

THE TEXAS A&M UNIVERSITY HEALTH SCIENCE CENTER

RURAL AND COMMUNITY HEALTH INSTITUTE

AGREEMENT FOR PROFESSIONAL SERVICES

WITH

Frederic Passmann, MD

This Agreement for Professional Services (the "Agreement"), is entered into by and between Texas A&M University Health Science Center (hereinafter "TAMHSC"), a health-related institution under the administration of Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas, on behalf of the College of Medicine and its A&M Rural and Community Health Institute (hereinafter "COM-ARCHI"), having a principal place of business at 2700 Earl Rudder Frwy. S., Suite 3000, College Station, TX 77845 and Frederic Passmann, MD an individual, with principal office at 819 N Broadway, Aspermont, TX 79502 (hereinafter the "Individual"). TAMHSC, COM-ARCHI and Individual are sometimes referred to as a "party" and collectively sometimes referred to as the "parties".

WHEREAS, COM-ARCHI has developed a physician assessment program known as KSTAR which stands for "Knowledge," "Skills," "Training," "Assessment," and "Research" ("KSTAR");

WHEREAS, COM-ARCHI finds that the Individual is willing to perform certain work hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, COM-ARCHI finds that the Individual is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of COM-ARCHI's needs.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the Parties hereto agree as follows:

1. Services.

1.1 Services to COM-ARCHI. The Individual shall provide the following ("Services") to COM-ARCHI:

(a) Review five records prior to meeting with the KSTAR participant
(b) Participate in a record review of the five records with the KSTAR facilitator and the KSTAR participant
(c) Provide feedback in writing or by participating in the KSTAR Committee call, to the KSTAR committee about the KSTAR participant's medical knowledge and ability to practice medicine based on the record review.

2. Payment and Invoicing Terms.

2.1 Payment for Services. The Individual will be paid **One Thousand One Hundred Dollars and zero cents (\$1,100.00)** per KSTAR assessment. Payment shall be made in accordance to the State of Texas procurement guidelines.

2.2 Invoicing. Invoice will be submitted by the Individual for payment to COM-ARCHI. Invoice shall be itemized and reflect the services(s) provided and the amount requested as payment for such services rendered. Payment of undisputed invoice amounts will be due and payable within thirty (30) days from receipt of invoice. Upon resolution of any disputed charges, Individual shall invoice such remaining charges to COM-ARCHI. Payment of the revised charges shall be payable within thirty (30) days of receipt of revised invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

3. Term.

This Agreement, upon acceptance by both Parties, shall be effective from September 1, 2018 through midnight on August 31, 2022.

4. Termination.

This Agreement may be terminated by any the following occurrences:

- A. By mutual agreement and consent in writing by both Parties.
- B. By either Party upon thirty (30) days written notice to the other Party.
- C. By either Party upon the failure of the other Party to fulfill its obligations as set forth in this Agreement.

5. Changes.

COM-ARCHI may, with the approval of the Individual, issue written directions within the general scope of any Services to be ordered. Such changes may be for additional work or the Individual may be directed to change the direction of the work covered by this Agreement, but no change will be allowed unless agreed to by the Individual in writing.

6. Standard of Care.

The Individual warrants that Services shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed or software developed. THIS SECTION SETS FORTH THE ONLY WARRANTIES PROVIDED BY INDIVIDUAL CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR OTHERWISE.

7. Execution and Modification .

This Agreement, with the rights and privileges it creates, is assignable only with the written consent of both Parties.

8. Assignment.

Neither of the Parties shall assign, sublet, nor transfer its interests in this Agreement without the prior written consent of the other Party.

9. Governing Law and Venue.

The Parties agree that this Agreement shall be governed by the laws of the State of Texas, without reference to the conflicts of laws principles thereof. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMHSC shall be in the County in which the primary office of the chief executive officer of TAMHSC is located. At the execution of this Agreement such County is Brazos County, Texas.

10. Dispute Resolution.

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMHSC and Individual to attempt to resolve any claim for breach of contract made by Individual that cannot be resolved in the ordinary course of business. Individual shall submit written notice of a claim of breach of contract under this Chapter to the Vice President for Finance and Administration of TAMHSC, who shall examine Individual's claim and any counterclaim and negotiate with Individual in an effort to resolve the claim.

11. Force Majeure.

Neither Party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism or other similar occurrence, the cause of which is not reasonably within the control of such Party and which by due diligence it is unable to prevent or overcome.

12. Notices.

Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email (to the extent a facsimile number or an email address is set forth below) or other commercially reasonable means and will be effective when actually received (provided that in the event of a facsimile or email, concurrently therewith a copy is mailed by certified mail, return receipt requested). Each Party can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

For COM-ARCHI:
Nancy W. Dickey, MD
Executive Director
Rural and Community Health Institute
2700 Earl Rudder Fwy. S. Suite 3000
College Station, TX 77845
Bryan, Texas 77807
Phone: 979-436-0390
Fax: 979-436-0079
Email: tadams@tamhsc.edu

For Individual:
Frederic Passmann, MD

819 N Broadway
Aspermont, TX 79502

Phone: 940-989-3551
Fax:
Email: rick.passmann@stonewallhospital.org

With copy to TAMHSC:

Texas A&M Health Science Center
Attn: Vice President & Chief Financial Officer
8441 Riverside Parkway, Suite 3100
Bryan, TX 77807
Phone: 979-436-9200
Fax: 979-436-0076

13. Independent Contractor.

The Parties hereby acknowledge that they are independent contractors, and neither of the Parties nor any of their respective agents, representatives, or employees shall be construed to be the agent, representative, or employee of the other Party. In no event shall this Agreement be construed as establishing a partnership, joint venture, joint enterprise or similar relationship between the Parties. Individual shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits of its employees.

14. Confidential Records and Information.

In the carrying out of the terms of this Agreement, each Party may, from time to time, have access to confidential information and documents pertaining to KSTAR participation. The Parties shall not, without written consent, release or disclose to the public or any third party information or records regarding any participant information that is confidential in nature, except to the extent necessary to carry out the terms of this Agreement or in a medical emergency. The Parties shall take all reasonably necessary steps to ensure that confidential information and records are viewed only for the permissible uses stated herein. Said information is considered confidential, and shall not be used by any Party, or any of its employee, agents or representatives, or anyone acting in concert with those individuals, for private purposes. All Parties acknowledge that the unauthorized release of confidential information or records may subject any and/or all Parties to criminal and civil penalties. Accordingly, each Party will educate its employees, agents and representatives regarding the permissible uses of information and records pertaining to participant information.

15. Public Information.

Individual acknowledges that TAMHSC is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.

16. Compliance with Federal Law.

16.1. The Individual will comply with all applicable federal, state, and local laws, ordinances, rules, and regulations; comply with all applicable requirements of any accreditation authority; and certify such compliance upon request by TAMHSC.

16.2. In compliance with federal law, including provisions of Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, TAMHSC and Individual will not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability or military service in their administration of policies, programs, or activities, admission policies, other programs and employment.

17. Indemnification.

TAMHSC, to the extent authorized by the Constitution and laws of the State of Texas, and Individual each agree to indemnify and hold the other harmless from and against any and all losses, claims, demands, damages, liabilities and costs directly or indirectly arising from or related to such indemnifying Party's negligence or willful misconduct or that of its officers, employees, affiliates, contractors and agents, except in all cases to the extent arising from the negligence or intentional misconduct of the indemnified Party or their respective officers, employees, affiliates, contractors or agents. Under no circumstances shall either Party be liable to the other Party for any special, indirect or consequential damages, including without limitation lost profits or cost of capital.

18. Severability.

If any of the provisions of this Agreement in the application thereof to any person or circumstance is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the extent permitted by applicable law.

19. Non-Waiver.

Individual expressly acknowledges that TAMHSC is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMHSC of its right to claim such exemptions, privileges and immunities as may be provided by law.

20. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or understanding, written or oral, between the Parties with regard to the subject matter covered by this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed to be effective as of the date and year set forth above by their authorized representatives.

THE TEXAS A&M UNIVERSITY
HEALTH SCIENCE CENTER

FREDERIC PASSMANN, MD

[REDACTED]
Steve Brown, M.D.
Associate Vice President of Clinical Strategy & Chief
Clinical Officer

[REDACTED]
Frederic Passmann, MD

Date: [REDACTED]