**STATE OF TEXAS** §

§

**COUNTY OF TRAVIS** §

Expert Witness Agreement
Between
The Texas Board of Nursing
And

The Board of Nursing for the State of Texas, hereinafter referred to as the Board and hereinafter referred to as the Expert, hereby make and enter into this agreement for the mutual consideration set forth below as provided for in the Texas Government Code § 2151.005.

**I.**

The Expert agrees to provide to the Board expert testimony in various disciplinary proceedings brought pursuant to TEX. OCC. CODE §301.452. The Expert will provide such services to the extent specifically requested by the Board on an as needed basis. No provision of this agreement shall be construed as mandating performance under this contract by the Expert, if the Expert is unavailable, unable, or unwilling to perform the service requested.

**II.**

All information prepared by Expert is the work product of the Board and is subject to disclosure or non-disclosure pursuant to the Texas Rules of Civil Procedure and Texas Rules of Evidence.

**III.**

The Expert's payment structure shall be as follows:

**Hourly Rate for Pre-Trial Services.** The hourly rate for the Expert's services shall be seventy-five dollars ($75.00) per hour for pre-trial consulting and other tasks necessary to prepare a consulting report or testimony for a contested case. These tasks may include record review, preparation of an expert report, consultation with Board Staff, and preparation for testimony.

**Hourly Rate for Trial and Testimony.** The hourly rate for the Expert's services shall be one hundred twenty five dollars ($125.00) per hour for deposition and hearing testimony. All time that the Expert is required to be present at the State Office of Administrative Hearings during a contested case proceeding is considered testimony for purposes of this contract.

**Expenses.** Travel and per diem expenses, if any, shall be reimbursed according to State of Texas Comptroller Guidelines. The Board will also reimburse for travel to any Board of Nursing training workshops according to State of Texas Comptroller Guidelines.

**Compensation Limits.** The total price of this contract is capped at three thousand five hundred dollars ($3,500.00) per contested case, and ten thousand dollars ($10,000.00) per year, unless specifically approved by the Executive Director of the Board of Nursing.

The Expert agrees to keep documentation and receipts related to his or her performance under this contract. The parties stipulate and agree that the total amount due to Expert for all services performed under this Agreement shall be the amount set forth in this Agreement. The parties further acknowledge and agree that nothing in this Agreement will be interpreted to create an obligation or liability in excess of the funds currently appropriated to the Board during this biennium.

**IV.**

Payment will be made within thirty (30) days of services rendered and after Expert has submitted to the Board a signed invoice attesting to the days and hours worked, the subject matter of the work, and expenses incurred. Expenses are to be itemized and copies of all available receipts provided.

**V.**

The term of this agreement shall become effective upon the signature of the Executive Director of the Board, Katherine A. Thomas, MN, RN, FAAN, and continue until August 31, 2016. This agreement may be canceled at any time by mutual consent. In addition, either party to this agreement may cancel it by the giving of at least thirty days notice in writing to the other party whereupon this agreement will be canceled upon the expiration of the thirty day (or longer) period after receipt of the notice of cancellation. Upon mutual agreement of the parties, this contract may be extended for up to one year upon the expiration of this contract.

**VI.**

The Expert is not an employee of the Board, and as such is responsible for payment of any federal taxes to be paid to the federal government attributable to the payments made under this agreement, and is, furthermore, not eligible for any fringe benefits due state employees.

**VII.**

The Expert warrants that, to the best of his or her knowledge, there are no state or federal laws which would prevent the Expert from entering into this agreement.

**VIII.**

It is agreed and understood that the Expert acts in the capacity of an independent contractor under this Agreement. Expert will indemnify and hold the State harmless from and against all claims arising out of Expert's performance including, but not limited to, the use of automobiles and/or other means of

transportation.

## IX.

The dispute resolution process provided in chapter 2260 of the Texas Government Code must be used by the Board and Expert to attempt to resolve all disputes arising under this Agreement.

## X.

In accordance with Section 403.055(h) of the Texas Government Code, the Expert agrees that any payments due to the Expert under this contract will be first applied toward any debt and/or back taxes the Expert owes the State of Texas. Payments will be so applied until such debts and taxes are paid in full. This clause does not apply if federal law requires payment to be made to the Expert for the services, and may not apply if federal law conditions the receipt of the money for this service to the State on the basis of payment being made to the Expert.

## XI.

It is agreed and understood that the Agreement may be amended only upon written agreement between the Board and Expert, but in no case will the Agreement be amended so as to make it conflict with the laws of the State of Texas.

## XII.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought for any breach of the Agreement is fixed in any court of competent jurisdiction in Travis County, Texas, and all payments shall be due and payable in Travis County, Texas.

## XIII.

The Expert agrees to keep confidential and privileged and protected from disclosure to all others, except to the limited extent of prior written consent of the Board or written order of the court in a lawsuit, and will not share any such information to the detriment of the Board or any officer of agency of the State of Texas: (1) all communications between the Expert and the Board; (2) all information that may identify or tend to identify any victim or recipient of victim services. No information in whatever form prepared by the Expert for the Board pursuant to this Agreement shall be disclosed by the Expert without the prior written approval of the Board or as required in giving testimony either by deposition and/or live testimony at hearing. All files, records, reports, data, and other documents obtained, used, prepared, or otherwise developed by the Expert in the performance of the scope of work authorized by this Agreement shall be the property of the Board, and shall be delivered to the Board within ten (10) business days upon written request of the Board.

**This agreement is full and complete on its face, has been read by all parties, and no terms or conditions exist outside those acknowledged and accepted herein by the parties whose signatures**

**appear below.**

For the faithful performance of the terms of this agreement, the parties hereto execute this agreement in their respective capabilities on the dates indicated.

TEXAS BOARD OF NURSING

By: _____

Katherine A. Thomas, MN, RN, FAAN
Executive Director for the
Texas Board of Nursing
333 Guadalupe Street
Suite 3-460
Austin, TX 78701
P: (512) 305-6811
F: (512) 305-8101

Date: 11/16/15

EXPERT

By: _____

Date: 11/13/15