

**AGREEMENT BETWEEN THE NATIONAL BOARD OF MEDICAL EXAMINERS AND THE TEXAS A&M UNIVERSITY HEALTH SCIENCE CENTER ON BEHALF OF – A&M RURAL AND COMMUNITY HEALTH INSTITUTE**

This Agreement ("Agreement"), effective upon the date it is signed by both parties (the "Effective Date"), is made by and between the National Board of Medical Examiners ("NBME"), 3750 Market Street, Philadelphia, PA 19104 and The Texas A&M University Health Science Center ("TAMHSC"), a health related institution under the administration of Texas A&M University, a member of the Texas A&M University System ("TAMUS"), an Agency of the State of Texas, on behalf of its – A&M Rural and Community Health Institute ("ARCHI"), with an address at Crystal Park Plaza, 2700 Earl Rudder Freeway South, Suite 3000, College Station, TX 77845, (together "the Parties").

**Whereas**, The Texas A&M University Health Science Center (TAMHSC) wholly owns and operates a physician assessment program known as the KSTAR Program; and

**Whereas**, ARCHI is currently seeking to supplement its existing physician assessment tools to further its mission of providing timely and thorough physician evaluations; and

**Whereas**, ARCHI is seeking objective assessment materials from NBME, namely, the Clinical Science Subject Examinations, and practice-based examinations (together "NBME Materials"); and

**Whereas**, NBME wishes to make the NBME Materials available to ARCHI for a fee.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending legally to be bound agree as follows:

**1. Scope of Work and Responsibilities**

ARCHI and NBME acknowledge and understand that the NBME Materials made available by NBME pursuant to this Agreement are designed to assist ARCHI in objectively evaluating a referred physician's capacity in the domains of medical knowledge, clinical judgment, and patient management. ARCHI and NBME acknowledge and understand that the NBME Materials (1) do not involve direct observation of a referred physician in practice, (2) are not intended to be used to predict actual practice performance, and (3) should not be used as the sole basis for determining a physician's readiness for practice.

**2. Selection and Utilization of NBME Materials**

Representatives of ARCHI are solely responsible for determining which, if any, of the NBME Materials described in the Menu of Assessments (Exhibit C) are

appropriate for use in each individual participant assessment based on the participant's needs, training, practice type, and initial reason for referral. The Menu of Assessments is subject to change, with 3 months' advance notice, based on the development of new forms and assessments and retirement of older forms. ARCHI agrees not to administer the same forms of NBME Materials administered in the initial assessment in any subsequent or follow-up assessments. Please see the Menu of Assessments (Exhibit C) to determine which materials have alternate forms available for subsequent or follow-up assessments, or contact the NBME for further information.

**3. Proctor(s) and Assessment Facilities**

ARCHI is responsible for providing a secure, suitable testing environment for all participants to whom NBME materials are administered and for appointing one or more suitable ARCHI staff members to serve as proctors. ARCHI agrees to administer NBME Materials in accordance with the requirements set forth in the manuals supplied by NBME.

**4. Test Accommodations**

ARCHI will be responsible for all decisions and costs associated with the provision of reasonable test accommodations, if applicable. Recognizing ARCHI's responsibility for making test accommodation determinations, the NBME will work with ARCHI on a case-by-case basis to identify reasonable accommodations, provide associated fee estimates, and make arrangements to fulfill reasonable requests from ARCHI. Notification to NBME must be in writing and sufficiently in advance of the test administration date to arrange for the accommodation.

**5. Non-Disclosure**

Only ARCHI employees who have signed an Ownership, Confidentiality, Non-Disclosure agreement provided by NBME attached hereto as Exhibit A are permitted to access NBME Materials.

**6. Fees**

ARCHI agrees to pay to NBME the fees listed in the Menu of Assessments (Exhibit C). NBME will invoice ARCHI at the end of the month for all services provided during that month. Payment is due within 30 days after ARCHI receives the 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.

The fees provided in the Menu of Assessments (Exhibit C) are subject to change with 3-months advance notice. Fee increases will not exceed 15% over the term of the Agreement.

7. **Data**

ARCHI agrees to provide NBME with demographic information as described more fully in Exhibit B. ARCHI will not provide to NBME any data that would be considered an identifier under the Health Insurance Portability and Accountability Act of 1996. Failure to provide the aforementioned data as specified shall constitute a basis for either party to terminate this Agreement upon 14 days written notice.

Agreements between the parties regarding additional data collection or research, beyond what is listed in the paragraph above, will be addressed in a separate document.

8. **Publication**

NBME and ARCHI shall have full rights to utilize the data collected by ARCHI as described in paragraph 7 and more fully in Exhibit B of this Agreement and the data generated during administration of NBME Materials for research and educational purposes only. Authorship designations will be assigned in accordance with the guidelines established by *Uniform Requirements for Manuscripts Submitted to Biomedical Journals: Writing and Editing for Biomedical Publication*.

NBME and ARCHI may publish the data generated from the administration of NBME Materials, jointly or individually, provided that individual subjects are not identified or identifiable in such publications and that confidential information regarding NBME Materials is not disclosed. In addition, the non-publishing party will receive a copy of the material to be submitted for publication and/or presentation a minimum of one month prior to the intended submission date. The publishing party agrees to review and incorporate any corrections of data or other factual information proffered by the non-publishing party.

9. **Marketing and Advertisement**

ARCHI agrees to provide NBME with a written copy of any and all advertising and/or marketing material in which NBME Materials are referenced prior to releasing the material to the public. ARCHI agrees to provide NBME a minimum of two weeks to review and comment on the material. ARCHI agrees not to release any such marketing and/or advertising material in any form prior to receiving the express written consent of NBME. Such consent may be granted or withheld in the sole and absolute discretion of NBME; however, such consent shall not be unreasonably withheld.

NBME agrees to provide ARCHI with a written copy of any and all advertising and/or marketing material, in which ARCHI is referenced, including but not limited to, material containing ARCHI's name and logo, prior to releasing the material to the public. NBME agrees to provide ARCHI a minimum of two (2) weeks to review and comment on the material. NBME agrees not to release any such marketing and/or advertising material in any form prior to receiving the express written consent of ARCHI. Such consent may be granted or withheld in

the sole and absolute discretion of ARCHI; however, such consent shall not be unreasonably withheld.

**10. Ownership, Copyright and Security**

The Parties understand and agree that all NBME Materials, including, but not limited to, examinations, answer sheets, and other scoring data and reports, booklets, computer reports, and program manuals are the proprietary confidential, and copyrighted property of NBME. The Parties further agree that all derivatives of NBME supplied materials resulting from edits, modifications, alterations, additions, or rewrites made to any NBME materials, including those resulting from input from ARCHI, will be the proprietary, confidential and copyrighted property of NBME.

ARCHI agrees to use its best efforts to prevent and protect NBME Materials from any unauthorized disclosure by its agents, employees and/or other representatives.

ARCHI agrees to maintain a standardized test environment and strictly adhere to the administration procedures provided by the NBME and set forth more fully in the Multiple Choice Questions (MCQ) Procedures. In the event ARCHI becomes aware of any suspected breach in security and unauthorized disclosure of NBME Materials, ARCHI agrees to notify the NBME representative listed in paragraph 22 immediately. ARCHI agrees to assist the NBME in investigating such events including but not limited to, providing a detailed written report of the suspected breach and suggestions for preventing future recurrences. ARCHI agrees to ensure that Ownership, Confidentiality and Non-Disclosure agreements attached as Exhibit A are signed by all authorized persons with access to NBME Materials.

**11. Privacy of Information**

NBME agrees to use reasonable efforts to maintain the confidentiality of the participant's information transmitted to NBME by ARCHI staff members during the course of the assessment process.

ARCHI will be responsible for answering any examination related questions from its candidates. Calls received by NBME will be referred to ARCHI for response.

**12. Term, Termination and Amendment**

The term of this Agreement shall commence as of the date on which it is signed by both Parties and shall continue thereafter on a month to month basis but in no case shall it extend beyond December 14, 2021.

Either party may terminate this Agreement by giving the other written notice to that effect at least thirty (30) days prior to the date of termination. This Agreement may be terminated by either party upon failure of the other party to cure any material defect hereunder within 14 days after receipt of written notice designating the specific material default. Notwithstanding the foregoing

statement, no cure period shall apply in the event of a breach in confidentiality or security.

This Agreement may be amended, modified or supplemented only by a written instrument duly executed by each of the Parties. Such amendments, modifications or supplements shall be attached to and become a part of this Agreement.

**13. Representations and Warranties**

13.1 ARCHI warrants to NBME that ARCHI is a program wholly owned and operated by Texas A&M University Health Science Center and that the Texas A&M University Health Science Center is a validly existing, legally recognized entity located in ARCHI and has all requisite power and authority to enter into this Agreement and carry out the provisions of this Agreement.

13.2 NBME represents and warrants that NBME is a validly existing, legally recognized entity located in Philadelphia, Pennsylvania and has all requisite power and authority to enter into this Agreement and carry out the provisions of this Agreement.

13.3 NBME represents and warrants that NBME has rights to use and provide to ARCHI the NBME Materials in this Agreement and such use does not violate any trademark, trade secret, copyright or any other right of ownership of any third party.

**14. Indemnification**

ARCHI agrees to the extent permitted by the Constitution and laws of the State of Texas, to indemnify and hold NBME, its officers, directors, agents and employees harmless from the costs and expenses (including reasonable attorneys' fees) of any third party claim arising from or in connection with ARCHI's use of NBME Materials and/or any decisions or recommendations ARCHI makes regarding its participants, except to the extent such costs and expenses, attorneys' fees or claims are caused by or result from the negligent acts or omissions or breach of the terms of this Agreement by NBME, its officers, agents, or employees in performing services pursuant to this Agreement.

NBME agrees to indemnify and hold ARCHI, its officers, directors, agents, and employees, harmless from the costs and expenses (including reasonable attorneys' fees), of any third party claim arising out of the performance of this Agreement but only in proportion to and to the extent such costs and expenses, attorneys' fees, or claims are caused by or result from the negligent acts or omissions or breach of contract by NBME, its officers, agents, employees while performing services pursuant to this Agreement.

15. **Entire Agreement**  
This Agreement and the attached Exhibits constitutes the entire agreement and understanding of the Parties with respect to its subject matter, and shall supersede all oral negotiations and prior writings with respect thereto.
16. **Authority**  
Each individual executing this Agreement on behalf of a corporation or other entity warrants that he or she is authorized to do so and that this Agreement constitutes a legally binding obligation of the corporation or other entity that the individual represents.
17. **Survival**  
The following provisions shall survive termination or expiration of this Agreement: Paragraph 10 ("Ownership, Copyright and Security"); Paragraph 11 ("Privacy of Information"); Paragraph 14 ("Indemnification"); Paragraph 15 ("Entire Agreement"); any other provision which by its nature extends beyond termination or expiration of this Agreement.
18. **Assignment**  
ARCHI may not assign, subcontract or otherwise transfer any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without NBME's prior written consent, which consent may be granted or withheld by NBME in its sole and absolute discretion.
19. **No Third Party Beneficiary**  
Notwithstanding that some benefit may inure to individuals or entities other than Parties under this Agreement; it is not the intention of ARCHI or NBME that any individual or entity shall be a third party beneficiary of the obligations assumed by either party to this Agreement.
20. **Independent Contractor**  
The Parties to this Agreement expressly acknowledge that said Parties are independent contractors and no party hereto shall receive any other benefits besides those expressly provided for herein.
21. **Force Majeure**  
Neither party will be liable for failure to perform any of its obligations hereunder during any period in which such performance is delayed by fire, flood, war, riot, embargo, organized labor stoppage, earthquake, acts of civil and military authorities, terrorist acts or any other acts beyond its reasonable control, provided that the non-performing party notifies the other party of the delay and uses all reasonable efforts to overcome the delay as soon as practicable. A party shall have the right to terminate this Agreement upon ten days prior written notice if the other party's delay due to any of the above-mentioned causes of action continues for a period of thirty (30) days or more.

22. **Notices**

Notice required or permitted by this Agreement, shall be given to the following representatives of each party, at the address set forth below, by hand delivery; by registered or certified mail, return receipt requested; or by overnight mail or courier service, signed acknowledgement of receipt required. Notice shall be deemed as given on the day of receipt of the notice or communication, as indicated on the signed and dated receipt or acknowledgment, or on the date of hand delivery. Notices shall be addressed as follows:

**If to NBME:**

Janine Hawley  
Director of Program Management,  
Licensure Programs  
National Board of Medical Examiners  
3750 Market Street  
Philadelphia, PA 19104  
Phone: (215) 590-9747

**If to ARCHI:**

Robert Steele, MD  
Medical Director, KSTAR Program  
TAMHSC, Crystal Park Plaza  
2700 Earl Rudcer Freeway South  
Suite 3000  
College Station, TX 77845  
Phone: (979) 436 - 0390

If after this Agreement is executed, a party designates a new representative to accept notice, the party shall furnish the new representative's name and address in writing, to the other party, and a copy of the notice shall be attached to this Agreement.

23. **Miscellaneous**

a. **Dispute Resolution:**

The dispute resolution process provided for 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 Contractor to attempt to resolve any claim for breach of agreement made by Contractor that cannot be resolved in the ordinary course of business. Contractor shall submit written notice of a claim of breach of contract under this Chapter to TAMHSC Vice President for Finance and Administration, who shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claim.

b. **Conflict of Interest.** By executing and/or accepting this Agreement, NBME and each person signing on behalf of NBME certifies, and in the case of a sole proprietorship, partnership or corporation, each party hereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by ARCHI, TAMHSC or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

c. Public Information:

NBME acknowledges that ARCHI 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, as well as any other disclosure of information required by applicable Texas law.

Upon ARCHI's written request, NBME shall provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to ARCHI in a non-proprietary format acceptable to ARCHI. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which ARCHI has a right of access. For avoidance of doubt, ARCHI and NBME agree that the NBME Materials described in Section 10 hereof are not "public information" as used in this subsection c.

NBME acknowledges that ARCHI may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

- d. Non-Waiver. NBME expressly acknowledges that ARCHI is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by ARCHI of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- e. Prohibition On Contracts With Companies Boycotting Israel. By executing this Agreement, NBME certifies it does not and will not, during the performance of this contract, boycott Israel. NBME acknowledges this Agreement may be terminated if this certification is inaccurate.
- f. Certification Regarding Business With Certain Countries And Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, NBME certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. NBME acknowledges this Agreement may be terminated if this certification is inaccurate.

If to NBME:  
Janine Hawley  
Director of Program Management,  
Licensure Programs  
National Board of Medical Examiners  
3750 Market Street  
Philadelphia, PA 19104  
Phone: (215) 590-9747

If to ARCHI:  
Robert Steele, MD  
Medical Director, KSTAR Program  
TAMHSC, Crystal Park Plaza  
2700 Earl Rudder Freeway South  
Suite 3000  
College Station, TX 77845  
Phone: (979) 436-0390

If after this Agreement is executed, a party designates a new representative to accept notice, the party shall furnish the new representative's name and address in writing, to the other party, and a copy of the notice shall be attached to this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date signed below.

**National Board of Medical Examiners**

**The Texas A&M University Health  
Science Center**

John J. Hinke, Jr. CPA

Jeffery T. Burton, CPA

Print Name

Print Name

Chief Financial Officer

Associate Vice President for  
Finance & Operations and CEO

Title

Title

Date

Date