STATE OF TEXAS §
§
COUNTY OF TRAVIS §

EXPERT WITNESS AGREEMENT
Between
TEXAS BOARD OF NURSING
And

The Texas Board of Nursing, hereinafter referred to as the "Board", and hereinafter referred to as the Witness, hereby make and enter into this agreement for the mutual consideration set forth below as provided for in Tex. Gov't. Code § 2151.005.

I.

The Witness agrees to provide to the Board expert consulting services and testimony in various disciplinary proceedings brought pursuant to TEX. OCC. CODE §301.452. The Witness 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 Witness, if the Witness is unavailable, unable, or unwilling to perform the service requested.

II.

All information prepared by Witness 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. The Witness agrees to keep all information to which it is privy under this agreement confidential, privileged and protected from disclosure without the prior consent of the agency. The Witness will indemnify and hold harmless the State of Texas, its officers and employees, and the Board, its officers and employees for any claims or damages that arise from the disclosure by the Witness of information held by the Board. Further, any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by the Witness in the performance of its obligations under this agreement shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Witness upon completion, termination, or cancellation of this agreement. The Witness may, at his or her own expense, keep copies of all its writings for its personal files. The Witness shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Witness's obligations under this agreement without the prior written consent of the Board.

III.

The Witness's payment structure shall be as follows:

Hourly Rate for Pre-Trial Services. The hourly rate for the Witness'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 Witness's services shall be one hundred and twenty-five dollars ($125.00) per hour for deposition and hearing testimony. All time that the Witness

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 the 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.

The Witness 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 the Witness 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 for this biennium.

IV.

Payment will be made within thirty (30) days of services rendered and after Witness 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 offer of this Agreement is an official act of the Board, or its designee, the Executive Director, who has been empowered and authorized to act on behalf of the Board in respect to this agreement.

VI.

The term of this agreement shall become effective upon the signature of the Executive Director of the Board 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 (30) days notice in writing to the other party whereupon this agreement will be canceled upon the expiration of the thirty (30) 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 on August 31, 2016.

VII.

The Witness 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. This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, legislative budget cuts, amendment of the Appropriations Act, state agency consolidations, or any other disruption of current appropriations, the contract shall be terminated.

VIII.

The Witness warrants that, to the best of his/her knowledge, there are no state or federal laws which would prevent him/her from entering into this agreement. The Witness represents and warrants that Witness has not violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or federal antitrust laws.

IX.

The Witness acts in the capacity of an independent contractor under this Agreement. The Witness will indemnify and hold the Board harmless from and against all claims arising out of The Witness's performance including, but not limited to, the use of automobiles and/or other means of transportation.

X.

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

XI.

In accordance with Section 403.055(h) of the Texas Government Code, the Witness agrees that any payments due to the Witness under this contract will be first applied toward any debt and/or back taxes the Witness 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 Witness 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 Witness.

XII.

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

XIII.

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.

XIV.

The Witness understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The Witness further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The Witness will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it awards, should subcontracting be

authorized. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Witness relating to this contract.

XV.

Pursuant to Tex. Gov't Code § 2155.441, the Witness represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

XVI.

Neither Witness nor the Board shall be liable to the other for any delay in, or failure of performance caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

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. The Witness may not assign any of its rights or delegate any of its obligations under this agreement. Any assignment or delegation attempted by the Witness in violation of this clause will be void and ineffective for all purposes

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
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Date: 3/24/16

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