STATE OF TEXAS §
§
COUNTY OF TRAVIS §

AGREEMENT BETWEEN
THE TEXAS BOARD OF NURSING
AND

This agreement for expert witness services (the "Contract") is entered into by and between the Texas Board of Nursing (the "Board" or "BON") and the "Contractor" or "Expert") pursuant to the authority granted and in accordance with the provisions of Section 2151.005 of the Texas Government Code (Exemptions Related to Legal Services). For purposes of this Contract, the Board and the Contractor are sometimes collectively referred to as the "Parties" or individually as a "Party." This Contract supersedes any prior written agreement between the Parties.

1 Services to be Performed; Contractor's Responsibilities

1.1 Expert Consulting Services and Testimony. The Contractor agrees to provide to the Board expert consulting services and testimony in various disciplinary proceedings brought pursuant to Texas Occupations Code Chapter 301. The Contractor will provide such services to the extent specifically requested by the Board on an as needed basis.

1.2 No provision of this Contract shall be construed as mandating performance under this Contract by the Contractor if the Contractor is unavailable, unable, or unwilling to perform the service requested.

1.3 Confidentiality; Property Rights; and the Texas Public Information Act.

a) For purposes of this Contract, the term "Work" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the Contract. All information prepared by Contractor 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 Contractor agrees to keep all information to which it is privy under this Contract confidential, privileged, and protected from disclosure, unless the Contractor obtains the prior written consent of the Board. Further, any software, research, reports, studies, data, photographs, negatives, or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this Contract.

b) Contractor agrees to keep all information to which it is privy under this Contract confidential, privileged, and protected from disclosure, unless the Contractor obtains the prior written consent of the Board. Contractor 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 Contractor or its subcontractors of information held by the Board. Further, any software, research, reports, studies, data, photographs, negatives, or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this Contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of the Board.

c) Contractor understands that the Board will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

2 Payment Structure; Payment Cap

2.1 Payment Structure. The Contractor's payment structure shall be as follows:

a) For purposes of this Contract, **"per case"** refers to each disciplinary proceeding or contested case proceeding brought against an individual for alleged violations of the Nursing Practice Act. Most cases are distinguished by individual Respondent or State Office of Administrative Hearings ("SOAH") docketing number.

b) **Records Review and Expert Report Hourly Rate.** The hourly rate for the Expert's services shall be three hundred dollars ($300.00) per hour for records review and preparation of an expert report, per case.

c) **Fixed Fee for Deposition Preparation** shall be one thousand dollars ($1,000.00) per case. This will include review of the file in preparation for the deposition and any conference/s in person,

by phone, or via video teleconference with Board Staff in preparation of giving deposition testimony. This fee shall also include the Expert's review of Expert's own deposition transcript following a deposition.

d) **Hourly Rate for Deposition Testimony**. The hourly rate for the Expert's services shall be three hundred dollars ($300.00) per hour for deposition testimony in Expert's local area or via virtual media , per case.

e) **Fixed Fee for Trial, Hearing, or Mediation Preparation Services** shall be one thousand dollars ($1,000.00) per case. This fixed fee will include review of the file in preparation for testifying and any conference/s in person, by phone, or via video teleconference with Board Staff in preparation for trial, hearing, or mediation testimony at the State Office of Administrative Hearings.

f) **Fixed Fee for Review of Depositions and Expert Reports.** Expert shall be paid a fixed fee of five hundred dollars ($500.00) per expert report and/or deposition reviewed (up to 20 pages) and one thousand dollars ($1,000.00) per expert report and/or deposition reviewed (21 pages or longer) per case. This excludes the Expert's review of its own deposition transcript following a deposition.

g) **Fixed Fee for Trial, Hearing, or Mediation Testimony**. Expert shall be paid a fixed fee of one thousand dollars ($1,000.00) per day for live trial, hearing, or mediation testimony,either in person, by phone, or via video teleconference, at the State Office of Administrative Hearings, per case. Expert shall be paid a fixed fee of two hundred fifty dollars ($250.00) per day for any day the Expert is scheduled to be available, either in person or telephonically, but is not present physically or via virtual appearance at the trial, hearing, or mediation, and is not called to provide trial, hearing, or mediation testimony.

h) **Fixed Formal Hearing, Trial, or Mediation Cancellation Fee for In-Person Testimony.**

i. Should a scheduled Formal Hearing, Trial, or Mediation before the State Office of Administrative Hearings be cancelled or continued, less than **seven (7)** calendar days prior to the date of the hearing, trial, or mediation, Expert shall be paid a fixed fee of seven hundred dollars ($700.00) for each scheduled day of in-person testimony and/or in-person availability at the State Office of Administrative Hearings, not to exceed three (3) days or two thousand one hundred dollars ($2,100.00).

ii. Should a scheduled Formal Hearing, Trial, or Mediation before the State Office of Administrative Hearings be cancelled or continued, less than **fourteen (14)** calendar days prior to the date of the hearing, trial, or mediation, Expert shall be paid a fixed fee

of four hundred dollars ($400.00) for each scheduled day of in-person testimony and/or in-person availability at the State Office of Administrative Hearings, not to exceed three (3) days or one thousand two hundred dollars ($1,200.00). Each day Expert receives the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee, for cancelled or continued hearings, trials, or mediations less than fourteen (14) calendar days prior to the date of the hearing, trial, or mediation, Expert will remain available for any Board of Nursing litigation service, including, but not limited to: rescheduled formal hearings, trials, or mediations, depositions, and hearing, trial, or mediation preparation. Any and all substitute litigation services under this subparagraph must be scheduled no later than fourteen (14) calendar days prior to the date of the substitute litigation service. Further, Expert will be paid, per day of service, for any and all substitute litigation services in accordance with the terms of this expert witness agreement, only if the amount of payment exceeds the applicable Fixed Formal Hearing, Trial, or Mediation Cancellation Fee described in this subparagraph. If the amount of payment for the substitute legal service, per this expert witness agreement, does not equal or exceed the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee, Expert will receive the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee described in this subparagraph.

iii. Should a scheduled Formal Hearing, Trial, or Mediation before the State Office of Administrative Hearings be cancelled or continued, less than **twenty-one (21)** calendar days prior to the date of the hearing, trial, or mediation, Expert shall be paid a fixed fee of two hundred dollars ($200.00) for each scheduled day of in-person testimony and/or in-person availability at the State Office of Administrative Hearings, not to exceed three (3) days or six hundred dollars ($600.00). Each day Expert receives the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee, for cancelled or continued hearings, trials, or mediations less than twenty-one (21) calendar days prior to the date of the hearing, trial, or mediation, Expert will remain available for any Board of Nursing litigation service, including, but not limited to: rescheduled formal hearings, trials, or mediations, depositions, and hearing, trial, or mediation preparation. Any and all substitute litigation services under this subparagraph must be scheduled no later than fourteen (14) calendar days prior to the date of the substitute litigation service. Further, Expert will be paid, per day of service, for any and all substitute litigation services in accordance with the terms of this expert witness agreement, only if the amount of payment exceeds the applicable Fixed Formal Hearing, Trial, or Mediation Cancellation Fee described in this subparagraph. If the amount of payment for the substitute legal service, per this expert witness agreement, does not equal or exceed the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee, Expert will receive the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee described in this subparagraph.

i) **Fixed Formal Hearing, Trial, or Mediation Cancellation Fee for Testimony by Phone or via Video Teleconference.**

i. Should a scheduled Formal Hearing, Trial, or Mediation before the State Office of Administrative Hearings be cancelled or continued, less than **seven (7)** calendar days prior to the date of the hearing, trial, or mediation, Expert shall be paid a fixed fee of three hundred fifty dollars ($350.00) for each scheduled day of testimony by phone or via video teleconference at the State Office of Administrative Hearings, not to exceed three (3) days or one thousand fifty dollars ($1,050.00).

ii. Should a scheduled Formal Hearing, Trial, or Mediation before the State Office of Administrative Hearings be cancelled or continued, less than **fourteen (14)** calendar days prior to the date of the hearing, trial, or mediation, Expert shall be paid a fixed fee of two hundred dollars ($200.00) for each scheduled day of testimony by phone or via video teleconference at the State Office of Administrative Hearings, not to exceed three (3) days or six hundred dollars ($600.00). Each day Expert receives the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee, for cancelled or continued hearings, trials, or mediations less than fourteen (14) calendar days prior to the date of the hearing, trial, or mediation, Expert will remain available for any Board of Nursing litigation service, including, but not limited to: rescheduled formal hearings, trials, or mediations, depositions, and hearing, trial, or mediation preparation. Any and all substitute litigation services under this subparagraph must be scheduled no later than fourteen (14) calendar days prior to the date of the substitute litigation service. Further, Expert will be paid, per day of service, for any and all substitute litigation services in accordance with the terms of this expert witness agreement, only if the amount of payment exceeds the applicable Fixed Formal Hearing, Trial, or Mediation Cancellation Fee described in this subparagraph. If the amount of payment for the substitute legal service, per this expert witness agreement, does not equal or exceed the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee, Expert will receive the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee described in this subparagraph.

iii. Should a scheduled Formal Hearing, Trial, or Mediation before the State Office of Administrative Hearings be cancelled or continued, less than **twenty-one (21)** calendar days prior to the date of the hearing, trial, or mediation, Expert shall be paid a fixed fee of one hundred dollars ($100.00) for each scheduled day of testimony by phone or via video teleconference at the State Office of Administrative Hearings, not to exceed three (3) days or three hundred dollars ($300.00). Each day Expert receives the Fixed Formal Hearing/Trial Cancellation Fee, for cancelled or continued hearings, trials, or

mediations less than twenty-one (21) calendar days prior to the date of the hearing, trial, or mediation, Expert will remain available for any Board of Nursing litigation service, including, but not limited to: rescheduled formal hearings, trials, or mediations, depositions, and hearing, trial, mediation preparation. Any and all substitute litigation services under this subparagraph must be scheduled no later than fourteen (14) calendar days prior to the date of the substitute litigation service. Further, Expert will be paid, per day of service, for any and all substitute litigation services in accordance with the terms of this expert witness agreement, only if the amount of payment exceeds the applicable Fixed Formal Hearing, Trial, or Mediation Cancellation Fee described in this subparagraph. If the amount of payment for the substitute legal service, per this expert witness agreement, does not equal or exceed the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee, Expert will receive the Fixed Formal Hearing, Trial, or Mediation Cancellation Fee described in this subparagraph.

j) **Travel 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. Reimbursement for travel shall not include travel time, including time spent traveling to and from the hearing.

2.2 Contract Amount. The Board agrees to pay the Expert up to fifty thousand dollars ($50,000.00) for the total term of this Contract, unless specifically approved in writing by the Executive Director of the Board.

2.3 Payment for Services. The Contractor agrees to maintain documentation and receipts related to its performance under this Contract. The Parties stipulate and agree that the total amount due to the Contractor for all services performed under this Contract, including travel expenses, shall be the amount set forth in this Contract. Payment will be made within thirty (30) days from receipt of a correct invoice or billing statement describing the work completed (the "Invoice").

1. The Invoice must include:
    a. The Contractor's mailing address;
    b. The Contractor's telephone number and e-mail address;
    c. The name and telephone number of a person designated by the Contractor to answer questions regarding the Invoice;
    d. The Board's name, agency number, and delivery address;
    e. The Board's purchase order number, if applicable;
    f. A reference to this Contract;

g. The Contract number or other reference number, if applicable;
h. A valid Texas identification number ("TIN") issued by the CPA;
i. Invoice Date;
j. Date(s) of service(s);
k. A description of the goods or services, in sufficient detail to identify the order which relates to the Invoice;
l. Unit numbers corresponding to the amount of the Invoice; and
m. Other relevant information supporting and explaining the payment requested.

2. The Invoice must be submitted to:

Texas Board of Nursing
ATTN: Dusty Johnston, General Counsel
1801 Congress Ave., Suite 10-200
Austin, Texas 78701; and
507accting@bon.texas.gov

2.4 No Quantity Guarantees. The Board makes no express or implied warranty that any minimum compensation or minimum quantity will be guaranteed under this Contract.

2.5 Non-Appropriation of Funds; Legislative Action. The Contractor acknowledges that the ability of the Board to make payments under this Contract is contingent upon the continued availability of funds. The Contractor further acknowledges that funds may not be specifically appropriated for the Contract and the Board's continual ability to make payments under the Contract is contingent upon the funding levels appropriated to the Board. The Board will use all reasonable efforts to ensure that such funds are available. The Contractor agrees that if future levels of funding for the Board are not sufficient to continue operations without any operational reductions, the Board, in its discretion, may terminate the Contract or a pending order under the Contract, either in whole or in part. In the event of such termination, the Board will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination. The Board shall make best efforts to provide reasonable written advance notice to the Contractor of any such Contract or order termination. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination, either on the particular order if an order is being terminated, or the Contract, if the Contract is being terminated. The Board shall be liable for payments limited only to the portion of work the Board authorized in writing and which the Contractor has completed, delivered to the Board, and which has been accepted by the Board. All such work shall have been completed, per the Contract requirements, prior to the effective date of termination.

2.6 Refund. The Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by the Board, which are not expressly authorized under the Contract.

3 Term; Termination

3.1 Term. This Contract shall be effective upon the signature of the Executive Director of the Board and shall terminate on August 31, 2025.

3.2 Termination for Cause. If the Contractor fails to provide the goods or services contracted for according to the provisions of this Contract, or fails to comply with any terms or conditions of this Contract, the Board may, upon written notice of default to the Contractor, immediately terminate all or any part of this Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under this Contract. The Board may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of this Contract. The exercise of any of the foregoing remedies will not constitute a termination of this Contract unless the Board notifies the Contractor in writing prior to the exercise of such remedy. The Contractor shall be liable for all costs and expenses, including court costs, incurred by the Board with respect to the enforcement of any of the remedies listed herein.

3.3 Termination for Convenience. Either Party may terminate this Contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice. In the event of such a termination, Expert must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Board shall be liable for payments limited only to the portion of work the Board authorized in writing and which Expert has completed, delivered to the Board, and which has been accepted by the Board. All such work shall have been completed, in accordance with Contract requirements, prior to the effective date of termination. The Board shall have no other liability, including no liability for any costs associated with the termination.

3.4 Contractor's Continued Performance. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by the Texas Board of Nursing, Contractor must continue performance and will not be excused from performance during the period any breach of contract claim, dispute or mediation is pending under either of the above processes. However, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Section 2251.051 of the Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

4 Signatories

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their undersigned, duly authorized representatives. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the Parties.

This Contract, along with Addendum A – Texas Board of Nursing Terms and Conditions, 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. Addendum A – Texas Board of Nursing Terms and Conditions is incorporated herein as part of this Contract for all purposes and Contractor agrees to comply with these terms. It is agreed and understood that the Contract may be amended only upon written agreement between the Board and Contractor, but in no case will the Contract be amended so as to make it conflict with the laws of the State of Texas.

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

TEXAS BOARD OF NURSING

By Kristin K. Benton, DNP, RN

Kristin K. Benton, DNP, RN
Executive Director
1801 Congress Ave., Suite 10-200
Austin, TX 78701

Date 11-28-23

CONTRACTOR

By _____

Date 11-10-2023