collectible insurance provides for contribution by equal

shares, the System shall not be liable for a greater proportion of such loss than would be payable if each such insurer contributes an equal share until the share of each insurer or the Plan equals the lowest applicable limit of liability under any one policy or the Plan or the full amount of loss is paid, and with respect to any amount of loss not so paid, the remaining insurers or the Plan then continue to contribute equal shares of the remaining amount of the loss until each such insurer or the Plan has paid its limit in full or the full amount of the loss is paid.

- B. **Contribution by Limits.** If any of such insurance does not provide for contribution by equal shares, the System shall not be liable for a greater proportion of such loss than the applicable limit of liability under this Plan for such loss bears to the total applicable limit of liability of all valid and collectible insurance and the Plan against such loss.

ARTICLE IX MODIFICATION AND TERMINATION

Section 1 -- Rights of Participants

The Board may terminate the Plan at any time, or at any time or from time to time, may amend, alter or suspend the Plan in whole or in part, as to all persons eligible to participate hereunder, or any class or groups of such persons, provided such action shall not impair any rights accrued prior to the effective date of such termination, amendments, alterations or suspension. Any such termination, amendments, alterations or suspension shall be effective on the date of the Board action unless a later date is specified by the Board. The Administrator shall promptly give notice of any such termination, amendment, alteration or suspension to all participants affected thereby.

Section 2 -- Termination in Event of Mandatory Participation in Other Indemnity or Insurance Programs

It is an express condition of the Plan that if the System is required by law, or by a collective bargaining or other agreement, to contribute toward another plan, program or scheme providing professional liability insurance or indemnity benefits for a class or group of Medical Staff Members, this Plan will terminate forthwith as to such class or group of Medical Staff Members.

Section 3 -- Termination Upon Cessation of System Employment

This Plan shall apply to a participant only so long as such participant remains qualified to participate in this Plan, provided that cessation of such participation shall not impair any rights accrued under this Plan prior to the effective date of such cessation of qualification.

Section 4 -- Benefits Terminable

All coverage of a participant under this Plan shall cease at once if the participant engages in any business or performs any act which in the sole judgment of the Board is prejudicial to the interest of the System.

**ARTICLE X
ACTION AGAINST SYSTEM**

Section 1 -- Conditions Precedent

No action shall lie against the System unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Plan, nor until the amount of the participant's obligation to pay shall have been finally determined either by judgment against the participant after actual trial, or by written agreement of the claimant and the Administrator.

Section 2 -- Third-party Actions

Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement shall thereafter be entitled to recover under this Plan to the extent of the coverage afforded by this Plan. No person or organization shall have any right under this Plan to join the System as a party to any action against the participant to determine the participant's liability, nor shall the System be impleaded by the participant or his legal representative. Bankruptcy or insolvency of the participant or the participant's estate shall not relieve the System of any of its obligation hereunder.

**ARTICLE XI
ADMINISTRATION OF PLAN**

Section 1 -- Administration

The Plan shall be administered by the Administrator under direction of the Board.

Section 2 -- Administrative Regulations

The Administrator may from time to time prescribe regulations for the administration of this Plan provided that such regulations shall, in the opinion of the Administrator, be consistent with the provisions of this Plan as it may be amended from time to time pursuant to Article IX of this Plan. Pursuant to Section 7.2(13), Chapter II, Part One, The University of Texas System Regents' Rules and Regulations, the Administrator may delegate in writing certain administrative, accounting, and investment functions of the Plan.

Section 3 -- Legal Interpretation

The text of this Plan shall control and the headings to the Articles, Sections and Paragraphs are for reference purposes only, and do not limit or extend the meaning of any of the Plan's provisions. The Plan shall be governed by and construed in accordance with the laws of the State of Texas. Any interpretation of the Plan by the Administrator shall be conclusive as between the System and its employees and students, participating Medical Members, and retired or otherwise terminated participants, employees and students, and may be relied upon by the System and all parties in interest.

Section 4 -- Counsel and Settlement Authority

Authority to employ counsel, approve attorney fees and expenses, and approve settlement of all claims, including litigation, shall rest with the Administrator, or his delegate, subject to any additional approval required by the Board of Regents of the System pursuant to any applicable policies of the System.

ARTICLE XII GENERAL PROVISIONS

Section 1 -- Subrogation

In the event of any payment under this Plan, the System shall be subrogated to all of the participant's rights of recovery thereof against any person or organization and the participant shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The participant shall do nothing after loss to prejudice such rights.

Section 2 -- Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Plan, or estop the System from asserting any right under the terms of this Plan; nor shall the terms of this Plan be waived or changed, except by written waiver or amendment duly approved by the Board.

Section 3 -- Entirety of Agreement

This Plan embodies all agreements existing between any and all persons and the System or any of its agents relating to this Plan and the coverage afforded hereunder.

Section 4 -- Employment Non-Contractual

The System may terminate the appointment, internship, residency, fellowship, or student-school relationship of any participant as freely and with the same effect as if this Plan were not in operation.

Section 5 -- Actions Against Participant

This Plan or its operations shall not in any way affect any claim or cause of action by the System against a participant for indemnity or contribution arising out of or incident to any medical liability claim.

Section 6 -- Communications

All notices, reports and statements given, made, delivered or transmitted to a participant shall be deemed duly given, made, delivered or transmitted when delivered to him, or when mailed by first-class mail, postage prepaid, and addressed to him at the address last appearing on the books of the System. A participant who changes his address shall forthwith give written notice to the System of such change. Written directions, notices and other communications from participants to the System shall be mailed by first-class mail, postage prepaid, or delivered as follows:

The University of Texas System
Office of General Counsel
Ashbel Smith Hall
201 West 7th Street
Austin, Texas 78701

Attention: Vice Chancellor and General Counsel

Section 7

Whenever used in this Plan, masculine pronouns shall include both men and women unless the context indicates otherwise.

Section 8 -- Coverage Under Prior Plan

A medical liability claim that occurred prior to the effective date of the revised Plan filed against a medical member after the effective date of the revised Plan is covered under the terms of the prior Plan.

Section 9 -- Effective Date

The revised Plan shall be effective February 12, 1998.

3. U. T. Health Science Center - San Antonio (U. T. G.S.B.S. - San Antonio): Establishment of a Master of Occupational Therapy (M.O.T.) Degree and Authorization to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change).--Authorization was granted to establish a Master of Occupational Therapy (M.O.T.) degree at the U. T. G.S.B.S. - San Antonio of The University of Texas Health Science Center at San Antonio and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The master's degree program is consistent with the U. T. Health Science Center - San Antonio's Table of Programs and institutional plans for offering quality degree programs to meet student needs.

The Master of Occupational Therapy degree is a six-year program wherein the preprofessional phase (freshman, sophomore, and junior years) consists of 89 hours of required course work. This work may be taken at any regionally accredited college or university but a minimum of 59 hours may be taken at the freshman and sophomore level, requiring 30 semester credit hours at the junior or senior upper-division level. Following completion of the prerequisites and admittance to the Occupational Therapy program, the student enters the professional phase, which consists of 111 hours of academic and clinical courses at the U. T. Health Science Center - San Antonio and within the community.

The Department of Occupational Therapy and the Graduate School of Biomedical Sciences at the U. T. Health Science

Center - San Antonio will be responsible for the degree program. The anticipated date to enroll the first students is the Summer Session 1999.

Thirty-five students are expected to enroll in the entry-level master's degree program each year, which is the same number currently enrolled in the baccalaureate program. This number meets the needs of the community and is the maximum number of students to whom the department can provide quality education.

The curriculum is a "three plus three" program with the preprofessional curriculum consisting of 89 semester credit hours based on a broad foundation of liberal arts and science courses. Students will be considered graduate students upon entering the professional phase of the program. After completion of the first year at the U. T. Health Science Center - San Antonio, students are eligible to receive a Bachelor of Science degree in Health Care Sciences (BSHCS). The professional curriculum is consistent with essential program elements required for accreditation through the Accreditation Council for Occupational Therapy Education (ACOTE).

The Department of Occupational Therapy is not requesting any new funds for the development and implementation of the Master of Occupational Therapy degree program. The current budget allocations for the Bachelor of Science degree in Occupational Therapy will be used to fund the replacement Master of Occupational Therapy degree.

Upon approval by the Coordinating Board, the next appropriate catalog published at the U. T. Health Science Center - San Antonio will be amended to reflect this action.

4. U. T. M.D. Anderson Cancer Center: Appointment of Mr. Leon Leach, Dr. Martin Raber, and Mr. Dan Fontaine to the Board of Directors of the Moncrief Radiation and Research Foundation.--Article II, Section 1 of the Bylaws of the Moncrief Radiation and Research Foundation (Foundation) provides that the sole member of the Foundation (the President of The University of Texas M.D. Anderson Cancer Center) shall appoint the six directors provided that "the Member's appointment of directors shall be subject to the prior approval of such nominees by the Board of Regents of The University of Texas System." Currently one vacancy exists on the Board of Directors due to the resignation of Mr. Robert N. Shaw, and Mr. Lee W. Hogan and Mr. Randall Meyer have indicated

a desire to resign from the Board of Directors of the Foundation.

Upon recommendation of the Health Affairs Committee, the Board approved the appointment by the sole member, i.e. the President of the U. T. M.D. Anderson Cancer Center, of the following three employees of U. T. M.D. Anderson Cancer Center to membership on the Board of Directors of the Moncrief Radiation and Research Foundation:

- Mr. Leon Leach, Chief Financial Officer
- Dr. Martin Raber, Vice President for Managed Care and Outreach Programs
- Mr. Dan Fontaine, Chief Legal Officer

The filling of the positions on the Board of Directors of the Foundation by these individuals will not jeopardize the independent legal status of the Foundation but will provide greater cohesiveness between the Foundation and the U. T. M.D. Anderson Cancer Center in the furtherance of the mission of each entity.

5. U. T. M.D. Anderson Cancer Center: Acceptance of Pledge from the Family of Mr. and Mrs. Floyd (Kathleen) Cailloux, Houston, Texas, and Establishment of the Floyd and Kathleen Cailloux Research Center in Human Cancer Genetics.--Approval was given to accept a \$10,000,000 pledge, payable by December 31, 2004, from the family of Mr. and Mrs. Floyd (Kathleen) Cailloux, Houston, Texas, and to establish an endowment at The University of Texas M.D. Anderson Cancer Center to be named the Floyd and Kathleen Cailloux Research Center in Human Cancer Genetics.

Funds distributed from the endowment will be used to support the Human Cancer Genetics Program at the U. T. M.D. Anderson Cancer Center.

Although a 100% pledge and a payout period longer than five years are exceptions to The University of Texas System Gifts Policy Guidelines, acceptance of the conditions of this pledge will assure the future of this vital research program at the U. T. M.D. Anderson Cancer Center.

See additional reference on Page 25 in the Report of Summary of Gift Acceptance and Related Administrative Actions.

6. U. T. M.D. Anderson Cancer Center: Approval of
(a) Second Amendment to License Agreement Between the
U. T. Board of Regents and M.D. Anderson Cancer Center
Outreach Corporation (Outreach); (b) Clinical Support
Services Agreement Between MDA Holding Spain, S.A. and
M.D. Anderson Cancer Center Outreach Corporation; and
(c) Sublicense Agreement Between M.D. Anderson Cancer
Center Outreach Corporation and MDA Holding Spain, S.A.--
On behalf of The University of Texas M.D. Anderson Cancer Center, the Board approved the following agreements:
- a. Second Amendment to License Agreement between the Board of Regents of The University of Texas System and M.D. Anderson Cancer Center Outreach Corporation (Outreach) in substantially the form set forth on Pages 164 - 165
 - b. Clinical Support Services Agreement between MDA Holding Spain, S.A. and M.D. Anderson Cancer Center Outreach Corporation in substantially the form set forth on Pages 166 - 213
 - c. Sublicense Agreement between M.D. Anderson Cancer Center Outreach Corporation and MDA Holding Spain, S.A. in substantially the form set forth on Pages 214 - 231.

At its February 1990 meeting, the U. T. Board of Regents approved a license agreement whereby Outreach was permitted to use the name and trademark "M.D. Anderson Cancer Center Outreach Corporation" in the operation of the Orlando Cancer Center, Orlando, Florida. At its August 1996 meeting, the U. T. Board of Regents approved a license agreement whereby Outreach was permitted to use that name and trademark and specific variances thereof in the entirety of the United States and its territories and possessions. At the U. T. Board of Regents' meeting in May 1997, the Board approved a First Amendment to License Agreement, permitting the licensing of names for the provision of services in other countries under the name M.D. Anderson Cancer Center Outreach Corporation (name of country). By this Second Amendment to License Agreement, Outreach seeks Board approval to use a variation of the M.D. Anderson name, "M.D. Anderson International

_____ " with the name of a foreign country being placed in the blank for geographical identification of the business entity involved. This will provide name identification for an international market in order to clearly delineate between foreign and domestic operations of M.D. Anderson Cancer Center Outreach Corporation.

This amendment of the license agreement leaves in place the U. T. Board of Regents' ability and authority pursuant to the license agreement to terminate the license agreement if at any time Outreach fails to comply with its obligations under the agreement.

The Clinical Support Services Agreement between MDA Holding Spain, S.A. and M.D. Anderson Cancer Center Outreach Corporation provides for the operation, by foreign entities over which Outreach will have directorial control, of a cancer center, radiotherapy center and insurance company. The M.D. Anderson International name will be sublicensed to all three entities.

The Sublicense Agreement between Outreach and MDA Holding Spain, S.A. provides the following safeguards to the trademarked names owned by the U. T. Board of Regents:

- a. There may be no assignment of the sublicense of the name without the U. T. Board of Regents' approval (Section 14)
- b. Overall quality control of all operations using the name are monitored by Outreach. Certain quality must be maintained or the Agreement may be unilaterally terminated by Outreach (Section 8.1).
- c. Final approval of all marketing material by the sublicensees will be determined by Outreach with review by the U. T. System Office of General Counsel (Section 8.2)
- d. The Sublicense Agreement automatically terminates if the Clinical Support Services Agreement terminates (Section 3.4.1)
- e. The Sublicense Agreement automatically terminates if the U. T. Board of Regents terminates the licensing agreement between the U. T. Board of Regents and Outreach (Section 3.4.2)

- f. Sublicenses will be granted only to subsidiaries that are directly controlled by a Holding Company for which Outreach provides two members of the Board of Directors. These Directors have irrevocable veto powers over any material transactions of the Holding Company (Section 7.1).

With regard to the Clinical Support Services Agreement, the following corporate structure safeguards and payment safeguards are provided for:

- a. Corporate Structure Safeguards

- 1. No Capital Investment by MDACC or Outreach in the Holding Company or Subsidiaries (Section 3.1(b))
- 2. Two of five Board Members of Holding Company are Outreach Appointees (Section 3.1(c))
 - (a) Two Outreach Appointees must agree to any Material Actions of Holding Company (Section 3.1 (d) and Exhibit 3.1-D)
 - (b) The two Outreach Board Members must vote in favor of Directions to Subsidiaries (Section 3.1 (h))
 - (c) Subsidiaries must have directions from Holding Company to take any Material Action (Sections 4.1(f), 5.1(f), 6.1(d) and Exhibit 1.11)
- 3. Three of five Board Members of Subsidiaries appointed by Holding Company of which one is named by Outreach (Sections 4.1(e), 5.1(e), 6.1(c))

- b. Payment Safeguards

- 1. Guaranteed Payment of the greater of \$100,000.00 or 10% of Holding Company Profits (Exhibit 7)
- 2. \$800 Per Registered Patient in Spain Facility (Exhibit 7)

3. Termination of Clinical Support Services Agreement if Financial Goals are not met (Section 8.10)
4. Annual Audits of Holding Company and All Subsidiaries (Sections 3.1(e), 4.1(g), 5.1(g), 6.1(e)).

Each of the subsidiaries, M.D. Anderson International - España, S.A., M.D. Anderson International Radiotherapy - España, S.A., M.D. Anderson International - España Seguros, S.A., are required to maintain sufficient liability insurance to insure and protect the interest of Outreach and the U. T. M.D. Anderson Cancer Center. The U. T. M.D. Anderson Cancer Center and Outreach will be listed as additional insureds on liability policies required to be purchased by the subsidiaries. Safeguards are provided to prevent customers of the subsidiaries from successfully alleging an agency relationship between the subsidiaries and either Outreach or the U. T. M.D. Anderson Cancer Center. Outreach will maintain its own liability insurance.

SECOND AMENDMENT TO LICENSE AGREEMENT

The Board of Regents of The University of Texas System (the "BOARD OF REGENTS") and M. D. Anderson Cancer Center Outreach Corporation (hereafter referred to as OUTREACH) enter into this Second Amendment to that License Agreement previously made effective as of the **first day** of January, 1996, (the 'LICENSE AGREEMENT'), and approved and entered into by the BOARD OF REGENTS and OUTREACH, at the BOARD OF REGENTS meeting of August 7th and 8th, 1996 at Tyler, Texas, and amended per the First Amendment to License Agreement, effective May 1, 1997. This Second Amendment to License Agreement is effective as of the **first** day of January, 1998 for the purposes herein set forth. Except as otherwise provided herein, the defined terms used in this AMENDMENT shall have the same meanings assigned to them in that certain LICENSE AGREEMENT. The BOARD OF REGENTS and OUTREACH are referred to collectively herein as the PARTIES.

WHEREAS, the BOARD OF REGENTS owns rights in certain marks used by The University of Texas System and/or component institutions;

WHEREAS, the PARTIES entered into the LICENSE AGREEMENT in order that the BOARD could grant to OUTREACH a non-exclusive license to utilize LICENSED MARKS under the terms and conditions of the LICENSE AGREEMENT;

WHEREAS, Attachment A of the LICENSE AGREEMENT describes the LICENSED MARKS that OUTREACH has a nonexclusive license to utilize; and

WHEREAS, the PARTIES desire to amend Attachment A to include additional Licensed Marks that OUTREACH shall have a non-exclusive license to utilize.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the PARTIES agree as follows:

1. Attachment A shall be revised to read in its entirety as follows:

LICENSED MARKS ARE:

1. M. D. Anderson Cancer Center Outreach Corporation
2. M. D. Anderson Cancer Center Outreach Corporation _____*
3. M. D. Anderson Outreach Corporation _____*
4. M. D. Anderson Outreach _____*
5. M. D. Anderson International _____*

* Denotes that a geographical place name may be inserted.

2. Except as expressly provided in this Second Amendment, all other terms, conditions and provisions of the License Agreement shall continue in full force and effect as provided therein.

CLINICAL SUPPORT SERVICES AGREEMENT

between

MDA HOLDING SPAIN, S.A.

M. D. ANDERSON INTERNATIONAL-ESPAÑA, S.A.

M. D. ANDERSON INTERNATIONAL RADIOTHERAPY-ESPAÑA, S.A.

M. D. ANDERSON INTERNATIONAL-ESPAÑA SEGUROS, S.A.

and

M. D. ANDERSON CANCER CENTER OUTREACH CORPORATION

DATE: _____

CLINICAL SUPPORT SERVICES AGREEMENT

This Clinical Support **Services** Agreement (the "**Agreement**"), effective as of the ___st day of _____ (the "**Effective Date**"). is by and between MDA Holding Spain. **S.A.** ("**Holding**"), a _____, **M. D. Anderson International-España, S.A.** ("**MDAI-España, S.A.**"), a _____, **M. D. Anderson International Radiotherapy-España, S.A.** ("**Radiotherapy**"), a _____, **M.D. Anderson International-España Seguros, S.A.** ("**Insurance Company**"?), a _____, and **M. D. Anderson Cancer Center Outreach Corporation** ("**Outreach**"), a **Texas** nonprofit corporation. (**Holding, MDAI-España, S.A., Radiotherapy, and Insurance Company** may be referred to individually or collectively herein as the "**Spanish Group Entities**").

RECITALS

WHEREAS, Holding has designed a project proposing **interrelationships of Spanish** companies as described in these recitals, which companies desire a relationship with **Outreach** as described in this Agreement;

WHEREAS, Holding is a parent company that holds at least a 51% ownership interest in **MDAI-España, S.A., Radiotherapy Corporation, and Insurance Company**;

WHEREAS, Outreach owns a 10% interest in Holding which interest has certain preferred rights attached to it;

WHEREAS, **MDAI-España, S.A.** shall develop, own, and operate a cancer center that provides oncology services through a Cancer Program;

WHEREAS, Radiotherapy shall participate in the Cancer Program by providing certain radiation oncology services to **MDAI-España, S.A.** for the treatment of patients of the **Cancer Program**;

WHEREAS, MDACC is the sole member of **Outreach**;

WHEREAS, Outreach has the ability to deliver certain Clinical Support Services relating to the treatment of cancer, which Clinical Support Services originate at MDACC;

WHEREAS, **MDAI-España, S.A.** and Radiotherapy desire to engage, for their benefit and the benefit of their patients, Outreach to provide certain Clinical Support Services and Outreach desires to be so engaged; and

WHEREAS, **Insurance Company** intends to establish and market an insurance product that will pay for full comprehensive cancer care at the Cancer Center and **MDACC** in Houston. **Texas**.

NOW THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, the Parties agree to the following:

1. DEFINITIONS

1.1 **Cancer Center** shall mean the facilities located at **calle Arturo Soria 270, Madrid, Spain** operated by **MDAI-España, S.A.** and Radiotherapy in which **oncology** services are provided to patients. Substitute or additional locations may be agreed to by the Parties through an amendment to this Agreement pursuant to Section **12. I.**

1.2 **Cancer Program** shall mean the **delivery** of medical, radiation and surgical oncology services to patients in the Cancer Center.

1.3 **Clinical Support** Services shall mean **those** clinical support services that Outreach is obligated to provide to **MDAI-España, S.A.** and Radiotherapy pursuant to Section 2.1 of **this** Agreement

1.4 **MDACC** shall mean **The** University of **Texas** M. D. Anderson Cancer Center in Houston, Texas.

1.5 **Operations Commencement Date** shall mean the date for commencement of operations of the Cancer Center as identified in the notice described in Section 4.6.

1.6 **Outreach Affiliate** shall mean MDACC and M. D. Anderson Physicians Network ("**MDAPN**"). MDAPN is a Texas non-profit corporation whose sole member is the President of MDACC and whose Board of Directors is composed entirely of physicians who are on the faculty of MDACC.

1.7 **Outreach** Name shall mean **any** form of the **name "M. D. Anderson Cancer Center Outreach Corporation."**

1.8 **Parties** shall mean the Spanish Group Entities and Outreach.

1.9 **Patients** shall mean the patients of the Cancer Program who are diagnosed or treated in **the** Cancer Center.

1.10 **Physicians** shall mean any physician whom **MDAI-España, S.A. or** Radiotherapy employs or who is otherwise permitted to provide oncology services to Patients (including the Core Staff, Affiliated Oncology Staff, and Affiliated Support **Staff**) and who are listed on Exhibit I. IO to this Agreement. "**MDAI-España, S.A. Physicians**" shall mean the Physicians listed in Section A of Exhibit 1.10. "**Radiotherapy Physicians**" shall mean the Physicians listed in Section B of Exhibit 1.10

1.11 **Subsidiary Matters** shall mean the matters described in **Exhibit I. 11**

1.12 **Term** shall mean the initial and any renewal periods of duration of this Agreement as described in Article VIII of this Agreement.

1.13 **Subsidiaries** shall mean **MDAI-España, S.A.,** Radiotherapy, and Insurance Company.

1.14 *Reserves* shall mean the profits of Holding that are not distributed to the shareholders as dividends.

II. OBLIGATIONS OF OCTREACH

2.1 *Clinical Support Services*: Outreach shall provide those Clinical **Support Services** described on Exhibit 2.1 to **MDAI-España, S.A.** and Radiotherapy for and in consideration of the covenants and obligations of the Spanish Group Entities as described herein. The delivery of **Clinical Support Services** shall be phased in over a three year period as described in Exhibit 2. 1.

2.2 *Additional Services*. **MDAI-España, S.A.** and Radiotherapy. at their option, may purchase additional services, including but not limited to the additional services described in **Exhibit 2.2**, at rates to be agreed to by the Parties at the time of purchase.

2.3 *Subcontractors*. Outreach may contract or subcontract with MDACC for the delivery of Clinical Support Services to **MDAI-España, S.A.** and Radiotherapy pursuant to this Agreement.

2.4 *Other Activities by Outreach and Outreach Affiliates*. MDACC has throughout its existence delivered to requesting physicians parts of Clinical Support Services. Moreover, MDACC is required by certain governmental requirements to provide access to its research and clinical efforts. Neither Outreach nor an Outreach Affiliate shall be deemed to have breached any provision of this Agreement in the conduct of such activities. Outreach shall inform MDACC faculty of the existence of the Cancer Center and its capabilities. Outreach shall use reasonable efforts to **inform** Holding of any clinical support services delivered to physicians in the **Iberian** Peninsula pursuant to this Section 2.4 as Outreach becomes aware of such events.

2.5 *Exclusivity*. During the Term of this Agreement, Outreach shall not enter into and shall cause Outreach **Affiliates** not to enter into a relationship with the operator of any **facility** (other than **MDAI-España, S.A.** and Radiotherapy) providing oncology treatment services and located in any area in the countries of Portugal and Spain or any physician group (other than Physicians) providing oncology treatment services and located in any area in the countries of **Portugal** and Spain pursuant to which Outreach would provide Clinical Support Services to such facility or physician group or pursuant to which such facility or physician group is entitled to use the Outreach Name. **Notwithstanding** the foregoing, nothing in this Agreement shall be interpreted to prohibit Outreach or any Outreach Affiliate from entering into a transaction with any insurance company domiciled in the European Union (excluding Spain and Portugal).

2.6 *Notification Requirement*. During the Term of this Agreement. if Outreach considers a Clinical Support Services Agreement relationship ("**CSSA Relationship**") in any country that is part of the European Union (other than Spain and Portugal), Outreach shall notify Holding of such consideration of the **CSSA** Relationship (which notification shall include (i) the country, city, and region involved and (ii) the services requested of Outreach) and will not conclude any such other **CSSA** Relationship for a period of 90 days from such notification and **will** during such 90 day period discuss with Holding (i) the potential effect that such other relationship might have on Cancer Center and (ii) the potential participation by Holding in such other relationship.

2.7 *Responsibility.* Outreach shall be responsible for all actions to be fulfilled by MDACC pursuant to this Agreement.

III. COVENANTS OF HOLDING

3.1 *Covenants of Holding.* Holding covenants and warrants that at all times during the Term:

- (a) Holding shall maintain at least a **51%** ownership interest in the **Subsidiaries**;
- (b) Simultaneously with the execution of this Agreement, Holding issues to Outreach shares of Holding representing a 10% interest in Holding. Outreach's initial 10% **interest** in Holding may be diluted in terms of ownership percentage, **but** Outreach shall continue to be entitled to 10% of any dividends or **distributions** of Holding to shareholders in Holdiig;
- (c) Holding shall be governed by a Board of Directors composed of five directors, and Outreach shall be entitled to select two of the directors. Outreach's power to select such **directors** shall include the power to reappoint, remove and replace such directors at its sole discretion;
- (d) Each action by Holding, its Board of Directors, or its shareholders with respect to the matters described in Exhibit 3.1-D must have received either the prior written approval of Outreach or the approving vote of both of the Directors appointed by Outreach;
- (e) Holding shall be audited each year by a reputable international firm of accountants with **offices** in the United States, using Spanish Generally Accepted Accounting Principles ("**GAAP**"). Holding's agreement with the auditor shall **require that** the financial statements or auditors' reports include a description of the differences between Spanish GAAP and US GAAP;
- (f) Holdiig shall not use any indicia of sponsorship, endowment, or connection with(i) any entity (other than Outreach) that prepares or pmvides services to Holding or any Subsidiary similar or analogous to Clinical Support Services or (ii) any university or other institution of higher learning;
- (g) The corporate documents of Holding shall provide that the transfer of shares by shareholders (other than the transfer of shares by Outreach to an Outreach Affiliate) shall be subject to a system that grants Holding and each shareholder a right of first refusal for the shares offered for sale, in such manner that:
 - (i) Any shareholder intending to transfer his shares must **advise** the Board of Directors of Holding of such intent; the latter, in turn, shall convey this intention to the other existing shareholders. Both notices should specify the number of shares to be sold and their price.

(ii) Each shareholder shall have a period of 15 days to notify the Board of Directors of his intention to acquire the offered shares. After the 15-day period, the Board itself will make a decision based on the bids received. Should the bids outnumber the offered shares, the Board will establish the preferential acquisition rights of the bidder in proportion to the percentage of the corporate stock held by each. If after the 15-day period, no shareholder notifies the Board of Directors of his intention to acquire the offered shares, the Board of Directors may determine that Holding shall exercise a preferential right to purchase the offered shares.

(iii) If neither existing shareholders nor Holding purchases the shares pursuant to this Section, then the selling shareholder may sell the shares, but only at a price equal to or greater than the price specified in the notice in (i) above.

(h) Before any vote may be taken by the Board of Directors or the shareholders of any Subsidiary with respect to any Subsidiary Matter, Holding's Board of Directors must meet to determine Holding's instructions to the Holding representatives at the Subsidiary's board or shareholder meeting on how to vote on such Subsidiary Matter. Holding's decisions regarding such instructions on how to vote on such Subsidiary Matter must receive the affirmative vote of the two directors of Holding that are selected by Outreach. Holding shall direct its representatives to vote on the Subsidiary Matter at issue in accordance with the decision of the Holding Board of Directors. Holding's representatives at the Subsidiary board or Shareholder Meeting shall vote in accordance with the Holding Board's direction; and

(i) Holding shall appoint at least three of the directors on the Board of each Subsidiary, one of whom shall be named by Outreach. Outreach's power to select such directors shall include the power to reappoint, remove, and replace such directors at its sole discretion.

3.2 Transfer of Outreach Shares. In the event that Outreach transfers its shares in Holding to a buyer(s) other than an Outreach Affiliate, neither the buyer(s) nor Outreach shall have the special rights to appoint directors described in Sections 3.1(c), 3.1(i), 4.1(e), 5.1(e) and 6.1(c) and the shares shall be exchanged for ordinary shares with no special rights whatsoever.

3.3 Sale of Shares upon Termination of Agreement. In the event that this Agreement is terminated pursuant to Article VIII, then Outreach shall sell its shares to Holding. The price to be paid by Holding to Outreach for such shares shall be equal to the sum of 2.5 million pesetas and 10% of the Reserves of Holding, excluding any initial share premium.

IV. OBLIGATIONS OF MDAI-ESPAÑA, S.A.

4.1 Covenants of MDAI-España, S.A. MDAI-España, S.A. covenants and warrants that at all times during the Term:

- (a) **MDAI-España, S.A. shall provide oncology services only to Patients at the Cancer Center;**
- (b) **MDAI-España, S.A. shall be and remain legally organized to operate a cancer center and to provide oncology services in a manner consistent with all applicable laws;**
- (c) **MDAI-España, S.A. shall be and remain licensed and/or accredited in accordance with all applicable laws relating to the delivery of oncology services;**
- (d) **Clinical direction for all medical aspects of MDAI-España, S.A. shall be performed in accordance with Exhibit 4. 1;**
- (e) **MDAI-España, S.A. shall be governed by a Board of Directors composed of five (5) directors, and Holding shall be entitled to appoint three of the directors, one of whom shall be named by Outreach. Outreach's power to select such director shall include the power to reappoint, remove, and replace such director at its sole discretion;**
- (f) **Before any vote may be taken by the Board of Directors or shareholders of MDAI-España, S.A. with respect to any Subsidiary Matter, Holding's Board of Directors must have met to determine Holding's instructions to the representatives at the MDAI-España, S.A. Board or shareholder meeting on how to vote on such Subsidiary Matter;**
- (g) **MDAI-España, S.A. shall be audited each year by a reputable international firm of accountants with offices in the United States, using Spanish GAAP. MDAI-España, S.A.'s agreement with the auditor shall require that the financial statements or auditors' reports include a description of the differences between Spanish GAAP and US GAAP;**
- (h) **The MDAI-España, S.A. Physicians listed in Section A of Exhibit 1.10 shall be the only physicians whom MDAI-España, S.A. employs, contracts with, or otherwise permits to provide medical services in association with MDAI-España, S.A. MDAI-España, S.A. shall obtain an amendment of this Agreement prior to employing, contracting with, or otherwise permitting a physician not listed in Section A of Exhibit 1.10 to provide such medical services, and MDAI-España, S.A. shall obtain an amendment of this Agreement upon the cessation of relationship with a Physician listed in Section A of Exhibit 1.10. Each such amendment shall be in the same form as Exhibit I. 10;**
- (i) **Each MDAI-España, S.A. Physician shall hold a currently valid and unlimited license to practice medicine in the country of Spain;**
- (j) **MDAI-España, S.A. shall not allow on its medical staff any physician who has not been credentialed by MDACC in an applicable specialty, and MDAI-España,**

S.A. shall remove from its medical staff any MDAI-España, S.A. Physician who fails to be recredentialed annually by MDACC. The current MDACC credentialing procedure is attached hereto as Exhibit 4.1(j);

(k) MDAI-España, S.A. shall not purchase from any source (other than Outreach) any services similar or analogous to Clinical Support Services for use by MDAI-España, S.A. Physicians:

(l) Neither MDAI-España, S.A. nor MDAI-España, S.A. Physicians shall use any indicia of sponsorship, endorsement, or connection with (i) any entity (other than Outreach) that prepares or provides services similar or analogous to Clinical Support Services or (ii) any university or other institution of higher learning;

(m) The corporate documents of MDAI-España, S.A. shall provide that the transfer of shares by shareholders shall be subject to a system that grants MDAI-España, S.A. and each shareholder a right of first refusal for the shares offered for sale, in such manner that:

(i) Any shareholder intending to transfer his shares must advise the Board of Directors of MDAI-España, S.A. of such intent; the latter, in turn, shall convey this intention to the other existing shareholders. Both notices should specify the number of shares to be sold and their price.

(ii) Each shareholder shall have a period of 15 days to notify the Board of Directors of his intention to acquire the offered shares. After the 15-day period, the Board itself will make a decision based on the bids received. Should the bids outnumber the offered shares, the Board will establish the preferential acquisition rights of each bidder in proportion to the percentage of the corporate stock held by each. If after the 15-day period, no shareholder notifies the Board of Directors of his intention to acquire the offered shares, the Board of Directors may determine that MDAI-España, S.A. shall exercise a preferential right to purchase the offered shares; and

(iii) If neither existing shareholders nor MDAI-España, S.A. purchases the shares pursuant to this Section, then the selling shareholder may sell the shares, but only at a price equal to or greater than the price specified in the notice in (i) above.

(n) MDAI-España, S.A. shall maintain a medical staff of no fewer than three (3) medical oncologists who are Physicians listed on Section A of Exhibit I. 10, the majority of whose practice (excluding work for the Spanish Social Security) is conducted at Cancer Center.

Exhibit 1.10 may be changed (for example to add a physician) by giving notice to Outreach and obtaining the written approval of Outreach as an amendment to the Agreement in accordance with

Section 12.1. If MDAI-España, S.A. notifies Outreach that it desires to amend Exhibit 1.10 by giving such notice to Outreach and Outreach does not reject such proposed amendment in writing within thirty days of Outreach's receipt of such proposal by MDAI-España, S.A., then Outreach shall be deemed to have approved the proposed amendment.

4.2 **Continuing Obligations.** During the Term of the Agreement. MDAI-España, S.A. agrees to comply with the obligations set forth on Exhibit 4.2.

4.3 **Notification.** MDAI-España, S.A. shall notify Outreach in writing within seventy-two (72) hours after MDAI-España, S.A. knows or reasonably should have known that any of the following events has occurred:

- (a) MDAI-España S.A.'s loss of license or loss of certification, accreditation, or qualification by any licensing, regulatory, or professional organization or agency with jurisdiction over MDAI-España, S.A.;
- (b) MDAI-España, S.A. (i) becomes the subject of a disciplinary proceeding or action before a licensing agency in the country of Spain or (ii) is disciplined by a licensing agency in the country of Spain;
- (c) any cancellation or suspension of MDAI-España S.A.'s insurance resulting in the absence of professional, general, or directors liability insurance coverage for a period longer than 30 days;
- (d) the license to practice medicine of any MDAI-España, S.A. Physician is suspended, revoked or terminated;
- (e) any MDAI-España, S.A. Physician is required to pay damages in any such action by way of judgment or settlement;
- (f) any MDAI-España, S.A. Physician becomes the subject of a disciplinary proceeding or action before a licensing agency in the country of Spain; or
- (g) any cancellation of a MDAI-España, S.A. Physician's professional liability insurance resulting in the absence of professional liability insurance for a period longer than 30 days.

4.4 **Medical Records.** With appropriate authorization and subject to Spanish and European Community law, Outreach shall be entitled to obtain copies of Patients' medical records. MDAI-España, S.A. shall provide Outreach with all records necessary to carry out Outreach's utilization management and quality improvement programs. Outreach shall maintain medical records received pursuant to this Section 4.4 in accordance with applicable law. Such medical and other records shall be made available to Outreach at no cost.

4.5 *MDAI-España, S.A. Rights.* MDAI-España, S.A. agrees that it may exercise its rights under this Agreement only at locations approved in writing by Outreach. The only location approved by Outreach on the Effective Date is calle Arturo Soria 270, Madrid, Spain.

4.6 *Commencement of Operations.* MDAI-España, S.A. shall give written notice to Outreach of the date on which MDAI-España and/or Radiotherapy first commence operations, which notice must be given within five (5) days following such date.

V. OBLIGATIONS OF **RADIOTHERAPY**

5.1 *Covenants of Radiotherapy.* Radiotherapy covenants and warrants that at all time during the Term:

- (a) Radiotherapy shall provide radiotherapy services only to Patients at the Cancer Center;
- (b) Radiotherapy shall be and remain legally organized to provide radiotherapy services in a manner consistent with all applicable laws;
- (c) Radiotherapy shall be and remain licensed and accredited in accordance with all applicable laws relating to the delivery of oncology services;
- (d) Clinical direction for all medical aspects of Radiotherapy shall be performed in accordance with Exhibit 4. 1 ;
- (e) Radiotherapy shall be governed by a Board of Directors composed of five (5) directors, and Holding shall be entitled to appoint three of the directors, one of whom shall be named by Outreach. Outreach's power to select such directors shall include the power to reappoint, remove, and replace such director at its sole discretion;
- (f) Before any vote may be taken by the Board of Directors or shareholders of Radiotherapy with respect to any Subsidiary Matter, Holding's Board of Directors must have met to determine Holding's instructions to the representatives at the Radiotherapy Board or Shareholder Meeting on how to vote on such Subsidiary Matter;
- (g) Radiotherapy shall be audited each year by a reputable international firm of accountants with offices in the United States. using Spanish GAAP. Radiotherapy's agreement with the auditor shall require that the financial statements or auditors' reports include a description of the differences between Spanish GAAP and **US GAAP**;
- (h) Radiotherapy Physicians listed in Section B of **Exhibit 1.10** shall be the **only** physicians whom Radiotherapy employs, contracts with, or otherwise permits to provide medical services in association with Radiotherapy. Radiotherapy shall obtain an amendment of this Agreement prior to employing, contracting with, or otherwise

permitting a physician **not listed** in **Section B** of Exhibit I. 10 to provide such **medical services**, and Radiotherapy shall obtain an **amendment** of this Agreement upon the cessation of relationship with a Physician listed in Section B of Exhibit I.10. Each such amendment shall be in the same form as Exhibit I IO:

(i) Each Radiotherapy Physician shall hold a currently valid and **unlimited license to** practice medicine in the country of Spain:

(j) Radiotherapy shall not allow on its medical staff any physician who **has** not been credentialed by MDACC in an applicable specialty, and Radiotherapy shall remove from its medical staff any Radiotherapy Physician who fails to be **recredentialed** annually by MDACC. The current **credentialing** procedure is attached hereto as Exhibit **4.1(j)**;

(k) Radiotherapy shall not purchase from any source (other than Outreach) any services similar or analogous to Clinical Support Services;

(l) Neither Radiotherapy nor Radiotherapy Physicians shall use any indicia of sponsorship, endorsement, or connection with (i) any entity (other than Outreach) that prepares or provides services similar or analogous to Clinical Support Services or (ii) any university or other institution of higher learning;

(m) The corporate documents of Radiotherapy shall provide that the transfer of shares by shareholders shall be subject to a system that grants Radiotherapy and each shareholder a right of first refusal for the shares offered for sale, in such manner that:

(i) Any shareholder intending to transfer his shares must advise the Board of Directors of Radiotherapy of such intent; the latter, in turn, shall convey this intention to the other existing shareholders. Both notices should specify the number of shares to be sold and their price.

(ii) Each shareholder shall have a period of **15** days to notify the Board of **Directors** of his intention to acquire the offered shares. After the **15-day** period, the Board itself will make a decision based on the bids received. Should the bids outnumber the offered shares, the Board will establish the preferential acquisition rights of each bidder in proportion to the percentage of the corporate stock held by each. **If after the 15-day** period, no shareholder notifies the Board of Directors of his intention to acquire the offered shares, the Board of Directors may determine that Radiotherapy shall exercise a preferential right to purchase the offered shares: and

(iii) **If neither** existing shareholders nor Radiotherapy purchases the shares **pursuant to this** Section, then the selling shareholder may sell the shares, but only at a price equal to or greater than the price specified in the notice in(i) above.

(n) Radiotherapy shall maintain a medical staff of no fewer than one (1) radiation oncologist who is a Physician listed on Section B of Exhibit I. 10 the majority of whose practice (excluding work for the Spanish Social Security) is conducted at Cancer Center.

Exhibit I. 10 may be changed (for example to add a physician) by giving notice to Outreach and obtaining the written approval of Outreach as an amendment to the Agreement in accordance with Section 12. I. If Radiotherapy notifies Outreach that it desires to amend Exhibit 1.10 by giving such notice to Outreach and Outreach does not reject such proposed amendment in writing within thirty days of Outreach's receipt of such proposal by Radiotherapy, then Outreach shall be deemed to have approved the proposed amendment.

5.2 **Continuing Obligations. During the Term** of the Agreement, Radiotherapy a- to comply with the obligations set forth on Exhibit 5.2.

5.3 **Notification.** Radiotherapy shall notify Outreach in writing within 72 hours after Radiotherapy knows or reasonably should have known that any of the following events has occurred:

(a) Radiotherapy's loss of license or loss of certification, accreditation, or qualification by any licensing, regulatory, or professional organization or agency with jurisdiction over Radiotherapy;

(b) Radiotherapy (i) becomes the subject of a disciplinary proceeding or action before a licensing agency in the country of Spain or (ii) is disciplined by a licensing agency in the country of Spain;

(c) any cancellation or suspension of Radiotherapy's insurance resulting in the absence of professional, general, or diitors liability insurance coverage for a period longer than 30 days;

(d) the license to practice medicine of any Radiotherapy Physician is suspended, revoked or terminated;

(e) any Radiotherapy Physician is required to pay damages in any such action by way of judgment or settlement;

(f) any Radiotherapy Physician becomes the subject of a disciplinary proceeding or action before a licensing agency in the country of Spain; or

(g) any cancellation of a Radiotherapy Physician's professional Liability insurance resulting in the absence of professional liability insurance for a period longer than 30 days.

5.4 **Medical Records.** With appropriate authorization and subject to Spanish and European Community law, Outreach shall be entitled to obtain copies of Patients' medical records.

Radiotherapy shall provide Outreach with all records necessary to carry out Outreach's utilization management and quality improvement programs. Outreach shall maintain medical records received pursuant to this Section 5.4 in accordance with applicable law. Such medical and other records shall be made available to Outreach at no cost.

5.5 **Radiotherapy Rights.** Radiotherapy agrees that it may exercise any rights that it has under this Agreement only at locations approved in writing by Outreach. The only location approved by Outreach on the Effective Date is **calle Arturo Soria, 270**. Madrid, Spain.

VI. OBLIGATIONS OF INSURANCE COMPANY

6.1 covenants of **Insurance Company.** Insurance Company covenants and warrants that at all times during the Term:

(a) Insurance Company shall market an insurance product that will pay for full comprehensive cancer care at Cancer Center or MDACC only;

(b) Insurance Company shall maintain all necessary governmental approvals, licenses, and permits in each jurisdiction in which it operates;

(c) Insurance Company shall be governed by a Board of Directors composed of five (5) directors, and Holding shall be entitled to appoint three of the directors, one of whom shall be named by Outreach. Outreach's power to select such director shall include the power to reappoint, remove, and replace such directors at its sole discretion;

(d) Before any vote may be taken by the Board of Directors or shareholders of Insurance Company with respect to any Subsidiary Matter, Holding's Board of Directors must have met to determine Holding's instructions to the representatives at the Insurance Company board or shareholder meeting on how to vote on such Subsidiary Matter;

(e) Insurance Company shall be audited each year by a reputable international firm of accountants with offices in the United States, using Spanish GAAP. Insurance Company's agreement with the auditor shall require that the Financial statements or auditors' reports include a description of the differences between Spanish GAAP and US GAAP;

(f) The corporate documents of Insurance Company shall provide that the transfer of shares by shareholders other than the transfer of shares by Outreach to an Outreach Affiliate (in the event Outreach owns shares as described in Section 6.1(g)) shall be subject to a system that grants Insurance Company and each shareholder a right of first refusal for the shares offered for sale, in such manner that:

(i) Any shareholder intending to transfer his shares must advise the Board of Directors of Insurance Company of such intent; the latter, in turn,

shall convey this intention to the other existing shareholders. Both notices should specify the number of shares to be sold and their price.

(ii) Each shareholder shall have a period of 15 days to notify the Board of Directors of his intention to acquire the offered shares. After the 15-day period, the Board itself will make a decision based on the bids received. Should the bids outnumber the offered shares, the Board will establish the preferential acquisition rights of each bidder in proportion to the percentage of the corporate stock held by each. If after the 15-day period, no shareholder notifies the Board of Directors of his intention to acquire the offered shares, the Board of Directors may determine that Insurance Company shall exercise a preferential right to purchase the offered shares; and

(iii) If neither existing shareholders nor Insurance Company purchases the shares pursuant to this Section, then the selling shareholder may sell the shares, but only at a price equal to or greater than the price specified in the notice in (i) above;

(g) Insurance Company shall afford to Outreach the opportunity to participate as a minority investor in the Insurance Company, subject to restrictions and conditions applicable to other shareholders and investors (other than Holding and as described in Section 6.1(f) in Insurance Company;

(h) Insurance Company shall notify Outreach in writing within 72 hours after Insurance Company knows or reasonably should have known that there has been a cancellation or suspension of Insurance Company's professional, general, or directors liability insurance coverage for a period of longer than 30 days;

(i) Insurance Company shall not use any indicia of sponsorship, endorsement, or connection with (i) any entity (other than Outreach) that prepares or provides services to any Spanish Group Entity analogous to Clinical Support Services or (ii) any university or other institution of higher learning;

(j) Investors (other than Holding and Outreach) in Insurance Company must be composed of one or more of AXA-AURORA, ADESLAS/CABS.A. CAJA MADRID, BBV, BCH, and GENERALI; and

(k) Each actual policy and policy document purchased by the insured will include (in the first language of the policy holder) disclaimer, release, and covenant not to sue language that shall prohibit the insured from bringing any cause of action against the licensor of the name of the Insurance Company for any dispute arising from the policy.

6.2 *Insurance Company Marketing Area.* Insurance Company may market its insurance products (consisting solely of cancer treatment insurance limited to treatment at Cancer Center and MDACC) in the countries comprising the European Union as of the Effective Date.

VII. COMPENSATION

Compensation. The Spanish Group Entities agree to compensate Outreach in accordance with Exhibit 7 for and in consideration of Outreach's obligations hereunder.

VIII. TERM! TERMINATION OF THIS AGREEMENT

8.1 Term. This Agreement shall commence on the Effective Date and shall continue for an initial period ending on the twentieth anniversary of the Operations Commencement Date. One year prior to the end of the Term, the Parties may meet to discuss the terms of renewal of the Agreement. Notwithstanding the foregoing, for those obligations, covenants and liabilities of the Parties which, by their nature, should not have effect until the Operations Commencement Date, the term or period for those obligations, covenants, and liabilities shall be deemed to commence on the Operations Commencement Date and last through the twentieth anniversary of the Operations Commencement Date.

8.2 Termination by Agreement. In the event the Parties shall mutually agree in writing, this Agreement may be terminated on the date specified in such written agreement.

8.3 Termination for Cause by Either Party. Either Party may terminate this Agreement for cause upon thirty (30) days written notice to the other Parties hereto. For purposes of this Agreement, "cause" shall be construed to mean a material breach of an obligation to be performed hereunder that is not cured within thirty (30) business days following receipt of notice of the breach, unless such breach cannot reasonably be cured within such thirty (30) day period, in which case the breaching Party has not begun to cure such breach during the thirty day period and the breaching Party has not cured the breach within ninety (90) days following receipt of notice of the breach.

8.4 Bankruptcy. Any Party may terminate this Agreement effective immediately upon written notice, if another Party files a petition in bankruptcy, is adjudicated bankrupt, or takes advantage of the insolvency laws of any jurisdiction, makes an assignment for the benefit of creditors, is voluntarily or involuntarily dissolved, or has a receiver, trustee, or other court officer appointed with respect to its property.

8.5 Termination by Outreach. Outreach, in its sole option, may terminate this Agreement effective immediately (a) if any of the covenants set forth in Sections 3.1, 4.1, 5.1 or 6.1 are breached; (b) upon the occurrence of any event that would require any Spanish Group Entity to give Outreach notice pursuant to Sections 4.3(a), 4.3(c), 5.3 (a). or 5.3(c); (c) upon the occurrence of any event that would require any Spanish Group Entity to give Outreach notice pursuant to Sections 4.3(d), 4.3(g), 5.3(d), or 5.3(g) unless the applicable Spanish Group Entity prohibits the Physician at issue from providing services to Patients within five (5) days following knowledge of the event giving rise to the requirement for notification; (d) upon the termination of the Sublicense Agreements entered between Outreach and Holding, effective [(t h e - S u b l i c e n s e Agreements)]; (e) if MDAI-España, S.A. fails to pay the CSSX service fee when due as described in Exhibit 7 and such failure is not corrected by such date by Holding; or (t) if Holding fails to pay any fee or other distribution required by Exhibit 7 or elsewhere in this Agreement.

8.6 Termination by Spanish Group Entities. Spanish Group Entities may terminate this Agreement pursuant to Section 8.3 if Outreach fails to deliver Clinical Support Services in accordance with Section 2.1.

8.7 Termination Due to Legislative or Administrative Changes. In the event that there shall be a change **in the federal or state** law of the United States **of America**, the laws **of the Kingdom** of Spain, **the** Medicare or Medicaid statutes, regulations, or **general** instructions (or in the **application** thereof), the adoption of new legislation or regulations applicable to this Agreement, or the initiation of an enforcement action with respect to legislation, regulations, or instructions applicable to **this Agreement**, any of which **affects** the continuing viability or legality of **this** Agreement, then either Party may by **notice** to the other Party propose **an** amendment to conform this Agreement to **existing** laws. If notice of such a change or an amendment is given and if **the** Parties are unable within **thirty** (30) days thereafter to agree upon **the** amendment, then either Party may terminate this Agreement by ninety (90) days notice to **the other** Party, unless a **sooner** termination is required by law.

a.8 Termination Due to Federal Income Tax Status. In the event **that** there shall be a change in the Internal Revenue Code or the Treasury Regulations promulgated thereunder, **the** promulgation by the Internal Revenue Service of rulings or other authorities, or a change in **the Internal** Revenue Service's interpretation **of** any of the foregoing that, as a result of this Agreement, adversely affects the status of Outreach as an organization described in section **501(c)(3)** of the Internal Revenue Code of 1986, as amended, or if the Internal Revenue Service takes, **or** proposes to take, any action that would, as a result of **this** Agreement, adversely affect **the** ability of Outreach to qualify **as**, or continue its status as, an organization described in section **501(c)(3)** of the **Internal** Revenue Code of 1986, as amended, then Outreach may by notice propose an amendment to conform this Agreement to existing **laws** or Internal Revenue Service positions. If notice of such a change or an amendment is given and if the Parties are unable within thirty (30) days thereafter to agree upon the amendment, then Outreach may terminate this Agreement by ninety (90) days notice to the Spanish Group Entities, unless a sooner termination is required by law.

8.9 Special Action The Parties understand that the Clinical Support Services provided by Outreach hereunder are supplied to Outreach by MDACC, a component institution of **The** University of Texas System (**the** "System"). In the event that **there** is an action by MDACC or the **System that would** require Outreach to review, adjust, or terminate the delivery of Clinical Support **Services as described in this Agreement**, then Outreach may by notice to The Spanish Group Entities propose an amendment to the Agreement to conform with such requirement. If notice of such a proposed amendment is given, and if the Parties are unable within thirty (30) days **thereafter** to agree upon the amendment, **then** either Parry may terminate this **Agreement** by ninety (90) days written notice to the other, unless a sooner termination is required by circumstances.

8.10 Termination pursuant to Financial Performance Test.

(a) In the event that at the end of the **first** five years following the Operations Commencement Date, Outreach and MDACC have not received an aggregate of US **\$2,152,670** (representing 65% of(i) projected compensation under Exhibit 7 to be paid by **MDAI-España**, S.A. to Outreach and (ii) **projected** distributions of Holding as adjusted) in cash **from** both **MDAI-España**, S.A. and Holding as **set** forth in

Exhibit 8.10. Outreach may terminate this Agreement. For purposes of this Section 8.10(a), no more than US\$215,267 of such cash requirement may consist of cash provided from MDAI-España S.A.'s and Holding's clinical cancer research initiatives that is received directly by MDACC in Houston (the "Financial Performance Test"). Notwithstanding the above, in the event that the Holding Board of Directors unanimously votes to reinvest after-tax profits rather than make distributions on equity, then MDACC shall be deemed to have constructively received in kind rather than in cash Holding's cash requirement of the Financial Performance Test.

(b) In the event that in the end of year ten (10) and year fifteen (15) following the Operations Commencement Date, Outreach and MDACC have not received a specific sum certain of cash for the applicable five (5) year period from both MDAI-España and Holding (consisting of 65% of (i) projected compensation under Exhibit 7 to be paid by MDAI-España, S.A. to Outreach and (ii) projected distributions of Holding as adjusted), such sum of cash to be determined from the annual budgeting process of MDAI-España, S.A. and Holding, thereby setting forth the calculated Financial Performance Test, Outreach may terminate the Agreement.

(c) In the event that after completion of each year's annual budget for both MDAI-España, S.A. and Holding, the annual budgeted amount of cash flow for each succeeding year does not exceed annual cash flow for the prior year, Outreach may terminate the Agreement; provided however that by unanimous vote of the Board of Directors of MDAI-España, S.A. and Holding, such budgeted cash flow may be less than the prior year's actual cash flow.

(d) With respect to the tests described in subparagraphs (a) and (b) above and solely for purposes of applying the Financial Performance Test, the target amount (which is expressed in US dollars) representing 65% of projections for the applicable S-year period also shall be calculated in pesetas using the peseta/dollar exchange rate existing on the date of the projections. In addition, the receipts by Outreach or MDACC (which will be in US dollars) also will be calculated in pesetas using the peseta/dollar exchange rate existing on the date of each such receipt. The applicable Financial Performance Test will be deemed to have been complied with if the aggregate receipts so calculated in pesetas equal or exceed the target amount so calculated in pesetas.

8.11 Termination for Failure to Meet Contingencies. Outreach, in its sole option, may terminate this Agreement effective immediately upon the failure of the applicable Spanish Group Entity to fulfill the obligation described below by the date prescribed for such obligation:

(a) On or before June 1, 1998, MDAI-España, S.A. shall have executed a lease with the Spanish Navy for the facility known as the Policlinica Naval Nuestra Señora del Carmen upon the terms described in the Arthur Anderson feasibility study dated February 14, 1997 (the "Arthur Anderson Feasibility Study"). The lease

arrangements shall require the naval facility to provide several key services including dietary, pharmacy, and operating room/intensive care unit.

(b) On or before April 1, 1999, Holding, MDAI-España, S.A. and Radiotherapy shall have been capitalized in accordance with the Arthur Anderson Feasibility Study.

(c) On or before May 1, 1999, MDAI-España, S.A. shall have entered into contractual relationships with all of the following physicians to provide services in the Cancer Center on the Operations Commencement Date: Dr. D. Jose Maria Fernández Rañada, Dr. Ramón María Perez Carrión, and Dr. D. Jose Francisco Tomás.

(d) On or before May 1, 1999, Radiotherapy shall have entered into contractual relationship with a mutually agreed upon radiation oncology physician to provide radiation oncology services in the Cancer Center on the Operations Commencement Date.

(e) On or before June 1, 1999, MDAI-España, S.A. shall have completed renovation of the Cancer Center, which renovations must have been reviewed and approved in writing by Outreach at the following three stages: (i) the program design stage, (ii) the schematic design stage, and (iii) the entire project after 80% of the renovations have been completed. On or before June 1, 1999, Radiotherapy shall have completed construction of the radiation facility, which construction must have been reviewed and approved in writing by Outreach at the following three stages: (i) the program design stage, (ii) the schematic design stage, and (iii) the entire project after 80% of the renovations have been completed.

(f) On or before June 1, 1999, the Spanish Group Entities shall have received approvals from all governmental agencies which approvals are required for the Spanish Group Entities to consummate the transactions set forth herein;

(g) On or before July 1, 1999, MDAI-España, S.A. and Radiotherapy shall have begun delivering oncology services to Patients.

(h) On or before July 1, 1999, Insurance Company shall be organized and capitalized in accordance with the Arthur Anderson Feasibility Study.

(i) On or before July 1, 1999, Insurance Company shall have executed this Agreement.

8.12 **Effects of Termination.** Upon termination of this Agreement, as provided herein, neither Party shall have any further obligation hereunder except for (a) obligations accruing prior to the date of termination, and (b) obligations, promises, or covenants contained herein that are

expressly made to extend beyond the Term of this Agreement, including, without limitation, confidentiality obligations.

IX. INSURANCE

9.1 **Spanish Group Entities.** Each Spanish Group Entity, at its sole cost and **expense**, shall procure **on** or before the **Operations** Commencement Date and maintain commercial insurance coverage for **general** and professional liabilities as described below. Such insurance **procured by** each Spanish **Group** Entity shall list Outreach and MDACC as named insureds to be covered under the insurance policies, and Outreach shall pay any increase in the cost of the insurance resulting **from the** inclusion of Outreach and **MDACC as** named insureds on the insurance policy. Within thirty (30) days after the Operations Commencement Date of this Agreement and annually thereafter, **each Spanish** Group Entity shall provide Outreach **with** a copy of the 'insurance policy. Each **Spanish** Group Entity **shall notify** Outreach of any reduction, suspension, or cancellation of such **insurance** coverage within three (3) business days of the Spanish Group Entity's receipt of such notice.

(a) Holding shall maintain coverage for general and professional liabilities in accordance with commercially acceptable standards for similar companies.

(b) **MDAI-España, S.A.** shall maintain coverage for general and professional liabilities in accordance with the commercially acceptable standards for companies providing similar services.

(c) Radiotherapy shall maintain coverage for general and professional liabilities in accordance with the higher of (i) **the** recommendations and instructions of the Official Physician College of Madrid (Colegio **Oficial** de Medicos de Madrid ("**COMM**") or (ii) commercially acceptable standards for similar companies.

(d) Insurance Company shall maintain coverage for general and professional liabilities as required by Spanish law.

9.2 **Physician Insurance.** **MDAI-España, S.A.** and Radiotherapy **shall** cause each Physician to carry effective as of the Operations Commencement Date and during the rest of the Term of this Agreement, general and professional liability insurance coverage to protect against any liability to Patients or the public generally in accordance with the recommendations and instructions of the **COMM**. Furthermore, if the **COMM** recommends an increase in such coverage as agreed to by the insurance company utilized by the **COMM**, each Physician shall increase his insurance coverage up to such limits. Within thirty (30) days after the Operations Commencement Date and **annually** thereafter, **MDAI-España, S.A.** and Radiotherapy shall provide Outreach with a copy of each Physician insurance policy. **MDAI-España, S.A.** and Radiotherapy shall notify Outreach of any reduction, suspension, or cancellation of such insurance coverage of any Physician within **72** hours of such reduction, suspension, or cancellation of insurance.

9.3 **Directors Liability** Insurance. Each Spanish Group Entity, at its sole cost and expense, shall procure on or before the Effective Date and maintain commercial insurance coverage for the liabilities of its board of directors in accordance with commercially acceptable standards for

such companies. Within **thirty (30) days after the Effective Date and annually thereafter, each Spanish Group Entity shall provide Outreach with a certificate evidencing such insurance coverage.** Each Spanish Group Entity shall **notify Outreach of any reduction, suspension, or cancellation of such insurance coverage** within **three (3) business days of the Spanish Group Entity's receipt of such notice.**

9.4 ***Duty to Defend and Cooperate.*** To the extent not covered by liability **insurance** carried by the Parties, each Party shall be solely responsible for its own claims, liabilities, damages, injuries, suits, demands, and expenses of all kinds (including, without limitation, attorneys fees and court costs) that may result or arise from any alleged malfeasance, neglect, misconduct, error, or omission caused, or alleged **to have been caused, by such party, or by any member, partner, employee, representative, agent, or contractor of such party, in connection with the performance of this Agreement.** In the event that a claim is made against **all parties,** it is the intent of all Parties to cooperate in the defense of said claim and to cause their insurers to do likewise.

X. THE SPANISH GROUP ENTITIES REPRESENTATIONS **AND WARRANTIES**

As of the date hereof, each of the Spanish Group Entities represents and warrants to Outreach that the following facts and circumstances are true and correct and hereby acknowledges that such facts and circumstances constitute the basis upon which Outreach has been induced to enter into and perform this Agreement:

(a) Each of the Spanish Group Entities is a corporation duly organized and validly existing in good **standing** under the laws of the **country** of Spain and has the requisite authority to enter into this Agreement, perform its obligations hereunder, and to conduct its business in the manner that is contemplated by this Agreement. Each of the Spanish Group Entities is **duly** authorized, qualified, and licensed under all applicable laws, regulations, and ordinances and orders of governmental authorities having jurisdiction over operations of **the Spanish** Group Entities.

(b) The execution, delivery, and performance of this Agreement by the Spanish Group Entities and the consummation of the transactions set forth herein by The Spanish Group Entities:

(i) are within their respective corporate powers, are not in contravention of **law** or the terms of their articles of incorporation, bylaws, or **any** amendments thereto, and have been duly authorized by all appropriate corporate action;

(ii) to the best of the Spanish Group Entities' knowledge after due inquiry and except as otherwise expressly herein provided and except for filings heretofore made by the Spanish Group Entities, do not require any approval or consent of, or filing with, any governmental agency or authority bearing on the validity of this Agreement that is required by law or regulation of **any** such **agency** or authority;

(iii) will neither conflict with nor result in any breach, event of default, default under or contravention of, nor permit the acceleration of the maturity of or the creation of any lien under, any indenture, mortgage, agreement, lease, contract, instrument, or understanding to which any Spanish Group Entity is a party or by which any Spanish Group Entity is bound:

(iv) will not violate any statute, law, or regulation of any governmental authority to which any Spanish Group Entity may be subject; and

(v) will not violate any judgment of any court or governmental authority to which any Spanish Group Entity may be subject.

(c) Except for **MDAI-España**, S.A., Radiotherapy, and Insurance Company, Holding has no subsidiaries or investments in another entity.

(d) This **Agreement** will constitute the valid and legally binding obligation of the Spanish Group Entities and is and will be enforceable against the Spanish Group Entities in accordance with the respective terms hereof.

(e) Each of the Spanish Group Entities is in compliance with all applicable laws of Spanish authorities and all applicable rules, regulations, and requirements of all Spanish commissions, boards, bureaus, and agencies having jurisdiction over the Spanish Group Entities and has timely filed all reports, data, and other information required to be filed with such commissions, boards, bureaus, and agencies where a failure to file timely would have an adverse effect on the transactions contemplated herein.

(f) There are no claims, actions, suits, proceedings, or investigations pending, threatened against, or affecting any Spanish Group Entity at law or in equity or before or by and national or local or other governmental department, commission, board, bureau, agency, or instrumentality wherever located.

(g) This **Agreement** and the exhibits hereto and all other documents and information furnished by the Spanish Group Entities and their representatives to Outreach pursuant hereto do not and will not include any untrue statement of material fact or omit to state any material fact necessary to make the statements made herein and therein not misleading.

XI. OUTREACH **REPRESENTATIONS** AND WARRANTIES

As of the date hereof, Outreach represents and warrants to the Spanish Group Entities that the following facts and circumstances are true and correct and hereby acknowledges that such facts and circumstances constitute the basis upon which the Spanish Group Entities have been induced to enter into and perform this Agreement:

(a) Outreach is a corporation duly organized and validly existing in good standing under the laws of the state of Texas and has the requisite authority to enter into this Agreement, perform its obligations hereunder, and to conduct its business in the manner that is contemplated by this Agreement. Outreach is duly authorized, qualified, and licensed under all applicable laws, regulations, and ordinances and orders of governmental authorities having jurisdiction over operations of Outreach.

(b) The execution, delivery, and performance of this Agreement by Outreach and the consummation of the transactions set forth herein by Outreach:

(i) are within its corporate powers, are not in contravention of law or the terms of its articles of incorporation, bylaws, or any amendments thereto and have been duly authorized by all appropriate corporate action;

(ii) to the best of the Outreach's knowledge after due inquiry and except as otherwise expressly herein provided and except for filings heretofore made by Outreach, do not require any approval or consent of, or filing with, any governmental agency or authority bearing on the validity of this Agreement that is required by law or regulation of any such agency or authority;

(iii) will neither conflict with nor result in any breach, event of default, default under or contravention of, nor permit the acceleration of the maturity of or the creation of any lien under, any indenture, mortgage, agreement, lease, contract, instrument, or understanding to which Outreach is a party or by which Outreach is bound;

(iv) will not violate any statute, law, or regulation of any governmental authority to which Outreach may be subject; and

(v) will not violate any judgment of any court or governmental authority to which Outreach may be subject.

(c) This Agreement will constitute the valid and legally binding obligation of Outreach and is and will be enforceable against Outreach in accordance with the respective terms hereof.

XII. GENERAL PROVISIONS

12.1 **Amendment.** This Agreement or any part of it only may be amended at any time during the Term of the Agreement by the mutual consent in writing of duly authorized representatives of the Parties.

12.2 **Applicable Law.** To the extent that disputes under this Agreement involve issues of federal copyright laws, such disputes shall be governed by and construed in accordance with US federal copyright law. Except as provided in Sections 4.4 and 5.4, all other disputes arising under

this Agreement shall be governed by and construed in accordance with Texas law without regard to Texas conflict of laws provisions. The exclusive jurisdiction and venue for resolution of all disputes pursuant to this Agreement should be in federal and state courts located in Harris County, Texas.

12.3 **Attorney Fees: Enforcement Costs.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorney's fees, court costs, and other reasonable expenses incurred in connection with maintaining or defending such action or proceeding, as the case might be., including any such attorney's fees, costs, or expenses incurred on appeal, in addition to any other relief to which such Party may be entitled.

12.4 **Assignment.** Neither this Agreement nor any rights, powers, or duties hereunder may be assigned by any Party without the express written consent of the other Parties, and any such unauthorized assignment shall be void, except that Outreach may assign this Agreement to an Outreach Affiliate without the written consent of any Spanish Group Entity. If any unauthorized assignment is attempted by either Party, any other Party shall have the power, at its election, to terminate this Agreement, effective immediately upon the giving of notice to the Party attempting such unauthorized assignment, in addition to any other remedies available to the Party. This Agreement shall inure to the benefit of and shall bind and be enforceable by or against the successors and permitted assignees of the Parties hereto.

12.5 **Confidentiality.** All Parties, including their affiliates, recognize and acknowledge that, by virtue of entering this Agreement, the Parties shall have access to information that is confidential and constitutes valuable, special, and unique property of the other Parties. Such information (the "Confidential Information") shall include, without limitation, clinical guidelines, care pathways, methods of multi-disciplinary treatment planning, Diagnosis/Treatment Categories and pricing of this Agreement. The Parties agree that no Party shall at any time, either during or subsequent to the Term of this Agreement, disclose to others, use, copy, or permit to be copied any Confidential Information of another Party for any reason or purpose without the other Party's prior written consent unless required by law. No Party shall disclose the terms of this Agreement, including, but not limited to, the compensation paid to Outreach, without the prior written consent of the other Parties unless required by law. This Section 12.5 shall survive the termination of this Agreement. Notwithstanding the above, the Parties agree to execute the Spanish version of the document before a Spanish Public Notary. Such execution shall not constitute a violation of Section 12.5.

12.6 **Enforceability.** In the event any provision of this Agreement is rendered invalid or unenforceable by a valid Act of Congress or of any state or by any regulation duly promulgated by officers of the United States or of any state acting in accordance with law or of the Kingdom of Spain, or declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect. In the event any part of this Agreement shall be finally determined by a court of competent jurisdiction to be non-binding on any of the Parties, it shall remain binding, and in full force and effect, with respect to the remaining Party or Parties.

12.7 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create in any person not a Party to this Agreement any rights, duties, or obligations.

12.8 Waiver of Breach. Waiver of breach of this Agreement shall not be deemed to be a waiver of any other breach of the same or another provision of this Agreement or any other Agreement between or among any of the Parties, and shall not bar any action for subsequent breach thereof.

12.9 Status of Parties. None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between the Parties other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. None of the Parties, nor any of their respective officers, directors, or employees, shall be construed to be the agent, employee, or representative of the other. No Party is authorized to represent the other for any purpose whatsoever without the prior written consent of the other except as specifically provided herein.

12.10 Force Majeure. So Party shall be liable nor deemed to be in default for any delay or failure to perform under this Agreement deemed to result, directly or indirectly, from any cause beyond the reasonable control of any other Party, including without limitation, Acts of God, civil or military authority, acts of public enemy, fires, floods, strikes, or regulatory delay or restraint.

12.11 Remedies. All rights, powers, and remedies granted to any Party by any particular term of this Agreement are in addition to, and not in limitation of, any rights, powers, or remedies that it has under any other term of this Agreement, at common law, in equity, by statute, or otherwise, and all such rights, powers, and remedies may be exercised separately or concurrently, in such order and as often as may be deemed expedient by any Party. No delay or omission by any Party to exercise any right, power, or remedy shall impair such right, power, or remedy or be construed to be a waiver of any breach or default or an acquiescence therein.

12.12 Captions and Gender. All section titles or captions contained in this Agreement are for convenience only and are not deemed part of the text of this Agreement. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

12.13 Sale or Merger. Each Party agrees to inform the other as soon as practicable if a change in ownership is contemplated.

12.14 Incorporation of Attachments. All Exhibits and Attachments to this Agreement are incorporated by reference herein and are made a part of this Agreement.

12.15 Counterparts. 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.

12.16 Entire Agreement. This Agreement and all attachments hereto together with the Sublicense Agreements contain the entire agreement between the Parties hereto with respect to the

subject matter hereof and supersedes any and all prior agreements and understandings, whether oral or written, between the Parties hereto relating to such subject matter.

12.17 Non-Exclusive Agreement. The Parties hereto agree that Outreach shall not be precluded from entering into arrangements to provide the types of services set forth herein to other entities, persons, or organizations, except as provided in Section 2.5.

12.18 Patient Referrals. The Parties agree that the benefits for the Spanish Group Entities hereunder do not require, are not payment for, and are not in any way contingent upon the admission, referral, or any other arrangement for the provision of any item or service offered by Outreach or any Outreach Affiliate with respect to any patients in any facility or laboratory owned, controlled, managed, or operated by Outreach or any Outreach Affiliate. All decisions concerning medical care made by Physicians shall be made in consideration of the best interest of the Patient. All services by Outreach hereunder are provided in exchange for fair and reasonable consideration.

12.19 Authority and Approval. The execution of this Agreement by The University of Texas M. D. Anderson Cancer Center, which is not party to this Agreement, is solely to evidence its review, authorization, and approval of this Agreement.

12.20 Spanish Counterparts. This Agreement is being executed in four counterparts, two of which are in the Spanish language and two of which are in the English language. The Spanish version is for reference purposes only. In the event of any conflict of inconsistency between the two versions, or for any other purpose, the English language version shall govern the interpretation and construction hereof.

12.21 Execution of Agreement. This Agreement shall be fully effective and binding on and between Holding, MDAI-España, S.A., Radiotherapy, and Outreach upon the execution of this Agreement by those Parties. Upon the later execution of this Agreement by Insurance (as described in Section 8.1 l(i)), the Agreement shall be effective and binding on all Parties.

XIII. NOTICES

Any notice, request, demand, instruction, communication, or other document required, permitted, or desired to be given hereunder shall be in writing and, except as otherwise provided for herein, shall be deemed effectively given on receipt if delivered personally or by commercial air mail courier service (e.g., DHL or Federal Express) as follows:

Holding:	MDA Holding Spain, S.A. calle Orense 32,7° 28020 Madrid, Spain Attn.: Cristina de Manuel Keenoy/ Ramón Fernández-Hortoria
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MDAI-España, S.A.

M. D. Anderson International-España, S.A.
calle Orense 32,7^o
28020 Madrid, Spain
Attn.: Cristina de Manuel Keenoy/
Ramón Fernández-Hortoria

Radiotherapy

M. D. Anderson International Radiotherapy-España, S.A.
calle Orense 32,7^o
28020 Madrid, Spain
Attn.: Cristina de **Manuel Keenoy/**
Ramón Fernández-Hortoria

Insurance Company

M. D. Anderson International-España Seguros, S.A.
calle Orense 32,7^o
28020 Madrid, Spain
Attn.: Cristina de Manuel **Keenoy/**
Ramón Fernández-Hortoria

Outreach:

M. D. Anderson Cancer Center Outreach Corporation
7505 South Main, Suite 500
Houston, Texas 77030
Attn: President

IN WITNESS **WHEREOF**, the Parties have caused this Agreement to be executed in **multiple originals** on this _____ day of _____, _____, but effective **as** of the date and year first written above.

MDA HOLDING SPAIN, S.A.

Name: _____

Title: _____

Date Signed: _____

M. D. ANDERSON INTERNATIONAL-ESPAÑA, S.A.

Name: _____

Title: _____

Date Signed: _____

M. D. ANDERSON INTERNATIONAL RADIO THERAPY-ESPAÑA, S.A.

Name: _____

Title: _____

Date Signed: _____

M. D. ANDERSON INTERNACIONAL-ESPAÑA SEGUROS, S.A.

Name: _____

Title: _____

Date Signed: _____

M. D. ANDERSON CANCER CENTER OUTREACH CORPORATION

By: _____

Name:

Title: President

Date Signed: _____

FOR REVIEW AND **APPROVAL** ONLY

THE UNIVERSITY OF TEXAS M. D. ANDERSON CANCER CENTER

By: _____

Name: John **Mendelsohn**, M.D.

Title: President

Date Signed: _____

EXHIBIT A

CLINICAL SUPPORT SERVICES AGREEMENT

Exhibits **1.10, 4.1(j)**, and 52.6 to the Clinical Support Services Agreement shall be mutually agreed to and added to this Exhibit prior to September 1, 1998, the date for execution of the **Clinical** Support Services Agreement.

EXHIBIT 1.10

PHYSICIANS

A. **MDAI-España**, S.A. Physicians

B. Radiotherapy Physicians

EXHIBIT 1.11

SUBSIDIARY MATTERS

1. Adoption and modifications to the business **plan** of any Subsidiary.
2. Amendments to bylaws or articles of incorporation of any Subsidiary.
3. Transfer of any material **assets** of any Subsidiary not expressly authorized in the business **plan**.
4. **Assumption of** material indebtedness by **any** Subsidiary not expressly authorized in the business plan.
5. Guarantee of material payment of a third party by any Subsidiary not expressly authorized in the business plan.
6. Creation of a material lien on any asset **of any** Subsidiary not expressly authorized in the business plan.
7. Loans by any Subsidiary to a third party not expressly authorized in the business plan other than as required by law.
 - a. Creation of a new subsidiary by any Subsidiary not expressly authorized in the business **plan**.
9. Approval of investors in any Subsidiary through the **Operations** Commencement Date.

With respect to matters **3, 4, 5,** and 6. “material” shall mean any transactions with respect to the particular matter, the **cumulative** affect of which would be that the cumulative transactions for such matter in total US dollars would exceed the Base Amount.

“Base Amount” shall mean an amount equal to the product of (i) **five** (5) percent multiplied by (ii) the Net Worth of the applicable Subsidiary pursuant to generally accepted accounting principles applied on a consistent basis.

EXHIBIT 2.1

CLINICAL SUPPORT SERVICES'

During the Term of the Agreement. Outreach shall provide the following Clinical Support Services** to **MDAI-España, S.A.** and Radiotherapy as applicable:

1. **Guidelines & Pathways** Outreach **shall** make available to **MDAI-España, S.A.** and Radiotherapy the applicable **MDACC** care guidelines and clinical pathways as such guidelines and pathways become available for distribution. The care guidelines provide an overview of a disease process and the approaches to medical care for that process based on current practice standards and are based on one disease site center concept The clinical pathways provide a specific detailed care plan **representing** the MDACC brand of disease treatment and **the** expected events and **interventions** in an episode of care. A format for reporting adherence to and variations **from** care pathways **shall** accompany the care pathways. Requirements with respect to the access, implementation, and on-going support and quality review checks are subject to change as pathways are enhanced/changed and technical access to the product is enhanced.

Volume of Services

In support of guidelines and **pathway** delivery and implementation, Outreach **will** provide initially:

- One four-hour training session in Madrid, Spain by one MDACC faculty physician to train Physicians in the use of care guidelines and clinical pathways

In support of guideline and pathway delivery and implementation, Outreach will provide annually:

- Two (2) on-site visits in Madrid, Spain by one MDACC physician each trip to provide quality review checks of services being provided at **MDAI-España, S.A.**, patient records, implementation processes and compliance. Length of review will depend on case volume for the period; and
- Two (2) one-day training sessions held at MDACC in Houston or a designated location available to Physicians for continuing orientation and education related to guidelines and pathway developments Outreach shall not be responsible for costs of travel of Physicians to attend training sessions.

2. **Multi-Disciplinary Treatment Planning**. Outreach shall assist **MDAI-España, S.A.** and Radiotherapy in establishing a multi-disciplinary treatment planning process.

Volume of Services

Outreach will provide access for four (4) one-hour, sessions per month (52 sessions annually), for multi-disciplinary case reviews by faculty. Multi-disciplinary treatment planning support **can** be

accessed through on-site programs and telemedicine teleconferencing. The 52 sessions include one on-site session and 51 telemedicine sessions as follows:

- **On-site Program** - Three MDACC physicians will conduct with Physicians one (1) one-day, multi-disciplinary treatment planning session at **MDAI-España, S.A.** The program will include incorporation of specialists in medical, surgical, and radiation oncology as well as sub-specialties as appropriate.
- **Telemedicine** - Via the MDACC Telemedicine network, providers can be linked electronically to MDACC faculty. Outreach will provide access for up to four (4) one-hour, sessions per month (up to 52 sessions annually if on-site program is not utilized), for multidisciplinary case reviews by faculty at predetermined conferences. These video conferences extend the MDACC **specialized** media expertise as appropriate to local need. Telemedicine capabilities will be required for access to multidisciplinary case reviews.

As a routine matter, MDACC shall designate an MDACC physician to be available for **consultations** for each Patient.

3. **Clinical Trials and Clinical Research Protocols.** MDACC investigators have activated a broad spectrum of chemotherapeutic and chemoprevention trials that afford Physicians access to innovative intervention for Patients, distinguishing them from other local oncologists. Potential collaborators will become part of **the Outreach** Clinical Research Consortium (OCRC). Physicians who **desire access** to research protocols **will** need to be approved by MDACC for the use of protocols and by a local Institutional Review Board (IRB). Following approval, physicians become an Outreach Credentialed Affiliate (OCA). This designation provides members access to all available protocols as defined by MDACC. Physicians will be eligible to apply for membership in the research **consortium**, and qualified investigators will be expected to perform clinical research at a level that will assure collection of data of the highest quality.

MDACC via OCRC will make available sponsored research contracts with pharmaceutical companies and assist **in:**

- Registration of IRB with **Office** of Protection of Research Risk (OPRR), and consultation on **IRB** regulations;
- Registration of Physicians with FDA and **NCI (1572 forms)**;
- Establishment of protocol and patient tracking systems;
- Annual training of research nurses (data managers) and pharmacy personnel via Houston-based training programs as needed; and
- Access to national sponsored Community Clinical Oncology Program (CCOP) trials.

MDACC will provide standardized forms for all studies, a detailed Procedure Manual, and study-specific instructional material. Quality control and quality assurance mechanisms include:

- Provision of bi-monthly **deficiency reports** and quarterly **Q.A. reports**;
- **Annual pharmacy** log monitoring;
- **IRB** approval monitoring;
- Direct access to **MDACC Data Management** Center via **E-mail** or telephone for protocol questions; and
- Coverage under the MDACC **IRB** if credentialed physicians provide representation at Houston **IRB** meetings.

Outreach will provide access to **annual** meetings of the OCRC members on the **MDACC campus** (or designated location) for presentations by investigators and discussions of **on-going** and **planned** trials, Bi-monthly Clinical Research Newsletter, direct contact with MDACC investigators E-mail hot-line, and protocol development meetings.

Outreach **shall** provide **one** (1) trip annually by **one** MDACC physician to instruct Physicians in the enrollment of Patients in clinical trials and research protocols.

4. **Continuing Medical Education.** A variety of education programming in oncology, basic science, research, and allied health sciences for practicing health care professionals, including physicians, is available. The Agreement offers access to the following services:

- Educational tapes, including Grand Round lectures; and
- Educational conferences, symposia and **disease-specific** conferences offered at a 20% discount. (Specific fees associated with these offerings will depend on the educational program selected.)

5. **Credentialing.** MDACC will provide **credentialing** reviews for physicians. **MDAI-España, S.A.** agrees to organize and complete applications of physicians for submission to the MDACC credentialing office. Outreach shall transmit MDACC credentialing procedures annually.

Volume of Services

MDACC shall provide credentialing reviews for up to twenty (20) physicians. Additional credentialing reviews will be provided at an additional charge per review.

On-site sessions conducted in Madrid, Spain as described in this Exhibit 2.1 may be concurrent with training or other scheduled visits described in this **Exhibit 2. 1.**

*Clinical Support Services are designed to provide minimum guidelines for facilities and individuals in the treatment of cancer. The Clinical Support Services are not intended to include all of the procedures and practices that a facility or individual should implement if the standard of practice in the community or federal or state laws or regulations establish additional requirements. **MDAI-España S.A.** Radiotherapy. and Physicians should analyze their practices and procedures to determine whether additional standards apply. Outreach disclaims any responsibility for **setting maximum** standards and expressly **does** not warrant or represent that use of Clinical Support

Services is an exclusive means of complying with the standard of care in the industry or the community.

****The Delivery of Clinical Support Services by Outreach to MDAI-España, S.A. and Radiotherapy shall be phased in as mutually agreed to by the Parties over the first three (3) years of this Agreement; thereafter the Clinical Support Services shall be provided throughout the Term of the Agreement.**

EXHIBIT 2.2

ADDITIONAL SERVICES

1. **Teleconferencing Support.** Outreach and **MDAI-España, S.A.** agree that telemedicine capability **is** important to the effective operation of the Program. Outreach shall provide **MDAI-España, S.A.** with access to Outreach's telemedicine services via MDACC. **MDAI-España, S.A.** will pay For the equipment and other costs associated with the **installation** of on-site telemedicine equipment compatible to MDACC service. If needed and requested by **MDAI-España, S.A.**, **MDAI-España, S.A.** will pay Outreach the costs associated with additional telemedicine services support, including, but not limited to:

- Technical **support**;
- Program scheduling;
- Event management, coordination, preparation and operation; and
- Travel expense For on-site support.

2. **Comprehensive Consultation and Second Opinions.** Upon the request of **MDAI-España, S.A.**, Outreach shall provide **MDAI-España, S.A.** access to comprehensive consultation and second opinion diagnoses services. Comprehensive consultation and second opinion diagnoses can be provided by sending the patient for a second opinion to the **MDACC** campus, or by sending the appropriate clinical information, including pathology and radiology records. In all cases, the pathology and radiology will be reviewed and a written opinion will be offered. In those cases where the patient is not seen, the referring physician will fill out the appropriate form requesting the consultation (**path • x-ray • clinical**) request.

3. **Prevention Programs.** Provide continuing access to MDACC developed programs in the area of prevention and screening, including the **LifeCheq** Smoking Cessation Program, as long as such programs are available at MDACC and on terms to be negotiated by the parties.

4. **Other Programs.** Access to other specialty oncology program advisors in areas such as:

- Pain and Symptom Management;
- Psychology;
- Rehabilitation Services; and
- Nutrition

EXHIBIT 3.1-D

List of Corporate Actions

1. Adoption of and modifications to the business plans of Holding;
2. Amendments to Bylaws or Articles of Incorporation of Holding;
3. Transfer of any material assets of Holding not expressly authorized in the business **plan**;
4. Assumption of material indebtedness by Holding not expressly authorized in the business **plan**;
5. Guarantee of material payment of a third party by Holding not expressly authorized in the business plan;
6. Creation of material lien on any asset of Holding not expressly authorized in the **business plan**;
7. Loans by Holding to a third party not expressly authorized in the business plan other than as required by law;
8. Creation of a new subsidiary by Holding not expressly authorized in the business plan; and
9. Acceptance/approval of investors in Holding through the Operations Commencement Date.

With respect to matters **3, 4, 5,** and 6, “material” shall mean any transaction with respect to the particular matter, the cumulative affect of which would be that the cumulative transactions for such matter in total US dollars would exceed the Base Amount.

“Base Amount” shall mean an amount equal to the product of (i) five (5) percent multiplied by (ii) the Net Worth of Holding pursuant to generally accepted accounting principles applied on a consistent basis.

EXHIBIT 4.1

CLINICAL DIRECTION

1. Clinical direction for all medical aspects of **MDAI-España**, S.A. and Radiotherapy shall be the responsibility of the Medical Director of **MDAI-España, S.A.** The Medical **Director shall** be appointed by **MDAI-España, S.A.** only with the prior written approval of Outreach. The Medical Director shall work half-time on the site of the Cancer Center. The Medical Director shall have the authority to direct the activities of the staff of physicians employed by **MDAI-España, S.A.** and Radiotherapy.
2. The employed physician staff of **MDAI-España**, S.A. and Radiotherapy (the “**Core Staff**”) initially shall consist of three medical oncologists and one radiotherapist. The responsibilities of the Core Staff shall include:
 - a. Performing initial evaluations of all Patients who are self-referred or have insurance under the insurance product carried by Insurance Company;
 - b. Providing medical care to self-referred Patients and Patients who have insurance under the insurance product carried by the Insurance Company;
 - c. Triage Patients to appropriate **affiliated** sub-specialists;
 - d. Preparing materials for teleconferencing;
 - e. Overseeing that care provided in the Cancer Center is provided **according** to MDACC directives; and
 - f. Arranging for care at MDACC when indicated by the Roster of Services or teleconferencing consultation.
3. **MDAI-España**, S.A. shall maintain an Affiliated Oncology **Staff that** shall consist of credentialed private practice Physicians who care for Patients at the Cancer Center. Physicians on the **Affiliated** Oncology Staff shall not receive direct salary support from **MDAI-España**, S.A. and shall provide services to Patients on a fee-for-service basis. The **Affiliated** Oncology Staff shall be comprised of a group of surgical, radiation, and medical oncologists.
4. Patients treated at the Cancer Center shall be managed in accordance with the MDACC Pathways or MDACC faculty consultations. Flow of Patients shall be both to the Affiliated Oncology Staff from the Core Staff for provision of specialized care, and from the **Affiliated** Oncology Staff practices to the Cancer Center for on-site management. Policies for switching patients to and from private practices to **MDAI-España**, S.A. and Radiotherapy shall be developed by the Parties.

5. **MDAI-España, S.A.** shall have **an Affiliated Support Staff** that shall consist of **a full panel of support services** physicians e.g. neurology, infectious disease, cardiology, pulmonary, and orthopedics. The **Affiliated Support Staff** shall provide **fee-for-service** support to the Physicians.
6. **MDAI-España, S.A.** shall employ **a** pathologist to provide services to Patients at the Cancer Center..
7. **MDAI-España, S.A.** shall appoint a Physician who is trained as a surgeon to be **Head** of Surgery to assure adequate surgical input **in** multi-disciplinary treatment planning sessions for Patients.
 - a. Oversight of clinical care **provided** by **MDAI-España, S.A.** shall be vested in an MDACC Spanish Working Group. The Spanish Working **Group shall** be **appointed** by the President of MDACC or his designee. The Spanish Working Group shall have the following clinical governance responsibilities with respect to **MDAI-España, S.A.** and Radiotherapy: establish clinical policies for **MDAI-España, S.A.** and Radiotherapy, oversee clinical quality, and perform the credentialing and recredentialing review of Physicians.
9. An **MDAI-España, S.A.** Operating Committee shall be organized for the implementation of MDACC policies and **procedures** and **local** policies and procedures. The Operating Committee **shall** be composed of physicians selected by **MDAI-España, S.A.** who are credentialed for practice at **MDAI-España, S.A.** The Operating Committee **shall** report to both the **MDAI-España, S.A.** Board of Directors and the MDACC Spanish Working Group. Outreach shall designate a physician at MDACC who shall function as a Houston medical liaison for **MDAI-España, S.A.** and Radiotherapy and shall interact with the **MDAI-España, S.A.** Medical Director and with attending Physicians for Patients.
10. In order to provide a level of care at the Cancer Center that reflects the standards of MDACC (i.e. that Patients seen at the Cancer Center will receive the same treatment recommendations, and insofar as **clinically** feasible, the same treatment, as patients seen at MDACC), the following quality assurance mechanisms would be implemented:
 - a. The institution of a Roster of Services delineating which Patients should be referred to a tertiary facility;
 - b. Training of Core Staff Physicians and nurses at MDACC for at least 1-2 months (**MDACC's** expense shall consist solely of the trainers, training space, and MDACC generated presentation materials);
 - c. An intake clinic in which all referrals to the Cancer Center are seen by a Core Staff Physician for **a** work-up according to **MDACC** Pathways;
 - d. Division of the program into multi-disciplinary services corresponding to the MDACC services:

- e. Presentation of all new cases and problem cases by teleconference;
 - f. A quality control program to assess on an on-going **basis** the quality of pathology and radiology professional activities;
 - g. The development of a quality **assurance program** consisting of periodic chart reviews by a quality **assurance** nurse to assess adherence to pathways and **sound clinical** practice-three month patient status monitoring;
 - h. Adherence to United States and MDACC standards; and
 - i. **Annual** audit by MDACC faculty.
11. **Physician** representatives of MDACC, **MDAI-España, S.A. and** Radiotherapy shall **finalize a** Roster of Services to **determine** the appropriate treatment **site for** various cancer treatments.
12. **MDAI-España, S.A.** shall have an Administrative Director who shall be selected by **MDAI-España, S.A.** with the prior written approval of Outreach.

EXHIBIT 4.1(j)

MDACC CREDENTIALING PROCEDURE

EXHIBIT 4.2

MDAI-ESPAÑA. S.A. OBLIGATIONS

During the Term of this Agreement. **MDAI-España**. S.A. agrees as follows:

1. **MDAI-España**, S.A. shall **implement and shall cause MDAI-España, S.A.** Physicians to implement MDACC multidisciplinary treatment planning strategies **as** furnished by Outreach pursuant to Exhibit 2.1. Section 2;
2. **MDAI-España**, S.A. shall adhere substantially and shall cause **MDAI-España, S.A.** Physicians to adhere substantially to MDACC clinical guidelines and care pathways (**as furnished** by Outreach pursuant to Exhibit 2.1, Section 1). including applicable reporting requirements. in the treatment of Patients.
3. **MDAI-España**, S.A. shall make reasonable and good faith efforts and **shall cause MDAI-España, S.A.** Physicians to make reasonable and good faith efforts to comply with **the** Diagnosis/Treatment categories to which the Parties agree.
4. **MDAI-España**. S.A. shall participate and shall cause **MDAI-España, S.A.** Physicians to participate in MDACC clinical trials as described in Exhibit 2.1, Section 3 and as mutually agreed to by the Parties.
5. **MDAI-España, S.A.** shall conduct and shall cause **MDAI-España, S.A.** Physicians to conduct quality assurance and utilization review in a manner consistent with MDACC standards. Such MDACC quality assurance and utilization review standards shall be provided to **MDAI-España, S.A.** as they may apply from time to time.
6. **MDAI-España**, S.A. shall provide a means for integrating practice information with the MDACC combined database. **MDACC** shall **provide MDAI-España, S.A.** information regarding such integration requirements.
7. **MDAI-España, S.A.** shall comply with the Sublicense Agreement.
8. **MDAI-España. S.A.** shall give Outreach and **Outreach** Affiliates access to and shall cause **MDAI-España, S.A.** Physicians to give Outreach and Outreach Affiliates access to Patient records for the purpose of collection and analysis of cancer research data in accordance with Section 4.4.
9. **MDAI-España, S.A.** shall **structure and** enforce **its** contractual relationships with **MDAI-España, S.A.** Physicians so as to condition the utilization of Clinical Support Services by such **MDAI-España, S.A. Physicians** on the requirements described in this Exhibit 4.2. **MDAI-España, S.A.** shall include in the **documentation** of its **relationship** with **MDACC-España S.A.** Physicians that the **MDACC-España S.A.** Physicians have no rights to the use of the LICENSED MARKS (as described in the Sublicense Agreements) other than use of business cards and stationery provided by **MDAI-España, S.A.** in accordance with the Sublicense Agreements.

EXHIBIT 5.2

RADIOTHERAPY OBLIGATIONS

During the **Term** of this Agreement. Radiotherapy agrees as follows:

1. Radiotherapy shall implement and shall cause Radiotherapy Physicians to implement MDACC multi-disciplinary treatment planning strategies **as** furnished by Outreach pursuant to Exhibit 2. I, Section 2;
2. Radiotherapy **shall** adhere substantially and **shall** cause Radiotherapy **Physicians** to adhere substantially to MDACC clinical guidelines and care pathways (as furnished by Outreach pursuant to Exhibit 2.1, Section **1**), including applicable **reporting** requirements, in **the** treatment of Patients.
3. Radiotherapy shall make reasonable and good faith efforts and shall cause Radiotherapy Physicians to make reasonable and good faith efforts to comply with the **Diagnosis/Treatment** categories to which the **Parties** agree.
4. Radiotherapy shall participate and shall cause Radiotherapy Physicians to participate in MDACC clinical trials as described in Exhibit 2.1, Section 3 and as mutually agreed to by the Parties.
5. Radiotherapy shall conduct and shall cause Radiotherapy Physicians to conduct quality assurance and utilization review in a manner consistent with MDACC standards. Such MDACC quality assurance and utilization review standards shall be provided to Radiotherapy **as** they may apply from time to time. The current MDACC quality assurance and utilization review standards are attached hereto as Exhibit 5.2.6.
6. Radiotherapy shall provide a means for integrating practice information with the MDACC combined database. MDACC shall provide Radiotherapy information regarding such integration requirements.
7. Radiotherapy shall comply with the Sublicense Agreement.
8. Radiotherapy shall give Outreach and Outreach Affiliates access to and shall cause Radiotherapy Physicians to give Outreach and Outreach Affiliates access to Patient records for the purpose of collection and analysis of cancer research data in accordance with Section 5.4.
9. Radiotherapy shall structure and enforce its contractual relationships with Radiotherapy Physicians so as to condition the utilization of Clinical Support Services by such Radiotherapy Physicians on the requirements described in this Exhibit 5.2. Radiotherapy shall include in the documentation of its relationship with Radiotherapy Physicians that the Radiotherapy Physicians have no rights to the **use** of the LICENSED MARKS (as described in

the Sublicense Agreements) other than use of business cards and stationery provided by
Radiotherapy in accordance with the Sublicense Agreements

EXHIBIT 5.2.6

QUALITY ASSURANCE AND UTILIZATION REVIEW STANDARDS

EXHIBIT 7
COMPENSATION

Outreach shall be compensated as follows:

A. Compensation Attributable to Activities of MDAI-España

1. As compensation for the Clinical Support Services provided by Outreach under **this** Agreement, **MDAI- España**, S.A. shall pay Outreach a fee in an amount equal to the product of (x) the number of Patients multiplied by (y) the fee of US **\$800.00** per Patient. This annual fee shall be payable during each **Quarter**; Quarters are defined as October 1-December 31, **January 1-** March 31, April 1- June 30. July 1 -September 30.

2. Exhibit 2.1 of this Agreement prescribes the volume of services that are included **in** the fee described in A-I above. In the event that additional volumes or other services are requested or required, then Outreach shall be compensated for such services as mutually agreed to by the Parties.

3. Fees due under this Section A of Exhibit 7 shall be paid on or before the fifth day of each Quarter following the Operations Commencement Date, with the payment based on the product of(x) **1/4** of the estimated number of Patients to be diagnosed and/or treated at **MDAI-España**, S.A. for such year multiplied by (y) the fee of U.S. \$800 per Patient. If the number of Patients diagnosed **and/or** treated during such Quarter is less than the estimated number of Patients for such Quarter, **MDAI-España**, S.A. may adjust downward its initial Quarterly payment for the next Quarter to account for the overpayment in the preceding Quarter. If the number of Patients diagnosed and/or treated during such Quarter is greater than the estimated number of Patients for such Quarter, **MDAI-España**, S.A. will pay **the** amount of the underpayment not later than the tenth day of the succeeding Quarter. In the event that the Operations Commencement Date occurs other than at the beginning of a Quarter, **MDAI-España S.A.'s** payment for the period prior to the beginning of a Quarter shall be the product of(x) the number of Patients diagnosed and/or treated at **MDAI-España** during the period prior to the beginning of Quarter multiplied by (y) U.S. \$800 per Patient. payable on or before the fifth day of the tint Quarter. Each Quarterly payment shall be made by **MDAI-España** to the bank account designated by Outreach in immediately available funds prior to 3:00 p.m. Houston, Texas time on the business day such payment is due.

4. **MDAI-España**, S.A. has estimated the total number of Patients for the first six years of operation to be: 461 Patients in Year One, 510 Patients in Year **Two**. 567 Patients in Year Three, 687 Patients in Year Four. 832 Patients in Year Five. and **1004** Patients in Year Six. For subsequent years, the **MDAI-España**, S.A. Board of Directors shall include in the business plan of **MDAI-España**, S.A. the estimate of **the** number of Patients for each succeeding year; in the absence of such estimate in a business plan adopted by the Board of Directors, the parties shall use an estimate of 115% of the higher of the previous year's estimated number of Patients or the actual number of Patients for the purposes of the calculation.

5. Payments received later than the due date shall be subject to a late charge equal to MIBOR +2 per annum calculated from the date on which the payment was due.

6. In the event that MDAI-España fails to make any payment due under this Section A for a period longer than Five (5) days past the due date for such payment. Holding shall make the payment due to Outreach under this Section A.

7. During the 180-day periods immediately preceding the end of the 5th, 10th, and 15th years of operation, Outreach and Holding agree to review (a) the effect of US inflation rates for the preceding 5 years on the fixed formula of \$800 per patient diagnosed or treated, and (b) the effects of the exchange rate (US dollar and Spanish peseta) for the preceding 5 years on the financial ability of MDAI-España to pay \$800 per patient diagnosed or treated. Based on such review, the fee paid by MDAI-España may be revised if agreed to by both Outreach and Holding. If Outreach and Holding fail to agree to a revised payment, the fee to be paid by MDAI-España shall remain the same.

B. Compensation Attributable to Holding

1. As additional compensation for Clinical Support Services provided by Outreach under this Agreement and the substantial commitment and effort made by Outreach in connection with this Agreement, Holding will pay Outreach an annual fee of US \$100,000. This annual fee shall be payable in equal quarterly installments due successively, on or before the fifth day of each Quarter following the Operations Commencement Date. Quarters are defined as October 1-December 31, January 1-March 31, April 1 - June 30, July 1-September 30. In the event that the Operations Commencement Date occurs other than on the first day of the Quarter, the initial payment shall be prorated according to the number of days prior to the first full Quarter. Payments received later shall be subject to a late charge equal to a rate of interest equal to MIBOR +2 per annum calculated from the date on which the payment was due. Each such payment shall be made by Holding to the bank account designated by Outreach in immediately available funds prior to 3:00 p.m. Houston, Texas time on the business day such payment is due.

2. The U.S. \$100,000 annual payment described above shall be credited against any annual distributions made by Holding on the preferred stock held by Outreach (e.g., if Holding had made the US \$ 100,000 annual payment for the year, then Holding would retain the first US \$ 100,000 of distributions in Outreach's preferred stock for such year.) The distributions to Outreach shall be made to the bank account designated by Outreach in immediately available funds no later than 3:00 p.m. Houston, Texas time on the second business day following the date distributions were made to other Holding shareholder.

3. To facilitate accounting and tax planning, the quarterly installments to be paid to Outreach under this Section B, Compensation Attributable to Holding, shall be deemed advance payments of the US \$100,000 Annual Fee. Such advance payments are to be liquidated each fiscal year upon the closing of Holding's fiscal year accounts against the higher of (i) the US

\$100,000 payment **made** by Holding to Outreach or (ii) any annual distribution **of dividends** made by Holding to Outreach on the preferred stock held by Outreach in Holding.

The Compensation obligations described in Sections A and **B** above shall commence **upon** the **Operations Commencement Date**.

c . **Reimbursable Expenses Between Effective Date and Operations Commencement Date**

Notwithstanding any other provision of this Agreement to the **contrary**, the Parties **acknowledge** that Outreach's obligations to provide the Clinical Support Services described in Exhibit 2.1 and **the** obligations of Holding **and MDAI-España, S.A.** to make the payments described in Sections A and B of Exhibit 7 shall not begin until the **Operations Commencement Date**. In the event that Holding or **any** Subsidiary **requests Clinical Support Services** or other **services from** Outreach or MDACC **prior to the Operations Commencement Date, Outreach may provide such Clinical Support Services** or services as the Parties may **mutually** agree **and** on terms, including pricing, as **the** Parties may mutually agree.

EXHIBIT 8.10

**MDAI-España, S.A. And Holding
Cash Flow to Outreach
(From Arthur Anderson Madrid Financial Feasibility Study)**

	Year Ended December 31,					
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
MDA-España:						
Pro Forma Number Of Patients Treated	461	510	567	687	832	1004
CSSA Fee (\$800/Patient) Based Upon Patient Volume	\$368,800	\$408,000	\$453,600	\$549,600	\$665,600	\$803,200
Holding:						
Net Income Attributable To the 51% Majority Shareholders	(\$288,000)	\$803,000	\$1,306,000	\$2,115,000	\$3,241,000	\$4,987,000
Outreach Distribution Dividend @10% Of Profits	0	\$80,300	\$130,600	\$211,500	\$324,100	\$498,700
Guaranteed Fee To Outreach	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
Summary of Cash Flow to Outreach:						
CSSA fee Paid By MDAI-España	\$368,800	\$408,000	\$453,600	\$549,600	\$665,600	\$803,200
Greater Of Fee Guarantee Or 10% Distribution Dividend	\$100,000	\$100,000	\$130,600	\$211,500	\$324,100	\$498,700
Total Cash Flow To Outreach	\$468,800	\$508,000	\$584,200	\$761,100	\$989,700	\$1,301,900

M. D. ANDERSON CANCER CENTER OUTREACH CORPORATION
and
MDA HOLDING SPAIN, S.A.

SUBLICENSE AGREEMENT

This Sublicense Agreement ("Agreement") is entered into effective as of the [] (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. **M. D. Anderson Cancer Center Outreach Corporation (hereinafter referred to as LICENSOR) has a principal place of business at 7505 South Main, Suite 500, Houston, Texas 77030.**
- 1.2. **MDA Holding Spain, S.A. (hereinafter referred to as LICENSEE), with a principal place of business of calle Orense 32, 28020 Madrid, Spain.**
- 1.3. **LICENSOR and LICENSEE are parties to this Agreement**

2 BACKGROUND

- 2.1. **By virtue of that certain "License Agreement" (a copy of which is attached as Exhibit F) between LICENSOR and the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM (hereinafter referred to as BOARD), LICENSOR has rights in the mark(s) identified in Attachment A hereto, and public recognition and goodwill have been acquired through the use of such mark(s) in the United States and elsewhere in the world. Any rights granted herein are no greater than those granted LICENSOR pursuant to Exhibit F.**
- 2.2. **LICENSEE recognizes the goodwill appurtenant to use of the mark(s) and desires to obtain a nonexclusive license to utilize such mark(s). LICENSOR is willing to grant such a license under the terms and conditions of this Agreement.**

3 DEFINITIONS

- 3.1. **LICENSED MARKS means the mark(s) listed in Attachment A which are the subject of the applications included in Attachment A, as well as any registration or registrations which may be issued covering such mark(s). The LICENSED MARKS are the marks as listed in Attachment A only, and do not include any translation of the marks into another language.**

- 3.2. **LICENSED GOODS AND SERVICES** means those goods and services specified in Attachment B hereto in connection with which the applicable **LICENSED MARKS** are used.
- 3.3. **INSURANCE USE** means those services specified in Attachment B hereto in connection with which the applicable **LICENSED MARKS** are used.
- 3.4. **TERM** means the effective period of this Agreement, which shall commence on the **EFFECTIVE DATE** and which shall terminate, upon the earliest termination of either of the following Agreements:
- 3.4.1 the Clinical Support Services Agreement ("CSSA") between LICENSOR and LICENSEE (attached as Attachment E) effective the []: [] o r
- 3.4.2 the License Agreement between the BOARD and LICENSOR identified in Paragraph 2.1 above.
- 3.5. **QUALITY** means an acceptable level of quality in accordance with the terms and provisions of the **CSSA**.
- 3.6. **LICENSED TERRITORY** means the area described in Attachment C.
- 3.7. **MARKETING AREA** means the area described in Attachment D.

4 LICENSE GRANT

- 4.1. Subject to the terms and conditions of this Agreement, **LICENSOR** grants to **LICENSEE** the nonexclusive right and license to utilize the applicable **LICENSED MARKS** during the Term hereof (a) in the **LICENSED TERRITORY** solely in connection with the provision of **LICENSED GOODS AND SERVICES** of **QUALITY** and **INSURANCE USE**; and (b) with advertising and promotional material within the **LICENSED TERRITORY** a n d **MARKETING AREA** to the extent appropriate to the provision **LICENSED GOODS AND SERVICES** of **QUALITY** and **INSURANCE USE**
- 4.2. Further subject to the terms and conditions of this Agreement, **LICENSOR** agrees that it shall not Stunt a license to another party for the **LICENSED MARKS** or any other mark confusingly similar thereto in the **LICENSED Territory** for the **LICENSED GOODS AND SERVICES** for so long as the **CSSA (Attachment E)** remains in effect.
- 4.3. **LICENSEE** shall pay to **LICENSOR** the one-time price of two million and five hundred thousand (2,500,000) pesetas (_____ US dollars) for the **LICENSE** herein. **LICENSEE** shall pay such price by means of the transfer of 10% of its stock to **LICENSOR**

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, LICENSOR may serve on LICENSEE a written 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 to the satisfaction of LICENSOR, this Agreement shall automatically terminate upon service by LICENSOR of a formal written notice of termination.
- 5.2. upon expiration or termination of this Agreement, all rights granted to LICENSEE hereunder shall cease, and LICENSEE shall refrain from further use of the LICENSED MARKS, or any mark or name reasonably deemed by LICENSOR to be similar to the LICENSED MARKS, in connection with the provision of or promotion of services. LICENSEE acknowledges that failure to comply with this provision will result in immediate and irreparable harm affording injunctive and any and all other appropriate relief to the owner of the LICENSED MARKS.
- 5.3. 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 My relationship exists between LICENSEE and LICENSOR or the owner of the LICENSED MARKS.

6 GOODWILL IN LICENSED MARKS

LICENSEE agrees that the essence of this Agreement is founded on the goodwill associated with the LICENSED MARKS 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 MARKS;
- (b) apply to register or maintain any application or registration of the LICENSED MARKS or any other mark confusingly similar thereto in any jurisdiction worldwide;
- (c) use any colorable imitation of any of the LICENSED MARKS, or any variant form (including variant & sign forms, logos, colors, or typestyles) of the LICENSED MARKS not specifically approved by LICENSOR;
- (d) misuse the LICENSED MARKS;
- (e) take any action that would bring the LICENSED MARKS into public disrepute;
- (f) use the LICENSED MARKS, or any mark or name confusingly similar thereto, in its corporate or trade name without approval of LICENSOR; subject to the

- approval of BOARD, the names "M.D. Anderson International"; "M.D. Anderson International Radiotherapy- España, S.A."; and M.D. "Anderson International - España, Seguros, S.A., may be approved; or
- (g) take any action that would tend to destroy or diminish the goodwill in the LICENSED MARKS.

7 SUB-SUBLICENSES

LICENSEE shall have the right to grant sub-sublicenses under this Agreement only under the following conditions:

- 7.1. **LICENSEE may grant a sub-sublicense only to a company in which LICENSEE has at least a 51% ownership interest. In the event that LICENSEE ceases to have at least a 51% ownership interest in a sub-sublicensee, the sub-sublicense as to that sub-sublicensee will terminate immediately.**
- 7.2. **LICENSEE may grant a sub-sublicense only upon the prior written approval of LICENSOR. Copies of each sub-sublicense shall be provided to LICENSOR within thirty (30) days of execution of such sub-sublicense. LICENSOR agrees that sub-sublicenses may be granted to the following parties for the LICENSED MARKS, LICENSED GOODS AND SERVICES or INSURANCE USE. LICENSED TERRITORY and MARKETING TERRITORY specified; however, such sub-sublicenses may be granted only upon LICENSOR's prior written approval of the form of such sub-sublicenses:**

Party	LICENSED MARK I (As permitted in Paragraph 9.2)	LICENSED GOODS AND SERVICES OR INSURANCE USE	LICENSED TERRITORY	MARKETING TERRITORY
M.D. Anderson International - España, S.A. (as described in the CSSA)	M.D. ANDERSON INTERNATIONAL	CANCER CENTER SERVICES (as specified in Attachment B)	The country of Spain at the Madrid address specified in Paragraph 4.1	The countries of Spain and Portugal
M.D. Anderson International Radiotherapy-España, S.A. (as described in the CSSA)	M.D. ANDERSON INTERNATIONAL RADIOTHERAPY	RADIATION THERAPY SERVICES (as specified in Attachment B)	The country of Spain at the Madrid address specified in Paragraph 4.1	The countries of Spain and Portugal
M.D. Anderson International - España Seguros, S.A. (as described in the CSSA)	M.D. ANDERSON INTERNATIONAL	INSURANCE USE (as specified in Attachment B)	The countries of the European Union as of October 15, 1997	The countries of the European Union as of October 15, 1997

7.3. **LICENSEE** may grant a sub-license only under terms at least as restrictive as those of this Agreement.

8 QUALITY CONTROL; ADVERTISING APPROVAL

8.1 All LICENSED GOODS AND SERVICES shall be **QUALITY** service & **LICENSEE** acknowledges that if **LICENSED GOODS AND SERVICES** were of inferior quality, the substantial goodwill in **LICENSED MARKS** would be impaired. Accordingly, **LICENSEE** agrees that all **LICENSED GOODS AND SERVICES** shall be **QUALITY Services**. **LICENSOR** shall have the right to inspect each office or facility operated by **LICENSEE** pursuant to the Clinical Support Services Agreement and monitor services provided by **LICENSEE** to assure **LICENSEE'S** compliance with this Paragraph 8.1 **LICENSEE** agrees to comply with legal requirements regarding use of the **LICENSED MARKS** arising from Spanish, Portuguese, or European **Community** law.

8.2 All advertising and promotional material bearing the **LICENSED MARKS** and any use of the **LICENSED MARKS** inside or outside the **MARKETING AREA** shall be subject to the written approval of **LICENSOR**. **LICENSEE** shall furnish advertising and promotional materials and statements regarding use of the **LICENSED MARKS** to **LICENSOR** c/o The University of Texas M. D. Anderson Cancer Center, Associate Vice President for Public Affairs, 1515

Holcombe Blvd., BoX 229, Houston, Texas 77030, and to The University of Texas system Office of General counsel, Intellectual Property Section, at 201 W. 7th Street, Austin, Texas 78701. In addition, LICENSEE shall furnish to LICENSOR one (1) copy of my advertisement of LICENSED GOODS AND SERVICES or INSURANCE USE used by LICENSEE and a written description of the proposed use of the LICENSED MARKS. LICENSOR shall have one (1) month from receipt thereof in which to approve in writing the materials. In the absence of rejection, or upon earlier written approval, the materials will be deemed as approved. LICENSEE shall furnish to LICENSOR a further sample of advertising or a description of use of the LICENSED MARKS if it desires to change the advertising or use of the LICENSED MARKS. LICENSOR will have one (1) month to approve advertising or proposed use. Failure to reject will be deemed approval.

- a.3 In addition to the approval set forth in Paragraph 8.2, any use of the LICENSED MARKS outside of the MARKETING AREA or any use of advertising and promotional material bearing the LICENSED MARKS outside of the MARKETING AREA (which MARKETING AREA expressly excludes global communication/electronic mail, such as internet world wide web) shall be subject to the additional prior written approval of the chief Executive Officer of LICENSOR. LICENSEE shall furnish a written description of the proposed use of the LICENSED MARKS outside of the MARKETING AREA to the Chief Executive Officer of LICENSOR for approval.

9 MARKING AND USAGE

- 9.1 LICENSEE agrees that it will designate the LICENSED GOODS AND SERVICES in a manner as specified from time to time in writing with two-months written notice by LICENSOR to indicate the rights of LICENSOR in the LICENSED MARKS, including registration status of the LICENSED MARKS and that the services are provided pursuant to license. Initially, LICENSEE shall designate the LICENSED GOODS AND SERVICES as set forth in Attachment G. The terms of this provision shall apply to all marketing and publicity materials, including brochures, advertisements, letterhead, and printed or readable text materials, and shall not apply to business signage and business cards. Further, in the event of a change of status, LICENSEE shall have six months after notification to use its pro-existing supply of such materials and to transition to materials bearing the current status.

- 9.2 The LICENSED MARKS must be used with the additional designators "España, S.A.," "España," "España Seguros," or "España Seguros, S.A." as follows:

M. D. ANDERSON INTERNATIONAL - ESPAÑA
M. D. ANDERSON INTERNATIONAL - ESPAÑA, S.A.
M. D. ANDERSON INTERNATIONAL RADIOTHERAPY-ESPAÑA

M. D. ANDERSON INTERNATIONAL RADIOTHERAPY-ESPAÑA, S.A.
M. D. ANDERSON INTERNATIONAL • ESPAÑA SEGUROS
M. D. ANDERSON INTERNATIONAL - ESPAÑA SEGUROS, S.A.

No other form or variant of the marks may be used by LICENSEE.

10 INDEMNITY/HOLD HARMLESS

10.1 LICENSEE agrees that it is wholly responsible for all services it provides, including all LICENSED GOODS AND SERVICES and INSURANCE USE, and that neither LICENSOR nor the BOARD shall have any liability for any services, including any LICENSED SERVICE or INSURANCE USE, provided by LICENSOR LICENSEE shall indemnify and hold harmless LICENSOR and BOARD 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 rendering of professional services, including, without limitation, LICENSED GOODS AND SERVICES or INSURANCE USE,

10.2 LICENSOR shall, to the extent authorized Under the Constitution and laws of the State of Texas, indemnify and hold LICENSEE harmless from liability resulting from the negligent acts or omissions of LICENSOR, its agents or employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement; provided, however, that LICENSOR shall not hold LICENSEE harmless from claims arising out of the negligence or willful malfeasance of LICENSEE, its officers, agents, or employees or any person or entity not subject to LICENSOR's supervision or control.

11 MAINTENANCE OF TRADEMARKS

LICENSOR represents and warrants that it shall be responsible for the maintenance of the LICENSED MARKS including the payment of the corresponding taxes, renewal fees, etc. as to keep them with full legal effect. The maintenance or lack thereof by LICENSOR shall not entitle LICENSEE to recovery or restitution of royalties or other claim for failure to maintain by LICENSOR. In the event the registrations for the LICENSED MARKS are not maintained, LICENSEE's sole remedy shall be termination of this Agreement; subject to the limitation that if LICENSOR files new applications for the LICENSED MARKS the Agreement shall be reinstated. Should LICENSOR fail to maintain the registrations for the LICENSED MARKS, LICENSEE may take steps to maintain the registrations, subject to the reimbursement for all fees, costs, and expenses from LICENSOR. Upon written request, no more than two times per calendar year, LICENSOR shall indicate the status of the registrations to LICENSEE. LICENSOR may elect, and shall advise LICENSEE of its intention to allow registrations in Spain and Portugal to lapse in favor of registrations in the European Community. In such event, LICENSEE may, at its option and expense, maintain the registrations in Spain and

Portugal and shall supply complete documentation of same to LICENSOR upon written request of LICENSOR. If LICENSEE decides to maintain the Spanish and Portuguese trademark registrations, BOARD will remain the owner of such registrations, and LICENSEE will acquire ownership interest or My other right in conflict with this Agreement.

12 POLICING

- 12.1 LICENSOR and LICENSEE shall cooperate with each other in any action, proceeding or other effort to police the LICENSED MARKS.
- 12.2 Each party shall notify the other in the event it becomes aware of any third party's use of, or trademark application for, the LICENSED MARKS, or any mark or name confusingly similar thereto, or who it otherwise believes is or may be infringing, diluting, or otherwise derogating LICENSOR's or BOARD's rights to the LICENSED MARKS.
- 12.3 LICENSOR may, at its sole discretion, take action against my third party to enforce its rights in the LICENSED MARKS. If LICENSOR chooses to take action against a third party, it may request LICENSEE'S assistance in pursuing the action. In such event, LICENSOR will reimburse LICENSEE for its reasonable out-of-pocket expenses (not including attorney's fees) incurred as a result of such assistance.
- 12.4 LICENSOR may elect, on a case-by-case basis, not to enforce its rights in the LICENSED MARKS by a third party. Upon written request of LICENSEE, LICENSOR will communicate its decision to LICENSEE. In that event, LICENSEE may then take action against such third party. If LICENSEE chooses to take action against the third party, LICENSEE shall notify LICENSOR in writing of its decision. In such event, LICENSEE will reimburse LICENSOR for its reasonable out-of-pocket expenses (not including attorney's fees) incurred as a result of such assistance.
- 12.5 Either party may, upon written communication to the policing party under paragraphs 12.3 and 12.4 hereof, join fully in an action to enforce rights in the LICENSED MARKS. In such event, the attorney's fees for the joint action shall be borne equally by LICENSOR and LICENSEE from inception of the action, and each party shall bear its own expenses and costs. Decision in the action, insofar as possible, will be made jointly; however, LICENSOR shall have final decision-making authority in all matters regarding enforcement of the LICENSED MARKS.
- 12.6 If LICENSEE takes action against a third party under the provisions set forth in Section 12.4 and LICENSOR does not elect to join in the action, LICENSEE may

not settle such action or enter into any agreement or resolution affecting the LICENSED MARKS without LICENSOR'S written approval, which approval shall not be unreasonably withheld.

12.7 Any recovery obtained in an action to enforce rights in the LICENSED MARKS shall be distributed as follows:

- (a) First, to pay the attorney's fees and expenses of both LICENSOR and LICENSEE. In the event that the recovery is insufficient to cover the total amount of attorney's fees and expenses of both parties, the parties shall divide the recovery proportionally, with each party receiving that percentage of the recovery which equals the percentage of total attorney's fees and expenses incurred by that party.
- (b) Second, if there are funds remaining after payment of attorney's fees and expenses, LICENSEE shall be reimbursed for its provable damages.
- (c) Third, my remaining amount will be distributed to LICENSOR.

13 NOTICES

All notices or demands required to be made or permitted under this Agreement shall be in writing and shall be deemed served when deposited with air mail courier (e.g., DHL or Federal Express), addressed as provided in paragraph 1 of this Agreement, or to such other address as either party may from time to time designate in writing.

14 ASSIGNMENT

This Agreement may not be assigned by LICENSEE or LICENSOR without written approval from BOARD.

15 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, LICENSOR and LICENSEE and no representation to the contrary shall be binding upon BOARD or LICENSOR.

16 B.L.I.N.D.I.N.G -

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

17 **LAW GOVERNING**

This Agreement shall for all purposes be governed exclusively 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 and venue shall be in Harris County, Texas. LICENSEE hereby agrees to submit to the jurisdiction of the court of competent jurisdiction located in the State of Texas.

18 **RECORDAL OF LICENSE AGREEMENT**

LICENSOR and LICENSEE agree that they both shall take all necessary steps to have this Sublicense be made a public document before a notary and be submitted for recordation with the Spanish and Portuguese Trademark Offices within 45 days of the Effective Date of this Agreement.

19 **MISCELLANEOUS**

- 19.1 The provision 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.
- 19.2 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.
- 19.3 This Agreement, including the Attachments hereto, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements between the parties, written or oral, with respect to such subject matter.
- 19.4 This Agreement may not be amended, modified, or rescinded except by a written agreement executed by LICENSOR and LICENSEE.
- 19.5 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.
- 19.6 All expenses and taxes that are incurred from the formalization, execution and, where appropriate, conversion of this Agreement into public document(s) will be paid by the parties in equal proportions.

19.7 This Agreement shall be translated into Spanish and Portuguese as may be required for recordation, however, in the event of a discrepancy, the English language version shall govern.

19.8 LICENSOR acknowledges that the corporate name "MDA Holding Spain, S.A." belongs to LICENSEE.

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

LICENSOR:

**M.D. ANDERSON CAN-CENTER
OUTREACH CORPORATION**

By: _____
Name: _____
Title: _____
Date Signed: _____

LICENSEE:

MDA HOLDING SPAIN, S.A.

By: _____
Name: _____
Title: _____
Date Signed: _____

ATTACHMENT A

LICENSED MARKS ARE:

**M. D. ANDERSON INTERNATIONAL
M. D. ANDERSON INTERNATIONAL RADIOTHERAPY**

Copies of trademark applications in Spain, Portugal and the European Community for these marks are attached.

ATTACHMENT B

LICENSED GOODS AND SERVICES ARE:

The following goods and services may be provided by LICENSEE in connection with the applicable LICENSED MARKS listed in Attachment A:

- (1) **CANCER CENTER SERVICES:** Medical oncology, and surgical oncology facility services and ancillary supporting facility services (including pathology, medicine, laboratory, and nuclear medicine) used as part of the Cancer Program (as the term Cancer Program is defined in the CSSA);
- (2) **RADIATION THERAPY SERVICES:** Radiation Therapy Services used as part of the Cancer Program (as the term Cancer Program is defined in the CSSA)
- (3) **GOODS:** Uses of the LICENSED MARKS in connection with the LICENSED GOODS AND SERVICES as defined above including the advertising and promotion thereof in accordance with existing trade practices, within the LICENSED TERRITORY, including uses of the LICENSED MARKS on letterhead, stationery, business signage, advertisements, and promotional materials.

L _ _ N _ _ S _ _

LICENSE may use the applicable LICENSED MARKS listed in Attachment A in connection with the advertising, marketing, and sale of an insurance product to be offered by M. D. Anderson International - España Seguros, S.A.. Permitted uses may include use of the LICENSED MARKS within the product description and appropriate references to M.D. Anderson International - España, S.A. as a location where insurance benefits may be provided.

ATTACHMENT C

LICENSED TERRITORY IS:

For CANCER CENTER SERVICES:

The country of Spain solely at Calle Arturo Soria 270, Madrid Spain.

For RADIATION THERAPY SERVICES:

The country of Spain solely at Calle Arturo Soria 270, Madrid Spain.

For GOODS: Throughout the MARKETING TERRITORY for the relevant SERVICES or INSURANCE USE, as set forth in ATTACHMENT D.

For INSURANCE USE:

The countries of the European union as of October 15.1997.

ATTACHMENT D

MARKETING AREAS:

For CANCER CENTER SERVICES:

The countries of Spain and Portugal

For RADIATION THERAPY SERVICES:

The countries of Spain and Portugal

For INSURANCE USE:

The countries of the European Union as of October 15, 1997.

ATTACHMENT B

CLINICAL SUPPORT SERVICES AGREEMENT

ATTACHMENT F
LICENSE AGREEMENT BETWEEN LICENSOR AND BOARD

ATTACHMENT G

Pursuant to Paragraph 9.1, LICENSEE shall use the following marking of the LICENSED MARKS until it receives further notice from LICENSOR:

"[LICENSED MARK] is a trademark of Board of Regents, The University of Texas System, and is used under license."

7. U. T. Medical Branch - Galveston: Appointment of William Cohen Levin, M.D., as President Emeritus.--Upon recommendation of the Health Affairs Committee, the Board appointed William Cohen Levin, M.D., President Emeritus at The University of Texas Medical Branch at Galveston.

Dr. Levin received his M.D. degree from the U. T. Medical School - Galveston in 1941 and began his lifelong career at the U. T. Medical Branch - Galveston as an instructor in the Department of Medicine in 1944. He became director of the hematology division in the Department of Internal Medicine in 1946 and in 1974 was appointed president. During his presidency, Dr. Levin established a very successful minority affairs alumni committee which has an impressive record recruiting disadvantaged students. In addition, he worked closely with The Sealy & Smith Foundation encouraging the Foundation to fund programs and research as well as buildings. Dr. Levin was instrumental in the development of an educational facility which bears his name (Levin Hall) and is extensively utilized by the institution and the Galveston area for programs related to patient care, research, and community well-being.

8. U. T. Health Science Center - Houston: Report on Merger of Hermann Hospital and Memorial Healthcare System.--At the conclusion of the Health Affairs Committee meeting, Committee Chairman Loeffler called on President Low of The University of Texas Health Science Center at Houston to make a brief report regarding the merger of Hermann Hospital and Memorial Healthcare System in Houston, Texas.

President Low noted that since the establishment of The University of Texas Medical School at Houston in 1969 Hermann Hospital has served as the primary teaching hospital for that institution. This affiliation has served the U. T. Medical School - Houston well in providing a site for the training of medical students and residents as well as for faculty practice. The relationship has also served Hermann Hospital well by fostering the development of tertiary, one-of-a-kind services which have brought patients, distinction, and revenues to the Hospital.

Over the years, there have been concerns about the financial and market share stability and viability of Hermann Hospital and recently the pressures of managed care have led to a merger between Hermann Hospital and Memorial Healthcare System. The goal of the merger is to form the strongest not-for-profit hospital system in the Houston area which will build on both hospitals' long-standing commitment to the community and their unambiguous role of being not-for-profit. In addition to this close alignment of mission, the two hospital systems, as a combined entity, will have tremendous geographic coverage and market share, two factors which are critical in the growing managed care marketplace. The combined strength of Memorial Healthcare System as a community-based hospital system and of Hermann as a Texas Medical Center-based tertiary teaching hospital will position the new entity for the future as the health-care delivery system in Houston consolidates even further.

Dr. Low noted that a merger with Memorial Healthcare System presents expanded clinical opportunities for the U. T. Medical School - Houston. With Memorial's geographically dispersed community hospital and medical staffs, the School will have the opportunity to extend its teaching and patient-care programs into the community. Increased exposure to community-based care is vital to students and will strengthen the curriculum of the School. Other opportunities include extending continuing education programs, increasing referrals to Medical School specialists, and strengthening ties with community-based physicians.

President Low pointed out that from an operational viewpoint the affiliation agreement is essentially the same as the one that has been in existence for many years.

REPORT AND RECOMMENDATIONS OF THE FACILITIES PLANNING AND CONSTRUCTION COMMITTEE (Pages 234 - 252).--Committee Chairman Clements reported that the Facilities Planning and Construction Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Facilities Planning and Construction Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Austin - Renovation and Expansion of W. A. "Tex" Moncrief, Jr. - V. F. "Doc" Neuhaus Athletic Center (Formerly Known as Neuhaus-Royal Athletic Center) (Project No. 102-864): Approval of Plaque Inscription.-- Upon recommendation of the Facilities Planning and Construction Committee, the Board approved the inscription set out below for a plaque to be placed on the Renovation and Expansion of W. A. "Tex" Moncrief, Jr. - V. F. "Doc" Neuhaus Athletic Center (formerly known as Neuhaus-Royal Athletic Center) at The University of Texas at Austin in keeping with the standard pattern approved by the U. T. Board of Regents in June 1979:

RENOVATION AND EXPANSION OF
W. A. "TEX" MONCRIEF, JR. - V. F. "DOC" NEUHAUS
ATHLETIC CENTER
1997

BOARD OF REGENTS

Donald L. Evans
Chairman
Tom Loeffler
Vice-Chairman
Rita Crocker Clements
Vice-Chairman
Thomas O. Hicks
Lowell H. Lebermann, Jr.
Patrick C. Oxford
A. W. "Dub" Riter, Jr.
A. R. (Tony) Sanchez, Jr.
Martha E. Smiley

William H. Cunningham
Chancellor, The University
of Texas System
Peter T. Flawn
President ad interim, The
University of Texas at
Austin

O'Connell Robertson &
Associates, Inc.
Project Architect
Silverton Construction
Company, Inc.
Contractor

2. U. T. Austin - Darrell K Royal - Texas Memorial Stadium - Renovation and Expansion of East Grandstand (Project No. 102-862): Approval of Plaque Inscription.--Approval was given to the inscription set out below for a plaque to be placed on the Darrell K Royal - Texas Memorial Stadium - Renovation and Expansion of East Grandstand at The University of Texas at Austin in keeping with the standard pattern approved by the U. T. Board of Regents in June 1979:

DARRELL K ROYAL - TEXAS MEMORIAL STADIUM
RENOVATION AND EXPANSION OF EAST GRANDSTAND
1997

BOARD OF REGENTS

Donald L. Evans Chairman	William H. Cunningham Chancellor, The University of Texas System
Tom Loeffler Vice-Chairman	Peter T. Flawn President ad interim, The University of Texas at Austin
Rita Crocker Clements Vice-Chairman	
Thomas O. Hicks	
Lowell H. Lebermann, Jr.	
Patrick C. Oxford	Heery International, Inc. Project Architect
A. W. "Dub" Riter, Jr.	Hensel Phelps Construction Company Contractor
A. R. (Tony) Sanchez, Jr.	
Martha E. Smiley	

3. U. T. Austin: Authorization to Amend the FY 1998 and FY 1999 Capital Budget to Include Student Housing Project.--At the request of President ad interim Flawn, Dr. James W. Vick, Vice President for Student Affairs, presented a comprehensive overview of the proposed Student Housing project at The University of Texas at Austin noting that the project is needed to fulfill the mission of the institution to focus on the freshman experience, improve student retention and graduation rates, and provide a greater sense of on-campus community within the student body. Dr. Vick noted that this will be a project built with quality, including state-of-the-art use of technology in data networks, fire protection, security and infrastructure -- a place that can be a

center of university community life with faculty apartments and versatile community spaces and a building that will be an asset to the campus for future generations. (A [Prospectus](#) on this project was distributed to the U. T. Board of Regents in advance of the meeting and is on file in the Office of the Board of Regents.)

The Board, upon recommendation of the Facilities Planning and Construction Committee, amended the FY 1998 and FY 1999 Capital Budget to include the Student Housing project at U. T. Austin at a preliminary project cost of \$40,000,000 with \$8,000,000 from Auxiliary Enterprise Balances and \$32,000,000 from Revenue Financing System Bond Proceeds.

The Student Housing project at U. T. Austin was approved in the FY 1998-2003 Capital Improvement Program in August 1997 but was not included in the FY 1998 and FY 1999 Capital Budget. Amendment of the FY 1998 and FY 1999 Capital Budget to include the Student Housing project at this time will accelerate the project and move forward the construction of additional student housing on campus for 800-1000 residents consistent with the U. T. Austin Campus Master Plan and the goal to provide sufficient space so that the majority of incoming freshmen can be offered on-campus housing.

Approval of this item amends the FY 1998 and FY 1999 Capital Budget to include the Student Housing project at a preliminary project cost of \$40,000,000, with \$8,000,000 from Auxiliary Enterprise Balances and \$32,000,000 from Revenue Financing System Bond Proceeds.

4. U. T. Austin - University Interscholastic League Building (Project No. 102-803): Approval of Plaque Inscription.--
In keeping with the standard pattern approved by the U. T. Board of Regents in June 1979, approval was given to the inscription set out below for a plaque to be placed on the University Interscholastic League Building at The University of Texas at Austin:

UNIVERSITY INTERSCHOLASTIC LEAGUE BUILDING
1996

BOARD OF REGENTS

Bernard Rapoport Chairman	William H. Cunningham Chancellor, The University of Texas System
Thomas O. Hicks Vice-Chairman	Robert M. Berdahl President, The University of Texas at Austin
Martha E. Smiley Vice-Chairman	
Rita Crocker Clements	
Donald L. Evans	Cotera Kolar & Negrete Architects
Zan W. Holmes, Jr.	Project Architect
Lowell H. Lebermann, Jr.	Chasco Contracting
Tom Loeffler	Contractor
Ellen Clarke Temple	

5. U. T. Dallas - Satellite Facility/Callier Center Building Addition: Approval of Design Development Plans; Approval of Total Project Cost; Appropriation of Funds and Authorization of Expenditure; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Parity Debt Certificate, and Finding of Fact with Regard to Financial Capacity.--Following a brief overview by President Jenifer, the design development plans for the Satellite Facility/Callier Center Building Addition at The University of Texas at Dallas were presented to the Facilities Planning and Construction Committee by Mr. David Marsee, representing the Project Architect, MPI Architects, Dallas, Texas.

Based on this presentation and upon recommendation of the Facilities Planning and Construction Committee, the Board:

- a. Approved design development plans for the Satellite Facility/Callier Center Building Addition at U. T. Dallas

- b. Approved an estimated total project cost of \$3,319,483
- c. Appropriated funds and authorized expenditure of \$1,900,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System, \$855,926 from Gifts and Grants, \$44,074 from Permanent University Fund Bond Proceeds - Special Program, \$130,000 from 1995 LERR Permanent University Fund Bond Proceeds, \$300,000 from 1998 LERR Permanent University Fund Bond Proceeds, \$39,483 from 1996 LERR Permanent University Fund Bond Proceeds, and \$50,000 from Parking Revenues for \$3,319,483 total project funding.

Following a presentation by Ms. Pam Clayton, Assistant Vice Chancellor for Finance for The University of Texas System, related to the qualifications of this project for the U. T. System Revenue Financing System and in compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution"), and upon delivery of the Certificate of an Authorized Representative as set out on Page 240, the Board resolved that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System, including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System, and to meet all financial obligations of the U. T. Board of Regents relating to the Financing System
- c. U. T. component institutions, which are "Members" as such term is used in the Master Resolution, possess the financial capacity to satisfy their direct obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the aggregate amount of \$1,900,000

- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

The Satellite Facility/Callier Center Building Addition at U. T. Dallas consists of two major parts: an addition of approximately 12,500 gross square feet adjacent to the Callier Center Building D at its location near The University of Texas Southwestern Medical Center at Dallas and construction of a new satellite facility on the U. T. Dallas main campus of about 9,000 gross square feet. The additional space in the Callier Center Building Addition will be used for offices, labs, and classrooms for the academic programs in speech and hearing in the School of Human Development at the Callier Center for Communication Disorders.

To support the Callier Center Building Addition, the project will include the construction of a parking lot for approximately fifty vehicles and upgrading of the Thermal Energy Plant which were previously planned as separate institutional projects. The addition of these items adds \$389,483 to the preliminary project cost of \$2,930,000 for a total project cost of \$3,319,483.

Due to budget constraints, the Satellite Facility portion of the project has been deferred at this time and will be presented to the U. T. Board of Regents at a future meeting when additional funds have been identified.

This project is included in the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget at a preliminary project cost of \$2,930,000 with funding as follows: \$1,900,000 from Tuition Revenue Bond Proceeds, \$855,926 from Gifts and Grants, \$44,074 from Permanent University Fund Bond Proceeds - Special Program, and \$130,000 from 1995 LERR Permanent University Fund Bond Proceeds.

Approval of this item amends the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to add the following: \$300,000 from LERR Permanent University Fund Bond Proceeds (from FY 1998 LERR appropriation of \$300,000 for Callier Center Energy Plant Upgrade), \$39,483 from LERR Permanent University Fund Bond Proceeds (from FY 1996 LERR appropriation of \$100,000 for Callier Center HVAC), and \$50,000 from Parking Revenues, to establish the total project cost of \$3,319,483.

The 75th Texas Legislature authorized **\$5,000,000** of tuition bonds to be issued for U. T. Dallas, and this project represents one of two projects at that institution that will utilize the Tuition Revenue Bond Proceeds.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Interim Assistant **Vice Chancellor** for Finance of The University of Texas System, a U. T. System representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the U. T. Board of Regents (Board) on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution"), do hereby execute this certificate for the benefit of the Board pursuant to Section 5 (a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "Parity Debt" pursuant to the Master Resolution, and do certify that to the best of my knowledge, the Board is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the **Sixth** Supplemental Resolution, and is not in default of any of the terms, provisions, and conditions in said Master Resolution, the First Supplemental Resolution, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution.

EXECUTED this 12 day of February, 1998

Pamela K. Clayton
Interim Assistant Vice ~~Ch~~ancellor for Finance

6. U. T. El Paso: Amendment of the FY 1998 and FY 1999 Capital Budget to Include the Utility Infrastructure Upgrade Renovation Project; Appropriation of Funds for the Project; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Parity Debt Certificate, and Finding of Fact with Regard to Financial Capacity.--Upon recommendation of the Facilities Planning and Construction Committee, the Board:
- a. Amended the FY 1998 and FY 1999 Capital Budget to include the Utility Infrastructure Upgrade renovation project at The University of Texas at El Paso in the amount of \$14,400,000 to be funded from Revenue Financing System Bond Proceeds
 - b. Appropriated funds in the amount of \$14,400,000 from Revenue Financing System Bond Proceeds
 - c. Approved the use of Revenue Financing System Parity Debt in the amount of \$14,400,000.

Following a presentation by Ms. Pam Clayton, Assistant Vice Chancellor for Finance for The University of Texas System, related to the qualifications of this project for the U. T. System Revenue Financing System and in compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 243, the Board resolved that:

- a. Parity Debt shall be issued to pay the project costs including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System, including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System, and to meet all financial obligations of the U. T. Board of Regents relating to the Financing System

- c. U. T. El Paso, which is a "Member" as such term is used in the Master Resolution, possesses the financial capacity to satisfy its Direct Obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the aggregate amount of \$14,400,000 for the financing of the Utility Infrastructure Upgrade renovation project
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

When the FY 1998-2003 Capital Improvement Program was being updated in August 1997, it was not known if the provider of the energy conservation measures, as authorized by Section 51.927 of the Texas Education Code, would be able to provide less expensive financing than the U. T. System Revenue Financing System for the necessary utility infrastructure upgrades. For the U. T. El Paso project, it has been determined that the U. T. System can offer lower financing costs.

The original scope of work was changed from the use of cogeneration of electric power and natural gas powered chillers to new electrical chillers and thermal energy storage based on reduced electric energy rates offered by El Paso Electric. Based on these scope changes, and a determination by U. T. El Paso to not capitalize interest, the preliminary project costs have been reduced from \$30,700,000 to \$14,400,000. The debt service is to be paid from energy savings as a result of the renovation project.

PARITY DEBT CERTIFICATE OF-U. T. SYSTEM REPRESENTATIVE

I, the undersigned Interim Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System Representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the U. T. Board of Regents (Board) on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution"), do hereby execute this certificate for the benefit of the Board pursuant to Section 5 (a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "Parity Debt" pursuant to the Master Resolution to finance the renovation cost of the Utility Infrastructure at U. T. El Paso, and do certify that to the best of my knowledge the Board is in compliance with all covenants contained in the Master Resolution, the First Supplemental Resolution Establishing an Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution and is not in default of any of the terms, provisions and conditions in said Master Resolution, the First Supplemental Resolution, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution.

EXECUTED this 12 day of February, 1998

Pamela K. Clayton
Interim Assistant ~~Vice~~ Chancellor for Finance

7. U. T. Permian Basin - Visual Arts Studios Stage of the Library/Lecture Center, Visual Arts Studios, and Information Resources Facilities (Project No. 501-940A): Approval of Design Development Plans; Approval of Total Project Cost; Appropriation of Funds and Authorization of Expenditure; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Parity Debt Certificate, and Finding of Fact with Regard to Financial Capacity.-- Following opening remarks by President Sorber, Mr. James Rhotenberry, representing the Project Architect, Rhotenberry Wellen Architects, Midland, Texas, presented the design development plans for the Visual Arts Studios at The University of Texas of the Permian Basin to the Facilities Planning and Construction Committee.

Based on this presentation, the Board, upon recommendation of the Facilities Planning and Construction Committee:

- a. Approved design development plans for the Visual Arts Studios at U. T. Permian Basin
- b. Approved an estimated total project cost of \$4,150,000
- c. Appropriated funds and authorized expenditure of \$4,150,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System for total project funding.

In compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution"), and upon delivery of the Certificate of an Authorized Representative as set out on Page 246, the Board resolved that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System, including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements

of the Financing System, and to meet all financial obligations of the U. T. Board of Regents relating to the Financing System

- c. U. T. component institutions, which are "Members" as such term is used in the Master Resolution, possess the financial capacity to satisfy their direct obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the aggregate amount of \$4,150,000
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

The U. T. Permian Basin project titled Library/Lecture Center, Visual Arts Studios, and Information Resources Facilities is composed of two stages: "Visual Arts Studios" and "Library/Lecture Center." The existing visual arts facilities are located in what was the original warehouse, the first building on campus, constructed in 1971 and is inadequate in both spatial and equipment requirements for current needs.

The Visual Arts Studios stage will construct a new facility of approximately 29,380 gross square feet at a total project cost of \$4,150,000 which will appropriately house all studio spaces for two-dimensional and three-dimensional art courses and will contain exhibit space to showcase student and faculty work. The "Library/Lecture Center" stage estimated at \$15,850,000 will be submitted for approval at a later date.

The Library/Lecture Center, Visual Arts Studios, and Information Resources Facilities project is included in the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget at a preliminary project cost of \$20,000,000 from Tuition Revenue Bonds.

The 75th Texas Legislature authorized \$25,800,000 of Tuition Revenue Bonds for U. T. Permian Basin and this represents one of the projects from this source of funds.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Interim Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the U. T. Board of Regents (Board) on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution"), do hereby execute this certificate for the benefit of the Board pursuant to Section 5 (a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "Parity Debt" pursuant to the Master Resolution, and do certify that to the best of my knowledge, the Board is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution, and is not in default of any of the terms, provisions, and conditions in said Master Resolution, the First Supplemental Resolution, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution.

EXECUTED this 12 day of February, 1998

Pamela K. Clayton

Interim Assistant Vice Chancellor for Finance

8. U. T. San Antonio - Institute of Texan Cultures - Thermal Energy Plant: Appropriation of Funding and Approval of Use of Revenue Financing System Parity Debt, Receipt of Parity Debt Certificate, and Finding of Fact with Regard to Financial Capacity.--The Board, upon recommendation of the Facilities Planning and Construction Committee:

- a. Appropriated funding in the amount of \$1,144,000 from Revenue Financing System Bond Proceeds for the Institute of Texan Cultures, Thermal Energy Plant, at The University of Texas at San Antonio
- b. Approved the use of Revenue Financing System Parity Debt in the amount of \$1,144,000.

Following a presentation by Ms. Pam Clayton, Assistant Vice Chancellor for Finance for The University of Texas System, related to the qualifications of this project for the U. T. System Revenue Financing System and in compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 249, the Board resolved that:

- a. Parity Debt shall be issued to pay the project costs including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System, and to meet all financial obligations of the U. T. Board of Regents relating to the Financing System
- c. U. T. San Antonio, which is a "Member" as such term is used in the Master Resolution, possesses the financial capacity to satisfy its Direct Obligation as defined in the Master Resolution relating to the issuance

by the U. T. Board of Regents of tax-exempt Parity Debt in the aggregate amount of \$1,144,000 for the financing of the U. T. San Antonio - Institute of Texan Cultures - Thermal Energy Plant renovation project

- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

When the FY 1998-2003 Capital Improvement Program was being updated in August 1997, it was not known if the provider of the energy conservation measures, as authorized by Section 51.927 of the Texas Education Code, would be able to provide less expensive financing than the U. T. System Revenue Financing System for the necessary Thermal Energy Plant renovations. For the U. T. San Antonio project, it has been determined that the U. T. System can offer lower financing costs.

After further review of the potential cost savings for this project and a determination by U. T. San Antonio to not capitalize interest, the preliminary project costs have been reduced from \$2,600,000 to \$1,144,000. The debt service is to be paid from energy savings as a result of the project.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Interim Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System Representative under the Amended and Restated Master Resolution **Establishing The** University of Texas System Revenue Financing System adopted by the U. T. Board of Regents (Board) on February 14, 1991, and amended on October 8, 1993 (the 'Master Resolution'), do hereby execute this certificate for the benefit of the Board pursuant to Section 5 (a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "Parity Debt" pursuant to the Master Resolution to finance the renovation cost of the Thermal **Energy** Plant at U. T. San Antonio, and do certify that to the best of my knowledge the Board is in compliance with all covenants contained in the Master Resolution, the First Supplemental Resolution Establishing an Interim Financing Program, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution and is not in default of any of the terms, provisions and conditions in said Master Resolution, the First Supplemental Resolution, the Second Supplemental Resolution, the Third Supplemental Resolution, the Fourth Supplemental Resolution, the Fifth Supplemental Resolution, and the Sixth Supplemental Resolution.

EXECUTED this 12 day of February, 1998

Pamela K. Clayton
Interim Assistant Vice ~~Ch~~ancellor for Finance

9. U. T. Southwestern Medical Center - Dallas - North Campus Phase III Building (Project No. 303-859): Approval to Name Building as The Seay Biomedical Building (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Naming of Buildings and Other Facilities).--Pursuant to the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, relating to naming of buildings and other facilities, the Board approved naming the North Campus Phase III Building at The University of Texas Southwestern Medical Center at Dallas as The Seay Biomedical Building to recognize the contribution of Sarah M. and Charles E. Seay towards the construction of the facility.

The North Campus Phase III Building, scheduled for completion in 1999, is a ten-story, 342,727 gross square foot structure which will include seven floors of laboratories, offices and clinical spaces, and three floors of parking. The second and third floors will house oncology-related outpatient services and research laboratories. The fifth and sixth floors will house psychiatric clinics and laboratories, including The Sarah M. and Charles E. Seay Center for Basic and Applied Research and Psychiatric Illness. Research facilities and offices will fill the remainder of the building.

Mr. and Mrs. Seay have donated more than \$21,000,000 to U. T. Southwestern Medical Center - Dallas and the Southwestern Medical Foundation. These funds have gone toward the North Campus Phase III Building, as well as to the establishment of The Sarah M. and Charles E. Seay Center for Basic and Applied Research and Psychiatric Illness, a new pediatric emergency orthopedic center, two distinguished chairs and four chairs in pediatrics, child psychiatry, and cancer research.

10. U. T. Medical Branch - Galveston - Clinical Cardiology Renovation in John Sealy Hospital (Project No. 601-930): Authorization to Amend the FY 1998-2003 Capital Improvement Program to Change Source of Funds.--The Board, upon recommendation of the Facilities Planning and Construction Committee, amended the FY 1998-2003 Capital Improvement Program to change the source of funds for the Clinical Cardiology Renovation in John Sealy Hospital at The University of Texas Medical Branch at Galveston from \$4,087,000 in Hospital Revenues to \$4,087,000 in Gifts and Grants from The Sealy & Smith Foundation.

This project will facilitate the installation of three new cardiac catheterization units, two new electrophysiology units, expand the Heart/Echo facility, improve patient access and privacy, and include an area for new diagnostic equipment and procedures. This renovation project is composed of two stages, one under construction and the other in the programming phase.

Approval of this item amends the FY 1998-2003 Capital Improvement Program and the FY 1998 and FY 1999 Capital Budget to modify the source of funds from Hospital Revenues to Gifts and Grants.

11. U. T. Health Science Center - Houston - Institute of Molecular Medicine for the Prevention of Human Diseases Project: Appropriation of Funds for the Purchase of Equipment.--The Facilities Planning and Construction Committee recommended and the Board appropriated \$1,300,000 in Permanent University Fund (PUF) Bond Proceeds for the purchase of equipment for the Institute of Molecular Medicine (IMM) for the Prevention of Human Diseases project at The University of Texas Health Science Center at Houston. This appropriation of PUF Bond Proceeds is in accordance with a Memorandum of Understanding (MOU) approved by the U. T. Board of Regents in March 1994 whereby \$15,000,000 of PUF Bond Proceeds was to be matched by institutional funds to support the development of the Institute.

To date, \$3,600,000 of PUF funds have been expended on the IMM project for construction and equipment, and the U. T. Health Science Center - Houston has fulfilled its obligation to match these funds. The FY 1998-2003 Capital Improvement Program includes an additional \$8,500,000 of PUF funds for a future phase of construction. This leaves a total of \$2,900,000 remaining in PUF resources for support of the IMM. Under the conditions of the MOU, the institution will fund the debt service if actual PUF income does not meet certain targets.

This appropriation of funds will provide for the purchase of equipment to establish a protein chemistry laboratory, greatly enhancing the IMM's capabilities in analytical chemistry as well as positioning the Institute to take maximum advantage of matching gift funds in the amount of \$2,400,000, including a \$1,000,000 Welch Foundation endowment dedicated to this purpose.

* * * * *

At the conclusion of the Facilities Planning and Construction Committee meeting, Committee Chairman Clements reported that since the last regular meeting the Chancellor had approved three (3) general construction contracts totaling \$47,955,000 which included a 9% participation by Historically Underutilized Businesses, 3.6% by women-owned firms and 5.4% by minority-owned firms. In addition, five (5) architect/engineer contracts totaling \$2,731,000 have been awarded since the last meeting and these indicate a 20.3% participation by Historically Underutilized Businesses, 1.5% by women-owned firms and 18.8% by minority-owned firms.

RECONVENE.--At 11:55 a.m., the Board reconvened as a committee of the whole to consider those items remaining on the agenda.

ITEM FOR THE RECORD

U. T. Austin: Report on Naming the Texas Center for Writers as The James A. Michener Center for Writers.--President ad interim Flawn announced at a campus memorial service for Mr. James A. Michener that he would ask The University of Texas System to redesignate the academic program known as the Texas Center for Writers at The University of Texas at Austin as The James A. Michener Center for Writers. On December 18, 1997, the Chancellor, with the concurrence of the Acting Vice Chancellor for Academic Affairs, approved President ad interim Flawn's recommendation.

The Texas Center for Writers was created in the late 1980s with a gift of \$15,000,000 from Mr. Michener and his wife Mari. The gift was supplemented by a \$3,000,000 match by the U. T. Board of Regents. Mr. Michener took a keen interest in the Texas Center for Writers which is currently located in the J. Frank Dobie House. He kept an office there, seeing visitors and interviewing applicants. He cherished his time with the students, advising them, reviewing their papers, and discussing career possibilities.

Naming the Texas Center for Writers after Mr. Michener is a most fitting and appropriate tribute to a remarkable talent, a loyal and committed friend, and an exceedingly generous benefactor, with donations in excess of \$44 million to U. T. Austin.

Although U. T. Board of Regents' approval is not required for this program naming, this report for the record is provided for information.

REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS

Regents Lebermann and Smiley, as members of the Board for Lease of University Lands, submitted the following report on behalf of that Board:

Report

The Board for Lease of University Lands met on Wednesday, November 19, 1997, in the Regents' Meeting Room on the ninth floor of Ashbel Smith Hall in Austin, Texas, for a general business meeting and to award leases for the Regular Oil and Gas Lease Sale No. 92.

Following is a report on the results of the Regular Oil and Gas Lease Sale No. 92:

A total of 65,296.630 acres (195 tracts) of Permanent University Fund lands was offered for lease. Bonuses of \$7,751,118 were paid for 93 tracts covering a total of 30,690.163 acres. Total bonuses paid at this lease sale were the greatest paid at a single lease sale since February 3, 1982, when total bonuses paid were \$17,842,000. The average bonus paid per acre was \$252.56, with the high bonus per acre being \$1,011.89. The single highest bonuses were \$324,160.00 each for two 320-acre tracts in Ward and Loving Counties, Texas.

Following is a report on the general business meeting:

- a. Approved the Minutes of the Board for Lease meeting of May 13, 1997
- b. Elected Regent Lowell H. Lebermann, Jr., as Vice Chairman, Board for Lease of University Lands
- c. Appointed Pamela S. Bacon as Secretary of the Board for Lease of University Lands
- d. Approved tracts offered and approved lease awards to highest bidders in Regular Oil and Gas Lease Sale No. 92

- e. Approved procedures and terms for Regular Oil and Gas Lease Sale No. 93 to be held on May 19, 1998, in Midland, Texas
- f. Approved procedures and terms for Frontier Oil and Gas Lease Sale No. 93-A to be held on May 19, 1998, in Midland, Texas
- g. Approved a provision to be added to oil and gas leases which would allow special surface protection for specified tracts
- h. Received a report on the take in-kind crude oil sale held October 1, 1997; approved contracts dated December 1, 1997; and approved continuation of the take in-kind crude oil royalty program as currently managed. The take in-kind oil royalty program has resulted in net revenue enhancement of \$6,805,936.
- i. Received a report on the take in-kind gas royalty sale held September 22, 1997; approved contracts dated October 1, 1997; and approved continuation of the take in-kind gas royalty program as currently managed. The take in-kind gas royalty program has resulted in net revenue enhancement of \$97,703 since September 1995.
- j. Accepted a staff recommendation to meet in January 1998 to address the following matters: revision of oil and gas lease form, fee schedule, forms, administrative provisions, revisions to operational requirements, and policies (Note: Rescheduled to March 17, 1998)
- k. Considered a proposed policy regarding pooled units
- l. Received information regarding proposed reporting form changes
- m. Authorized taking legal action necessary to confirm the status of University Lands Oil and Gas Lease No. 72475 in Andrews County, Texas, and to collect all amounts owed to the

Board of Regents of The University of Texas System under the lease and to collect amounts owed under a certain Royalty Crude Oil Sales Agreement.

The next meeting of the Board for Lease of University Lands is scheduled for March 17, 1998, in the Regents' Meeting Room on the ninth floor of Ashbel Smith Hall in Austin, Texas.

OTHER MATTERS

1. U. T. System: Status Report on Action Plan for Corporate Compliance.--Chancellor Cunningham reported that Chairman Evans had requested the creation of an ad hoc committee to review all compliance issues within The University of Texas System. In keeping with that request, Chancellor Cunningham noted that he had asked Executive Vice Chancellor for Business Affairs Burck to chair a committee on compliance issues in the U. T. System institutions and called on Mr. Burck for a brief status report.

Mr. Burck reported that a committee, composed of System Administration officials and representatives from the academic and health-related component institutions, had been established to develop an action plan related to corporate compliance issues such as federal grants and contracts, environmental health and safety, Internal Revenue Service, human resources, and National Collegiate Athletic Association. The charge to the committee is to create an action plan to ensure compliance with all federal and state laws, the Regents' Rules and Regulations, and related agencies where compliance with regulations and rulings is an issue.

Executive Vice Chancellor Burck noted that the members of the committee have been attending corporate compliance seminars around the country, and he would report the committee's findings to the Business Affairs and Audit Committee and the full Board in the near future.

2. U. T. System: Adoption of Resolution Related to Reading Initiatives and Programs.--Chancellor Cunningham reported that the Board had expressed an interest in reviewing the inventory of reading initiatives and activities which are underway in all of The University of Texas System component institutions.

Dr. Cunningham noted that the institutions within the U. T. System are deeply committed to assisting the state's public schools in teaching reading and are working with considerable success on a broad spectrum of programs toward this end. He pointed out that one of the greatest needs at this time is to develop greater collaboration among these programs so that everyone can benefit from the most promising new ideas and techniques.

In keeping with the Board's request for a special presentation on reading initiatives, Chancellor Cunningham introduced the following speakers:

Dr. Barbara Foorman and Dr. Jack Fletcher
Co-Directors of the Center for Academic
and Reading Skills (CARS)
The University of Texas Health Science
Center at Houston

Dr. Manuel Justiz
Dean, College of Education
The University of Texas at Austin

Dr. Sharon Vaughn
Director, Texas Center for Reading and
Language Arts
College of Education
The University of Texas at Austin

Dr. George Farkas
Director, Center for Education and
Social Policy (Reading One-One)
The University of Texas at Dallas

Dr. Foorman noted that CARS, which is a multidisciplinary research center that focuses on the neuroscience of how children learn to read, has developed reading diagnostic instruments required by the Legislature for kindergarten through the second grade. The Center's researchers have gained national recognition for their work on cognitive and biological factors that influence the development of

reading and academic skills. Their research includes the development of skills in normal children, children who are underachievers, and children who are disabled. CARS provides an organizational structure through which science-based reading programs and teaching methods can be disseminated throughout the State.

In addition to such research, the Center's objectives are to evaluate the effectiveness of curriculum and assessment tools for remediating poor reading at all ages and levels of ability, disseminate information on curriculums and assessment tools for teaching reading and other academic skills from kindergarten through grade 12, provide training for teachers, and work with public schools in monitoring classroom interactions and assessing the effectiveness of curriculums and teaching materials and methods.

Drs. Justiz and Vaughn discussed in detail the Texas Center for Reading and Language Arts in the College of Education at U. T. Austin, which is a statewide project funded through a competitive grant from the Texas Education Agency as part of Governor Bush's reading initiative. The Center's focus is to assist K-12 educators in enhancing the reading and language skills of their students. The major objectives are to (1) enhance knowledge and skills of teachers as they implement the Texas Essential Knowledge and Skills (TEKS), (2) provide a team of specialists who can contribute intensive professional development to schools, and (3) develop materials and products that enhance implementation of TEKS.

Dr. Farkas pointed out that the Reading One-One tutoring program at U. T. Dallas is the model for the President's America Reads program. Schools from 21 cities from Brownsville to Alaska have patterned their own tutoring programs after the Reading One-One program, which is also being adapted by school officials in Mexico to assist young readers there. The U. T. Dallas program uses course-credit and paid tutors to provide highly structured tutoring in reading for elementary school students who are most at risk. Paid tutors are selected from among U. T. Dallas students, students from other area colleges and universities, and community residents.

Following these presentations, Chairman Evans expressed appreciation to each speaker for his/her involvement in this very critical area and also to Governor Bush for his sharp focus on reading initiatives. Chairman Evans noted that the Board is excited about the range of innovative activities in the U. T. System for improving the reading skills of the schoolchildren in Texas and strongly supports the coordination and integration of these efforts so that the best ideas and findings can be shared all across the State.

Referencing Governor Bush's statewide reading initiative, Chairman Evans emphasized that there is a critical need for Texas to do a better job of opening the wonders and pleasures of education to all children and enhanced programs for teaching reading are fundamental to these efforts. He stated that this is an excellent example of the way the substantial resources of Texas universities can be employed for the benefit of all society, and the Board commends all the U. T. faculty, staff, and students who are participating in these projects.

Mr. Evans noted that at the May 1998 U. T. Board of Regents' meeting he would like a report from the presidents of the other component institutions which shows what kind of impact these programs are having on their colleges of education and their future teachers once they get out in the State of Texas.

Chairman Evans then called on Vice-Chairman Clements who read the Resolution set out on Pages 260 - 261 which urges increased funding of university-based reading programs and emphasizes the need to transfer university research and pilot programs into practical classroom activities in elementary and secondary schools.

Upon motion of Vice-Chairman Clements, seconded by Regent Hicks, the Board unanimously adopted the Resolution.

Resolution

WHEREAS, The Board of Regents of The University of Texas System recognizes the clear responsibility of higher education institutions to provide excellent education and training for the future teachers of Texas public schools;

WHEREAS, Excellence in teacher preparation programs necessarily involves the conduct of advanced research into appropriate teaching methods, childhood development, cognition, learning disabilities, and related topics;

WHEREAS, Universities have a responsibility for public service by applying knowledge developed on university campuses to problems in the larger society, including, for example, the dissemination of new knowledge about effective ways of teaching and learning to the state's elementary and secondary classroom teachers;

WHEREAS, Governor George W. Bush has sponsored a comprehensive, statewide reading initiative with the goal of making sure that each and every child in Texas learns to read, has challenged all Texans to join him in realizing this goal, and has encouraged a multifaceted and innovative campaign to attack the problem of inadequate reading skills;

WHEREAS, Texas faces a serious challenge -- indeed, a crisis, as Governor Bush has described it -- in developing the reading skills of its population, as indicated by reports that almost one-fifth of Texas third- and fourth-graders did not pass the state's basic reading test in 1997;

WHEREAS, The general academic and health institutions of The University of Texas System are at the forefront of state and national efforts to enhance the teaching of reading, as documented by the research, outreach, and other programs cited in the "1997-1998 U. T. System Report on Reading Initiatives"; now, therefore, be it

RESOLVED, That the Board of Regents fully supports Governor George W. Bush's reading initiative and commits The University of Texas System to a central and continuing role in helping to achieve the goal that all Texas children learn to read; and, be it further

RESOLVED, That the Board of Regents does hereby commend all faculty, staff, and students who are contributing to the improvement of reading skills among the state's public school pupils, whether through cutting-edge research into the way children learn, innovative tutorial programs, strengthening of teacher-education programs, or other activities; and, be it further

RESOLVED, That the Board of Regents enthusiastically endorses the determination by Chancellor William H. Cunningham that research, instructional, and outreach initiatives related to the teaching of reading constitute one of the core priorities of The University of Texas System; and, be it further

RESOLVED, That the Board of Regents strongly supports the Chancellor's initiative to seek increased coordination and integration among the reading-related programs of the U. T. System's academic and health institutions, including programs in educational and scientific research, teacher preparation, instructional and tutorial activities, and other reading initiatives; and, be it further

RESOLVED, That the Board of Regents directs the Chancellor to report to the Board on the extent and nature of reading-related initiatives at System institutions, with particular attention to increased outreach to the public schools, as well as to report on how these diverse reading-related activities can be better coordinated; and, be it further

RESOLVED, That the Board of Regents supports a concerted and continuing effort to attract significant additional public and private financial resources for the support of reading initiatives that involve interaction between U. T. System institutions and the public schools of Texas, and, toward this end, the Board is committed to working constructively with the elected leaders of Texas to identify and access new resources for support of these initiatives.

SCHEDULED MEETING.--Chairman Evans announced that the next scheduled meeting of the U. T. Board of Regents would be held on May 13-14, 1998, at The University of Texas of the Permian Basin.

ADJOURNMENT.--There being no further business, the meeting was adjourned at 12:45 p.m.

/s/ Arthur H. Dilly
Executive Secretary

February 20, 1998