

**PROFESSIONAL SERVICES AGREEMENT BETWEEN TEXAS A&M UNIVERSITY -
CORPUS CHRISTI AND ROBERT E. McCLUNG, M.D., Ph.D.**

This Professional Services Agreement ("Agreement") is entered into between Texas A&M University-Corpus Christi, a member of The Texas A&M University System, an agency of the State of Texas ("TAMU-CC") and Robert E. McClung, M.D., Ph.D., (hereafter referred to as "Psychiatrist") for the purpose of defining the services that Psychiatrist agrees to provide to the University Counseling Center at Texas A&M University-Corpus Christi, a department within the division of Student Engagement and Success.

1. **Services Provided.** Psychiatrist shall provide the services described in Exhibit A which is attached hereto and incorporated by reference (the "Services"). Psychiatrist shall comply with the Texas A&M University-Corpus Christi Confidentiality and Responsibility Agreement Exhibit B which is incorporated in the Agreement.
2. **Term of Agreement.** The term of this Agreement shall be for a period of twelve (12) months ("Term"), commencing on September 1, 2016 through August 31, 2017, with option to renew annually not to exceed 5 years.
3. **Compensation and Method of Payment.**
 - (a) TAMU-CC shall compensate Psychiatrist for the services at the rate of \$111.00 per hour for Clinical Hours. The total of all payments during this contract period shall not exceed \$67,266.00. Any proposed services that exceed this amount must be first approved in writing by authorized signers of both parties, and of which may require a separate requisition be established to approve funding.
 - (b) This is the only compensation Psychiatrist shall receive for Services provided under this Agreement. Psychiatrist shall not be entitled to bill student(s) or any other payor(s) for Services provided in this Agreement.
 - (c) In no event shall Psychiatrist be reimbursed or paid for holidays, sick days, or time other than that actually spent providing the described Service(s).
 - (d) Payment will be made on a monthly basis upon submittal and approval of Invoice for Services that are received. TAMU-CC agrees to make all reasonable efforts to process payments within thirty (30) days, in accordance with the procedures and regulations of the Office of the State Comptroller (Texas Government Code, Chapter 2251, Prompt Payment Law).
 - (e) Reimbursement for travel. The cost of travel and meals are part of the compensation rates and amounts described above. No separate reimbursement of travel and meals will be made. No payment is due until the Psychiatrist commences providing Services to TAMU-CC. No amounts shall be paid to Psychiatrist in advance of providing Services.
4. **Default and Termination.**
 - (a) In the event of substantial failure by Psychiatrist to perform in accordance with the terms of this Agreement, TAMU-CC may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure, provided that said failure is through no fault of TAMU-CC. The termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period.

(b) Either party may, with or without cause, terminate this Agreement at any time upon giving thirty (30) days advance notice. If terminated by TAMU-CC, Psychiatrist shall be entitled to payment of such amount as shall compensate Psychiatrist for the Services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided that Psychiatrist shall deliver to TAMU-CC a final invoice, all completed, or partially completed, work and any and all documentation or other products and results of these Services. Psychiatrist shall not make or retain any copies of the work or any and all documentation or other products and results of the Services without the prior written consent of TAMU-CC. TAMU-CC shall not be required to reimburse or pay Psychiatrist for any Services performed or expenses incurred after the date of termination notice.

(c) If this Agreement is terminated for any reason, TAMU-CC shall not be liable to Psychiatrist for any damages, claims, losses, or any other amounts arising from or related to any such termination.

5. **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, if applicable, be used by TAMU-CC and Psychiatrist to attempt to resolve any claim for breach of contract made by Psychiatrist that cannot be resolved in the ordinary course of business. Psychiatrist shall submit written notice of a claim of breach of contract under this Chapter to the Director of the Contracts Department of TAMU-CC, which shall examine Psychiatrist's claim and any counterclaim and negotiate with Psychiatrist in an effort to resolve the claim.

6. **Insurance.** (a) Psychiatrist represents and warrants that he/she will, within five (5) business days of executing this Agreement (and, in any event, prior to rendering any Services) provide TAMU-CC with current certificates of insurance or other proof acceptable to TAMU-CC; and

(b) The Contractor shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. Coverage shall be underwritten by companies authorized to do business in the State of Texas and currently rated A-or better by A.M. Best Company or otherwise acceptable to TAMU-CC. By requiring such minimum insurance, the TAMU-CC shall not be deemed or construed to have assessed the risk that may be applicable to Psychiatrist under this Agreement. Psychiatrist shall assess his/her own risks and if deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Psychiatrist is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of failure to obtain or maintain insurance in sufficient amounts, duration, or types. Required insurance shall not be cancelable without thirty (30) days' prior written notice to TAMU CC.

<u>Coverage</u>	<u>Limit</u>
A. Professional Liability (Medical Malpractice)	\$1,000,000.00

B. Professional Liability 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 Psychiatrist 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, Psychiatrist 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 two (2) years after the expiration or cancellation of this Agreement.

7. **Indemnity.** Psychiatrist shall defend, indemnify and hold harmless TAMU-CC, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with or resulting from any acts or omissions of Psychiatrist or any agent, employee or representative of Psychiatrist in the execution or performance of this Agreement.

To the extent allowed by the Constitution and laws of the State of Texas, TAMU-CC shall defend, indemnify and hold harmless Psychiatrist from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with or resulting from any acts or omissions of TAMU-CC in the execution or performance of this Agreement.

8. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered to the other party (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. TAMU-CC and Psychiatrist can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMU-CC: Texas A&M University-Corpus Christi
Attn: Mr. John Casey
Director, Contracts & Property
6300 Ocean Drive, Unit 5478
Corpus Christi TX 78412
E-mail: john.casey@tamucc.edu

Attention: Dr. Don Albrecht
Vice President for Student Engagement and Success
Phone: (361) 825-3404
Fax: (361) 825-5810
E-mail: don.albrecht@tamucc.edu

Attention: Ms. Ann DeGaish
Dean of Students and Associate Vice President
for Student Engagement and Success
Phone: (361) 825-2612
Fax: (361) 825-2614
E-mail: ann.degaish@tamucc.edu

PSYCHIATRIST: Robert E. McClung, M.D., Ph.D.
4646 Corona, Suite 255
Corpus Christi, TX 78411
Attention: Robert E. McClung, M.D., Ph.D.
Phone: (361) 851-8598
Fax: (361) 851-8669
E-mail: _____

9. **Assignment.** This Agreement is not assignable without the express written agreement of both parties. Any attempt to do so shall be void.

10. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
11. **Independent Contractor.** This Agreement does not create an employer/employee relationship between the contracting parties. Psychiatrist will be an independent contractor of TAMU-CC. The sole responsibility of the parties is to ensure that the Services covered by this Agreement shall be performed and rendered in a professional, competent, efficient, and satisfactory manner. Psychiatrist agrees to perform the Services with that standard of professional care, skill, and diligence normally provided in the performance of similar services.
12. **Governing Law.** The validity of this Agreement and all matters pertaining thereto, 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, without reference to any conflict of law principles.
13. **Venue.** This Agreement is performable in Nueces County, Texas. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against TAMU-CC shall be in the county in which the primary office of the chief executive officer of TAMU-CC is located.
14. **Entire Agreement.** This document constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreements. This Agreement may not be amended or otherwise altered except upon the signed, written agreement of both parties.
15. **Severability.** If any part of this Agreement shall be held illegal, unenforceable, or in conflict with any law, the validity of the remaining portions shall not be affected hereby.
16. **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."
17. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, Psychiatrist agrees that any payments owing to Psychiatrist under this Agreement may be applied directly toward certain debts or delinquencies that Psychiatrist 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.
18. **Franchise Tax Certification.** If Psychiatrist is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Psychiatrist certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Psychiatrist is exempt from the payment of franchise (margin) taxes.

19. **Public Information.** Psychiatrist acknowledges that TAMU-CC 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.
20. **Previous Employment.** Psychiatrist acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMU-CC 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 Psychiatrist is an individual, by signing this Agreement, Psychiatrist certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
21. **Loss of Funding.** Payment by TAMU-CC 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, TAMU-CC will issue written notice to Psychiatrist and TAMU-CC may terminate this Agreement without further duty or obligation hereunder. Psychiatrist acknowledges that appropriation of funds is beyond the control of TAMU-CC.
22. **Non-Waiver.** Psychiatrist expressly acknowledges that TAMU-CC is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU-CC of its right to claim such exemptions, privileges, and immunities as may be provided by law.
23. **State Auditor.** Psychiatrist 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(e), *Texas Education Code*. Psychiatrist agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Psychiatrist will include this provision in all contracts with permitted subcontractors.
24. **Electronic and Information Resources.** To the extent applicable to this Agreement*, Psychiatrist represents and covenants that the electronic and information resources and all associated information, documentation, and support that it provides to TAMU-CC under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Psychiatrist becomes aware that the EIRs, or any portion thereof do not comply, then Psychiatrist represents and warrants that it will, at no cost to TAMU-CC, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs. In the event that Psychiatrist fails or is unable to do so, then TAMU-CC may terminate this Agreement and Psychiatrist will refund to TAMU-CC all amounts TAMU-CC has paid under this Agreement within thirty (30) days after the termination date.

*TAMU-CC's Counseling Center provides the Electronic Medical Records system that Psychiatrist will be utilizing.

(signatures on next page)

TEXAS A&M UNIVERSITY
CORPUS CHRISTI

PSYCHIATRIST

TH
By: John A. Casey
John Casey
Its: Director, Contracts & Property
Dated: 8-16-2016

By: [Signature]
Robert E. McClung, Ph.D.
Dated: 8/17/16

(see next page – exhibit)

Exhibit A
Scope of Professional Services Provided and Additional Requirements

1. The scope of Psychiatrist's services shall be limited to the provision of psychiatric services to TAMU-CC students utilizing University Counseling Center services (the "Services").
2. The Psychiatrist shall provide services to TAMU-CC students in Psychiatrist's area of expertise as licensed by the State of Texas.
3. The Psychiatrist shall provide the following psychiatric services to TAMU-CC University Counseling Center clients:
 - a. Psychiatrist will provide psychiatric evaluations and treatment; and will prescribe and monitor psychotropic medications as indicated.
 - b. Psychiatrist will partner with counselors as indicated to provide quality treatment, provide recommendations for counseling, and assist in providing referrals for students with psychophysiological disorders.
 - c. Psychiatrist will provide psychiatric evaluations and referral services for students requiring inpatient treatment or long-term outpatient treatment beyond the scope of services of the University Counseling Center.
 - d. Psychiatrist will serve as consultant to Health Center physician and treatment professionals as needed to provide treatment to students.
 - e. Psychiatrist will consult with the Executive Director of the University Counseling and Health Centers and the Counseling Center Associate Director as needed throughout the year.
4. The Psychiatrist will provide scheduled clinical services at the TAMU-CC W6796CK6 Counseling Center for the weeks classes are in session (up to 46 weeks a year). In addition to the scheduled clinical time, Psychiatrist agrees to provide, as needed, emergency consultation by phone or in person.
5. The Psychiatrist shall provide the Services at the TAMU-CC University Counseling Center located in the Driftwood Building on the TAMU-CC campus (the "Clinic"). Psychiatrist shall provide services on the day(s) agreed to by the Parties to accommodate the needs of the University Counseling Center and Psychiatrist's professional schedule.
6. The Psychiatrist will provide a minimum of 580 clinical service hours during this contract period (not to exceed 606 hours) with the majority of clinical service hours provided during the Fall and Spring semesters at fourteen and a half (14.5) hours per week. The minimum 580 hours include at least 40 hours of clinical service to be provided during summer semesters. Additional hours provided during summer semesters over minimum of 40 will be determined based upon Clinic need and will be paid at \$111.00 an hour.
7. The Psychiatrist shall document all pertinent psychiatric findings and treatments rendered to TAMU-CC University Counseling Center clients under this Agreement within one (1) business day of providing Services utilizing the Center's Electronic Medical Records system. All records of Psychiatrist encounters with clients under this Agreement shall be considered educational records and Psychiatrist agrees to comply with the Family Educational Rights and Privacy Act with respect to such educational records; as well as applicable State of Texas Mental Health laws and regulations; and other relevant professional and governing bodies.

8. Psychiatrist shall provide to TAMU-CC, proof of valid and current license and credentials authorized by applicable State of Texas laws and regulations prior to rendering any Services under this Agreement.
9. Representations, Warranties and Certain Covenants
 - a. Licensure and Certification. Psychiatrist represents and warrants that, as of the Effective Date, and during the term of this Agreement, Psychiatrist is and shall remain duly licensed, registered and in good standing under the laws of the State of Texas to engage in the unrestricted practice of medicine and to administer and prescribe controlled substances.
 - b. Disclosure. Psychiatrist shall promptly (within ten (10) days) notify TAMU-CC in the event any representation or warranty regarding Psychiatrist set forth in this Agreement shall no longer be true, correct or complete.
 - c. Compliance with Law. Psychiatrist represents and warrants that Psychiatrist shall satisfy, and during the term of this Agreement will continue to satisfy, the standards and requirements applicable to University Counseling Centers.
 - d. Compliance with TAMU-CC Policies. Psychiatrist shall comply with all applicable bylaws, rules, regulations, policies and procedures of TAMU-CC and shall work cooperatively with the personnel of TAMU-CC. Psychiatrist shall receive training on or access to such rules, regulations, policies and procedures.
 - e. Quality Assurance. Psychiatrist shall cooperate with and participate in the quality assessment and performance improvement activities of TAMU-CC as required by applicable bylaws, rules and regulations of TAMU-CC and/or by other regulatory licensing or accrediting agencies.
 - f. Ethics and Professional Standards. Psychiatrist shall comply with the ethical and professional standards of the American Psychiatric Association and other relevant professional and governing bodies.

(continued on next page – Exhibit B)

Exhibit B

**Texas A&M University-Corpus Christi
Confidentiality and Responsibility Agreement**

I understand that as an employee, member of the professional staff, or non-Texas A&M University-Corpus Christi care provider or support personnel (contractor, volunteer, intern, student, vendor, etc.) of Texas A&M University-Corpus Christi Student Counseling or Health Centers, the performance of my job may require me to access or become aware of confidential information, such as:

- Patient health care and financial information
- Business information related to Texas A&M University-Corpus Christi (including financial, administrative, resource management, and other information)

By signing below, I agree to the following:

a. I understand that approval to access and use this information in verbal, written, or electronic form is a privilege. I also understand that access to Texas A&M University-Corpus Christi information is granted to me based only on business or clinical "need to know" standards and the responsibilities of my job as an employee, member of the professional staff, or non-Texas A&M University-Corpus Christi care provider or support personnel. I agree to access information only on clients/patients for whom I or department has responsibility. Client/patient information may be used for research or teaching purposes only when authorized by the appropriate institutional review board and in compliance with Texas A&M University-Corpus Christi Policies and Procedures.

b. I understand that the methods I use to get information may only be used in the performance of my job. I understand that if granted a sign-on code or password, that I accept full responsibility for any use or actions taken with my sign-on codes(s), password(s) (codes) or Personal Identification Numbers (PIN), and recognize that, in some cases, these codes are the *equivalent of my signature*. The codes will be used only by me and I will not use another person's codes at any time. I will notify the Texas A&M University-Corpus Christi "Help Desk" immediately should my code(s) be compromised in any way. Violation of this Agreement will result in:

- **For Employees and Members of Professional Staff:** disciplinary actions under the guidelines of the Texas A&M University-Corpus Christi Policies and Procedures;
- **For Non-Employees (contractor, volunteer, intern, student, vendor, etc.):** disciplinary action up to and including immediate termination of your relationship with Texas A&M University-Corpus Christi. In addition, violation of this Agreement may result in possible legal action, fines or criminal prosecution against you and the organization you represent.

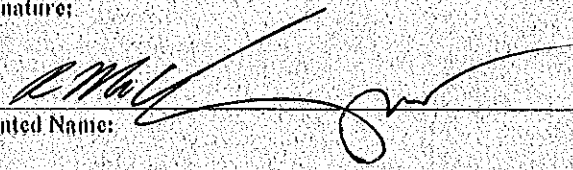
c. I understand that I may not seek access to any information that is not required to do my job. I understand that an audit trail, noting the date, my code(s) or PINs, the client/patient, or system accessed may be reviewed by Texas A&M University-Corpus Christi. I understand that client/patient information

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accessed through the computer is considered the same as the client/patient's medical record and may not under any circumstances be re-disclosed without proper authorization as covered in Texas A&M University-Corpus Christi Policies and Procedures. I agree to access, use, store and dispose of information which I use in a way that ensures continued security and confidentiality in accordance with Texas A&M University-Corpus Christi Policies and Procedures.

- d. I understand that computer hardware, software, and information are considered Texas A&M University-Corpus Christi property and are subject to and protected by appropriate Texas A&M University-Corpus Christi Policies and Procedures.
- e. I understand that Texas A&M University-Corpus Christi reserves the right to make modifications to its access program including revoking codes and requesting the return of any access devices.
- f. I understand my access privileges will be revoked if any of the above understandings are violated.

Signature: 	Date: 8/17/16
Printed Name: Robert B. McClung, M.D., Ph.D.	Department: TAMU-CC University Counseling Center