

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND MCGRUFF

This Services Agreement ("Agreement") is entered into and effective September 1, 2020 (the "Effective Date"), by and between The Texas A&M University System (hereafter referred to as "A&M System"), an agency of the state of Texas, and McGriff (hereafter referred to as "PROVIDER"). A&M System and PROVIDER are sometimes hereafter referred to as "Party" individually or "Parties" collectively).

A&M System and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will work with A&M System to provide insurance brokerage services. The services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin September 1, 2020 and will extend through August 31, 2023. This Agreement can be extended for two additional two (2) year terms upon written agreement of both parties. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the PROVIDER.

3. PAYMENT TERMS

- A. PROVIDER can invoice A&M System monthly for the Scope of Work identified in Section 1. Payment will be made to PROVIDER upon approval of such invoice by A&M System. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- B. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to A&M System a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at;
<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/> .
- C. All invoices must reference the A&M System contract number or purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and description of services provided to include but not limited to time, deliverables, and activities.

4. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, A&M System may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of A&M System.
- B. Either party may terminate this Agreement at any time upon thirty (30) days prior notice to the other party. .

5. PUBLIC INFORMATION

- A. PROVIDER acknowledges that A&M System 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.
- B. Upon A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- C. PROVIDER acknowledges that A&M System 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. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the PROVIDER agrees that the agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

6. INSURANCE

Insurance requirements are stated in Exhibit B, attached hereto.

7. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless A&M System from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of A&M System. A&M System will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of A&M System relative to conduct on its premises.
- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits A&M System from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901,

Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- F. **Not Eligible for Rehire.** PROVIDER is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this Agreement.
- G. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- H. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- I. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- J. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and 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 greatest extent permitted by applicable law.
- K. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- L. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- M. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <https://www.tamus.edu/business/hub-procurement/hub-programs-3/system-offices-hub-program/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.

In the event that you determine you will be using a subcontractor, please contact Keith Williams from the A&M System's HUB Program at (979) 458-3265 or kwilliams@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.

- N. **Force Majeure.** Neither party will be in breach of its obligations under this Agreement or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by,

or such losses or damages are caused by, a Force Majeure event (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure event had not occurred. "Force Majeure event" is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform its obligation(s). Written notice of a party's failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). For the avoidance of doubt, the COVID-19 pandemic and any governmental changes or closures related thereto shall be deemed Force Majeure events, even to the extent reasonably foreseeable by either party as of the effective date of this Agreement.

- O. **Loss of Funding.** Performance by A&M System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, A&M System will issue written notice to PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System.
- P. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- Q. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- R. **Non-Waiver.** PROVIDER expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- S. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, 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.
- T. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, PROVIDER certifies that (a) it does not currently

boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

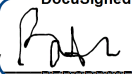
- U. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Purchase Order may be terminated if this certification is or becomes inaccurate.
- V. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- W. **Records Retention.** PROVIDER will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
- X. **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 or other commercially reasonable means and will be effective when actually received. A&M System and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

A&M System: The Texas A&M University System
 301 Tarrow St., Suite 273
 College Station, Texas 77840
 Attention: Jeff Zimmermann
 Phone: (979) 458-6410
 E-mail: jzimmermann@tamus.edu

PROVIDER: McGriff
 10100 Katy Greeway, Suite 400
 Houston, TX 77043
 Attention: Ronnie Anderson
 Phone: (713) 877-8975
 Email: randerson@mcgriff.com

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

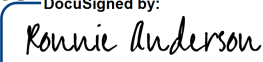
The Texas A&M University System

By  _____
 Billy Hamilton
 Deputy Chancellor & Chief Financial Officer

9/30/2020 | 17:36:24 CDT

Date

McGriff

By  _____
 Ronnie Anderson

9/30/2020 | 15:54:48 EDT

Date

rka

EXHIBIT A – SCOPE

PROVIDER may provide any of the insurance services below as requested by TAMUS Risk Management.

- 1) Implementation of Insurance Program
 - a) Notify the A&M System of new insurance products.
 - b) Provide marketing recommendations
 - c) Provide access to necessary insurance markets
 - d) Prepare program specifications and underwriting submissions
 - e) Assist in the selection of the insurers most suitable for risk
 - f) Awareness and access to specialty insurance markets
 - g) Assemble and format the A&M System's data for consideration by insurance carriers.
 - h) Upon System Risk Management and or System Benefit Administration's request, identify carriers who can provide the insurance coverage and programs required by the A&M System.
 - i) Provide a written summary of quotations and declinations from insurance carriers including analysis and comparison of program alternatives with best recommendation
 - j) Facilitate negotiations with insurance carriers who submit the most favorable quotes to maximize the System's coverage and to minimize its costs. Broker shall maintain complete records of the quote solicitation process and shall provide copies of such records to System Risk Management and/or System Benefits Administration.
 - k) Confirm policies issued conform to specifications.
 - l) Provide written policy outlines including but not limited to coverage type, policy number, insurance carrier, renewal date, and exclusions.
 - m) If requested by System Risk Management, bind coverage and maintain insurance policies and coverage without lapses.
 - n) Verify that rates and premiums are properly calculated and charged.
 - o) Communicate information between System Risk Management and/or System Benefits Administration and selected insurance carriers including information regarding policy renewals, premium pay-ins, audit returns and buy-out provisions.
 - p) Schedule meetings between the A&M System and selected insurance carriers.
 - q) Request, implement and monitor coverage changes requested by the A&M System.
 - r) Prorate insurance premiums by component institution.
 - s) Contractor shall pay all premiums to the insurance carrier and then be reimbursed by System Risk Management and/or System member institutions
- 2) Policyholder Services Provided by PROVIDER
 - a) Organize and attend meetings as requested by the A&M System and document meeting discussions.
 - b) Communicate with and secure all data required by insurance carrier or requested by the A&M System.
 - c) Thoroughly review all existing coverage and make written recommendations to System Risk Management and/or System Benefits Administration regarding any changes in coverage based on such

things as unintentional self-insurance, gaps in coverage, overlapping coverage, restrictive limits, higher education industry trends and projections and cost of coverage.

- d) Issue insurance binders, certificates, and policies when requested or required.
- e) Provide additional support through the A&M RMIS, including but not limited to the collection of data from and into RMIS.
- f) Coordinate ongoing insurer services among parties
- g) Verify the accuracy of any bills, audits, and other premium adjustments.
- h) Provide annual comprehensive loss history for all policies during renewal process
- i) Answer phone calls and field questions during regular business hours and be available during non-business hours for emergency claim submission and other services.

3) Safety and Loss Prevention Services

- a) When designated by the A&M System prior to the purchase of a policy, conduct inspections, tests and other safety and loss prevention services.
- b) Have the capacity to secure safety and loss prevention services from carriers for application with the System and its member institutions

4) Claims Handling

- a) When requested by the A&M System, communicate information to insurance carrier, report and monitor claims activity.
- b) Provide or obtain from carrier periodic loss runs as requested by the A&M System.
- c) Provide third party administrator claim functions if requested by System Risk Management and/or System Benefits Administration.

5) Information and Services Carriers

- a) The company must agree to furnish the insured: (sample reports requested with your proposal)
 - a. Reports on cost of claims on a monthly basis, including reserves status
 - b. Status report on any claim as requested by the insured
 - c. Reports of its investigation of claims to include statements from injured and/or witnesses, when requested
 - d. Photographs along with the appraisal of damages relating to the claim, when requested
- b) PROVIDER shall be capable of electronic data submission. The PROVIDER's system shall be capable of interfacing with the System Risk Management and/or System Benefits Administration and this service will be provided at no charge. Any software or upgrades will also be provided at no charge. The Company shall provide on-line access that allows the A&M System's Risk Management and/or System Benefits Administration to monitor pending claims, reserves, adjuster notes, final settlements, and etcetera. PROVIDERs shall provide training as needed to the A&M System Risk Management and/or System Benefits Administration in the utilization of software.
- c) The carrier is expected to represent and defend the named insured in any matter of litigation covered by the policy. However, the carrier and its designated counsel will keep System Risk Management and/or

System Benefits Administration and the System General Counsel informed of the status of any and all litigation claims filed under the policy.

- d) Successful company shall upon award provide insurance cards for all fleet and scheduled vehicles covered under all policies. The cards are to be forwarded express mail to Risk Management and Safety prior to the effective date and shall be collated in stacks of 25 for easy distribution.
- e) Deductible billings shall be individually invoiced per claim on a monthly basis. The billings shall include but not be limited to the following: name of claimant; date of accident; system driver; System Member; Department; Amount of Invoice; and Insurance Company federal Tax Identification Number. A summary listing each invoice should accompany the billings. The bill amount shall be supported by individual claim records. A sample deductible bill shall be submitted with each proposal.
- f) Verification of Qualifications - PROVIDER must meet the following minimum qualifications:
 - a. Shall be licensed by the State of Texas and permitted to contract with the State of Texas or any of its Subdivisions.
 - b. Be recommended in the latest edition of Best's Key Rating Guide and have at least a policyholder's rating of "A" and a Financial Size Category Rating of at least XI.
 - c. Any agents of record must be appointed by the A&M System.
 - d. Agents of record and carrier shall have toll free "800" number for accessibility during the policy period.

EXHIBIT B – INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

Insurance:

| <u>Coverage</u> | <u>Limit</u> |
|--|----------------------------------|
| A. <u>Worker's Compensation</u> | |
| Statutory Benefits (Coverage A) | Statutory |
| Employers Liability (Coverage B) | \$1,000,000 Each Accident |
| | \$1,000,000 Disease/Employee |
| | \$1,000,000 Disease/Policy Limit |

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured's.

C. Commercial General Liability

| | |
|---------------------------------|-------------|
| Each Occurrence Limit | \$1,000,000 |
| General Aggregate Limit | \$2,000,000 |
| Products / Completed Operations | \$1,000,000 |
| Personal / Advertising Injury | \$1,000,000 |
| Damage to rented Premises | \$300,000 |
| Medical Payments | \$5,000 |

The required commercial general liability policy will be issued on a form that insures PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

D. **Professional Liability (Errors & Omissions)** Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, PROVIDER agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration of cancellation of this Agreement.

E. PROVIDER will deliver to A&M System:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Exhibit B.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following A&M System contact in SOProurement@tamus.edu.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by A&M System in writing, except as may be noted.