

CONSULTING AND ACTUARIAL SERVICES AGREEMENT

This Consulting and Actuarial Services Agreement (“Agreement”) is entered into effective as of November 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 Rudd and Wisdom, Inc. (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

- A. PROVIDER will provide consulting and actuarial services for its group health, benefit, retirement, and WCI plans as outlined herein, or as otherwise mutually agreed upon on writing.
- B. The detailed scope of the work (“Work”) and the time for performance thereof, is as set forth in Exhibit A attached hereto and made a part hereof for all purposes.
- C. In the event A&M System identifies additional projects for which consulting or actuarial services are required, A&M System may amend the Scope of Work to include such services at a cost mutually agreed to by both Parties.

2. PAYMENT TERMS

- A. Breakdown of payment is described in Exhibit A attached hereto and made a part hereof for all purposes. The costs, as stated in Exhibit A, are all-inclusive and no additional reimbursement will be made.
- B. Payments of the amount due to PROVIDER will be provided by A&M System within thirty (30) days of receipt of an invoice. The invoice should detail a description of the work performed and should provide supporting documentation for reimbursable expenses relating to Work requested by A&M System, if any. The invoice must be submitted to A&M System at the address specified in Section 7.X below. Payment will be made in accordance with the Texas Prompt Payment Law, Chapter 2251, Texas Government Code.

3. TERM AND TERMINATION

- A. This Agreement shall have an initial term of three (three) years from the Effective Date of this Agreement. Thereafter, a renewal of up to three years may be made, assuming satisfactory performance by PROVIDER, and on terms and fees mutually agreed upon in writing by the Parties. The maximum period of performance under this Agreement inclusive of the initial term and all renewals is October 31, 2026. The A&M System reserves the right to solicit responses from qualified entities while negotiating for any renewals.
- B. In the event of substantial failure by a PROVIDER hereunder to perform in accordance with the terms hereof, A&M System without limiting any other rights or remedies it may have by law, equity or under contract, may terminate this Agreement upon thirty (30) 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 thirty-day period), provided that said failure is through no fault of A&M System. PROVIDER understands and acknowledges that, notwithstanding any termination of the contract, certain obligations of the PROVIDER shall survive the termination of the Agreement.
- C. Without restricting or waiving any other legal, contractual, or equitable remedies otherwise available to A&M System, A&M System may terminate the Agreement without cause by giving PROVIDER thirty (30) days written notice. Upon termination pursuant to this paragraph, PROVIDER shall be entitled to payment of such amount as shall compensate PROVIDER for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement. A&M

System shall not be required to reimburse PROVIDER for any services performed or expenses incurred after the date of termination notice.

4. 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.

5. 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 A&M System and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the Deputy Chancellor and Chief Financial Officer of A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

6. INSURANCE

Insurance requirements as stated within Exhibit B, attached hereto.

7. MISCELLANEOUS

- A. **Indemnification.** PROVIDER will promptly defend, indemnify and hold A&M System harmless from and against any and all claims, suits, actions, liabilities, losses, expenses or damages with A&M System may incur as a result of any violation by PROVIDER of any law, or any loss or expense to A&M System caused by the misrepresentation, negligent act or omission, or any breach of any of PROVIDER'S obligations 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. PROVIDER 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 (including Exhibit A) 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, 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. At the date of this Agreement, such county 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

**CONSULTING AND ACTUARIAL SERVICES AGREEMENT
EXHIBIT A**

SCOPE OF WORK

CONSULTING SERVICES

Task 1. Pharmacy Benefit Manager (PBM) Evaluation

Assist with PBM competitive bid process, to include RFP development, vendor response analysis, negotiation and if needed, assistance with drafting of the contract, and vendor implementation.

Timeline

RFP development is to begin as soon as the Agreement is signed or as soon thereafter as practical.

Billing/Payment

All requested services as described in Task 1 above shall be billed on a fee-per-hour basis using the hourly rates in Exhibit C. In addition, travel, if required shall be billed separately and shall not exceed the State of Texas per-diem rates listed at: www.window.state.tx.us/fm/travel .

Invoices must provide a description of the work performed and supporting documentation for reimbursable expenses. Payment of the amount due to PROVIDER will be provided by A&M System within thirty (30) days of receipt of an invoice. A&M System will pay the lesser of the not-to-exceed amount of \$50,000.00 or the fee-per-hour plus travel-related expenses, whichever is the lesser, for Task 1.

Task 2. General Consulting Services

Provide a broad range of consulting services on an as-needed basis for the A&M System's group health and welfare, retirement, and workers' compensation benefits plans. It is anticipated that the majority of interaction will be related to the health and benefits area versus retirement and workers' compensation. Provision of general consulting services will typically be accomplished by use of email or phone. The following list is intended to be illustrative and not intended to be all inclusive.

- General consultation – ad hoc design, technical, compliance, administration, communications review
- Affordable Care Act compliance
- Consultation around renewal activities
- Legislative reviews/support
- Selective insight relative to benchmarking (does not include formal benchmarking/survey analysis)
- General consulting regarding retiree health considerations

Note that none of the services described above would contemplate actual quantitative analysis or actuarial services, but could include general assessment of certain figures, i.e. contribution strategies.

Timeline

General consulting services are to be provided on an as-needed basis.

Billing/Payment

General consulting services as described in Task 2 shall be provided on a monthly retainer basis of \$1,950.00. Retainer fees shall be invoiced monthly. Payments of the amount due to PROVIDER will be provided by A&M System within thirty (30) DAYS of receipt of an invoice.

Task 3. Additional Consulting Services

In the event A&M System identifies a project outside the scope of Task 1 and 2 above, for which additional consulting services are required, A&M System may develop a Scope of Work for such services and request a not-to-exceed quote from PROVIDER. A timeline, billing arrangements, and payment terms will be defined at that point and agreed to in writing by both Parties.

ACTUARIAL SERVICES

Task 1. Perform actuarial analyses for the A&M System's self-insured health, prescription drug and dental plans. This includes recommendations regarding plan design changes and projection of their cost to the plan, annual actuarial pricing of the plan premiums, presentation of the annual pricing of the plan premiums to SEBAC, and annual determination of the appropriate IBNR reserving level.

Timeline

Annual actuarial pricing – February – May
Presentation of pricing – April – May
Change in IBNR – September - October

Billing/Payment

Compensation for providing the actuarial services listed in Task 1 is based on a fixed fee of \$17,000.00. PROVIDER will invoice A&M System monthly for work completed. Invoices should provide a description of the work performed. Payment of the amount due to PROVIDER will be provided by A&M System within thirty (30) days of receipt of an invoice.

Task 2. Perform annual actuarial analysis for the A&M System's self-insured WCI program to determine the appropriate IBNR reserving level.

Timeline

August – September

Billing/Payment

Compensation for providing the actuarial services listed in Task 2 is based on a fixed fee of \$11,000.00. PROVIDER will invoice A&M System monthly for work completed. Invoices should provide a description of the work performed. Payment of the amount due to PROVIDER will be provided by A&M System within thirty (30) days of receipt of an invoice.

Task 3. Perform annual valuation services in relation to Other Post-Employment Benefits (OPEB) required to comply with GASB 43 and 45, as necessary.

To include preparation of actuarial assumptions, preparation of actuarial analysis for post-retirement plan, complete accounting requirements, and reporting of results. A full valuation will be needed in the first year. In subsequent years, a roll-forward actuarial estimate may be determined to be appropriate.

Timeline

Draft – July
Final – August

Billing/Payment

Compensation for providing the actuarial services listed in Task 3 is based on a fixed fee of \$60,000.00 in years where a full valuation is provided and \$15,000.00 in years where a roll-forward valuation is determined to be appropriate. PROVIDER should invoice A&M System monthly for work completed. Invoices should provide a description of the work performed. Payment of the amount due to PROVIDER will be provided by A&M System within thirty (30) days of receipt of an invoice.

Task 4. Additional Actuarial Services

In the event A&M System identifies a project outside the scope of Task 1 through 4 above, for which additional actuarial services are required, A&M System may develop a Scope of Work for such services and request a not-to-exceed quote from PROVIDER. A timeline, billing arrangements, and payment terms will be defined at that point.

Task 5. Perform actuarial analysis for the A&M System's self-insured Auto program to determine the appropriate IBNR reserving level and a projection of contributions needed for the 2022 fiscal year.

Billing/Payment

Compensation for providing the actuarial services listed in Task 1 is based on customary hourly rates, as outlined in Exhibit C, with the total fee not to exceed \$10,000.00. Provider should invoice TAMUS monthly for work completed. Invoices should provide a description of the work performed. Payment of the amount due to PROVIDER will be provided by TAMUS within thirty (30) days of receipt of an invoice.

Task 6. Perform actuarial analysis for the A&M System's self-insured Medical Malpractice program to determine the appropriate IBNR reserving level and a projection of contributions needed for the 2022 fiscal year

Billing/Payment

Compensation for providing the actuarial services listed in Task 2 is based on customary hourly rates, as outlined in Exhibit C, with the total fee not to exceed \$7,000.00. Provider should invoice TAMUS monthly for work completed. Invoices should provide a description of the work performed. Payment of the amount due to PROVIDER will be provided by TAMUS within thirty (30) days of receipt of an invoice.

Task 7. Perform actuarial analysis for the A&M System's self-insured Property program to determine the appropriate IBNR reserving level and a projection of contributions needed for the 2022 fiscal year

Billing/Payment

Compensation for providing the actuarial services listed in Task 2 is based on customary hourly rates, as outlined in Exhibit C, with the total fee not to exceed \$7,000.00. Provider should invoice TAMUS monthly for work completed. Invoices should provide a description of the work performed. Payment of the amount due to PROVIDER will be provided by TAMUS within thirty (30) days of receipt of an invoice.

Task 8. Perform actuarial analysis for the A&M System's self-insured Workers Compensation, Auto, Directors & Officers Liability, and Property programs to determine the capital needed to cover these exposures with one fund or organization. Work on this task is to be completed in November and December of 2020.

Billing/Payment

Compensation for providing the actuarial services listed in Task 9 is based on customary hourly rates, as outlined in Exhibit C, with the total fee not to exceed \$12,000.00. Provider should invoice TAMUS monthly for work completed. Invoices should provide a description of the work performed. Payment of the amount due to PROVIDER will be provided by TAMUS within thirty (30) days of receipt of an invoice.

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.

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 or cancellation of this Agreement.

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.

- 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.

EXHIBIT C – RATES

Health and Welfare

Phil Dial	\$455
David Wilkes	\$440
Evan Dial	\$435
Khiem Ngo	\$350
Dustin Kim	\$315

Retirement Benefits

Mitchell Bilbe	\$435
Chris Johnson	\$435

Property and Casualty

Charles Faerber	\$380
Khiem Ngo	\$350

Support Staff

Actuarial Assistant	\$230
Clerical Assistant	\$120

Fees are guaranteed for the three-year term of the Agreement.

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") between The Texas A&M University System ("A&M System"), an agency of the State of Texas, on behalf of the A&M Care Plan ("**Covered Entity**") and ("**Business Associate**"), shall be effective ("**the Effective Date**"). All terms used in this Agreement and not defined herein which are defined under Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA"), including *45 C.F.R. Parts 160 and 164* ("Privacy Rule"), shall have the meanings set forth in the applicable definition under HIPAA.

Covered Entity and Business Associate have entered into, are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the "Business Arrangements") pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create, maintain, and use health information that is protected by state and/or federal law.

Pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the U.S. Department of Health & Human Services ("HHS") promulgated the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards"), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a "Covered Entity", or collectively, "Covered Entities") to protect the privacy of certain individually identifiable health information ("Protected Health Information" or "PHI").

Pursuant to HIPAA, HHS issued the Security Standards (the "Security Standards"), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information ("EPI").

In order to protect the privacy and security of PHI, including EPHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a "business associate agreement" with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or EPHI.

On February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the "HITECH Act"), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards.

The HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and EPHI, including extending certain HIPAA and HITECH Act requirements directly to Business Associates.

The HITECH Act requires that certain of its provisions be included in business associate agreements, and that certain requirements of the Privacy Standards be imposed contractually upon Covered Entities as well as Business Associates.

The Texas Legislature has adopted certain privacy and security requirements that are more restrictive than those required by HIPAA and HITECH, and such requirements are applicable to Business Associates as "Covered Entities" as defined by Texas law; and because Business Associate and Covered Entity desire to enter into this Business Associate Agreement, in consideration of the mutual promises set forth in this

Agreement and the applicable Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

I. Definitions

- a. Except as otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings set forth in HIPAA.
- b. **“Business Associate”** shall have the same meaning to the term “Associate” under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- c. **“Breach”** shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the Protected Health Information as defined, and subject to the exceptions set forth, in 45 CFR § 164.402.
- d. **“Covered Entity”** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- e. **“Data Aggregation Services”** shall mean the combining of PHI or EPHI by Business Associate with the PHI or EPHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of, payment to, and treatment of patients by the respective covered entities.
- f. **“Electronic Protected Health Information”** shall mean Protected Health Information that is transmitted or maintained in Electronic Media.
- g. **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented by the HITECH Act and its implementing regulations, as each is amended from time to time.
- h. **“HIPAA Breach Notification Rule”** shall mean the federal breach notification regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Part 164 (Subpart D).
- i. **“HIPAA Privacy Rule”** shall mean the federal privacy regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Parts 160 and 164 (Subparts A & E).
- j. **“HIPAA Security Rule”** shall mean the federal security regulations, as amended from time to time, issued under HIPAA and set forth in 45 CFR Parts 160 and 164 (Subparts A & C).
- k. **“HITECH Act”** shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, and all its implementing regulations, when and as each is effective and compliance is required.
- l. **“Protected Health Information of PHI”** shall mean Protected Health Information, as defined in 45 CFR § 160.103, and is limited to the Protected Health Information received, maintained, created or transmitted on behalf of, Covered Entity by Business Associate in performance of the Underlying Services.
- m. **“Underlying Services”** shall mean, to the extent and only to the extent they involve the creation, maintenance, use, disclosure or transmission of Protected Health Information, the services performed by Business Associate for Covered Entity pursuant to the Underlying Services Agreement.
- n. **“Underlying Services Agreement”** shall mean the written agreement(s) (other than this Agreement) by and between the parties as amended as set forth in the attached schedule by

and between the parties pursuant to which Business Associate access to, receives, maintains, creates or transmits PHI for or on behalf of Covered Entity in connection with the provision of the services described in that agreement(s) by Business Associate to Covered Entity or in performance of Business Associate's obligations under such agreement(s).

II. Business Associate Obligations.

Business Associate may receive from Covered Entity, or create or receive or maintain on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and EPHI. All references to PHI herein shall be construed to include EPHI. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Privacy Standards, Security Standards the HITECH Act, or Texas law, including without limitation the provisions of Texas Health and Safety Code Chapters 181 and 182 as amended by HB 300 (82nd Legislature), effective September 1, 2012, in each case including any implementing regulations as applicable (collectively referred to hereinafter as the "Confidentiality Requirements") if the PHI were used or disclosed by Covered Entity in the same manner.

III. Use of Protected Health Information

Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, (ii) for Data Aggregation Services (as herein defined), and (iii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. For avoidance of doubt, under no circumstances may Business Associate sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, as amended by HB 300 (82nd Legislature), effective September 1, 2012, nor shall Business Associate use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity. To the extent not otherwise prohibited in the Business Arrangements or by applicable law, use, creation and disclosure of de-identified health information, as that term is defined in 45 CFR § 164.514, by Business Associate is permitted.

IV. Disclosure of Protected Health Information

Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Business Associate recognizes that under the HIPAA/HITECH Omnibus Final Rule, Business Associates may not disclose PHI in a way that would be prohibited if Covered Entity made such a disclosure. Any disclosures made by Business Associate will comply with minimum necessary requirements under the Privacy Rule and related regulations.

Business Associate shall not, and shall provide that its directors, officers, employees, subcontractors, and agents, do not disclose PHI to any other person (other than members of their respective workforce), unless disclosure is required by law or authorized by the person whose PHI is to be disclosed. Any such disclosure other than as specifically permitted in the immediately preceding sentences shall be made only if such disclosee has previously signed a written agreement that:

- a.) Binds the disclosee to the provisions of this Agreement pertaining to PHI, for the express benefit of Covered Entity, Business Associate and, if disclosee is other than Business Associate, the disclosee;
- b.) Contains reasonable assurances from disclosee that the PHI will be held confidential as provided in this Agreement, and only disclosed as required by law for the purposes for which it was disclosed to disclosee; and,
- c.) Obligates disclosee to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent disclosee has obtained knowledge of such breach.

Business Associate shall not disclose PHI to any member of its workforce and shall provide that its subcontractors and agents do not disclose PHI to any member of their respective workforces, unless Business Associate or such subcontractor or agent has advised such person of Business Associate's obligations under this Agreement, and of the consequences for such person and for Business Associate or such subcontractor or agent of violating them as memorialized in a business associate agreement pursuant to the HIPAA/HITECH Omnibus Final Rule. Business Associate shall take and shall provide that each of its subcontractors and agents take appropriate disciplinary action against any member of its respective workforce who uses or discloses PHI in contravention of this Agreement

In addition to Business Associate's obligations under Section IX, Business Associate agrees to mitigate, to the extent commercially practical, harmful effects that are known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.

V. Access to and Amendment of Protected Health Information

Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity; and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Any such amendments shall be made in such a way as to record the time and date of the change, if feasible, and in accordance with any subsequent requirements promulgated by the Texas Medical Board with respect to amendment of electronic medical records by HIEs. Business Associate shall respond to any request from Covered Entity for access by an individual within seven (7) days of such request and shall make any amendment requested by Covered Entity within twenty (20) days of the later of (a) such request by Covered Entity or (b) the date as of which Covered Entity has provided Business Associate with all information necessary to make such amendment. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or the fee approved by the Texas Medical Board for the production of non-electronic media copies). Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests and statements in response to denials of such requests to the Designated Record Set, as requested by Covered Entity.

VI. Accounting of Disclosures

Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR § 164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision.

VII. Records and Audits

Business Associate shall make available to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or the requirements of any other health oversight agency, in a time and manner designated by the Secretary.

VIII. Implementation of Security Standards; Notice of Security Incidents

Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§164.308, 164.310, 164.312 and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act.

Furthermore, to the extent feasible, Business Associate will use commercially reasonable efforts to secure PHI through technology safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known.

IX. Data Breach Notification and Mitigation

HIPAA Data Breach Notification and Mitigation. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting to Covered Entity of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402. Specifically, a breach is an unauthorized acquisition, access, use or disclosure of unsecured PHI, including ePHI, which compromises the security or privacy of the PHI/ePHI. A breach is presumed to have occurred unless there is a low probability that the PHI has been compromised based on a risk assessment of at least the factors listed in 45 C.F.R. § 164.402(2)(i)-(iv) (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. § 164.404 governs the determination of the date of discovery of a HIPAA Breach. In addition to the foregoing and notwithstanding anything to the contrary herein, Business Associate will also comply with applicable state law, including without limitation, Section 521 Texas Business and Commerce Code, as amended by HB 300 (82nd Legislature), or such other laws or regulations as may later be amended or adopted. In the event of any conflict between this section, the Confidentiality Requirements, Section 521 of the Texas Business and Commerce Code, and any other later amended or adopted laws or regulations, the most stringent requirements shall govern.

Discovery of Breach. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity without unreasonable delay and in no event later than the earlier of the maximum of time allowable under applicable law or three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate.

Reporting a Breach. Without unreasonable delay and no later than the earlier of the maximum of time allowable under applicable law or five (5) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. § 164.400 et seq. Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with:

- a.) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address);
- b.) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery;
- c.) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, addressees, account numbers of any type, disability codes, diagnostic and/or billing codes and similar information);
- d.) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and,
- e.) appoint a liaison and provide contact information for same so that Covered Entity may ask questions or learn additional information concerning the HIPAA Breach.

Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described above.

X. Termination

This Agreement shall commence on the Effective Date.

Upon the termination of the applicable Business Arrangement, either Party may terminate this Agreement by providing written notice to the other Party.

Upon termination of this Agreement for any reason, Business Associate agrees:

- a.) to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. Business Associate agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and

EPHI shall be purged or destroyed concurrent with NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>; or,

- b.) in the case of PHI which is not feasible to “return or destroy,” to extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.

XI. Miscellaneous

Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery; or (iv) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

Covered Entity:
Ms. Jessica Palacios
Associate Director
Moore/Connally Building
301 Tarrow, 5th Floor
College Station, TX 77840

Rudd and Wisdom, Inc.:
Mr. Evan Dial
Principal
9500 Arboretum Blvd., Suite 200
Austin, Texas 78759

Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

Assignment. Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact

the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Texas. Venue for any dispute relating to this Agreement shall be in Brazos County, Texas.

Nature of Agreement; Independent Contractor. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COVERED ENTITY:

BUSINESS ASSOCIATE:

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.



The Texas A&M University System

DocuSigned by:

BEDCDB89EAT78479...
Billy Hamilton
Deputy Chancellor & Chief Financial Officer

Rudd and Wisdom, Inc.

DocuSigned by:

000B33B7C339480...
Philip Dial
President

Date: 1/22/2021 | 08:36:09 CST

Date: 1/21/2021 | 17:24:00 CST