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") 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."

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 Section 301.452 of the Texas Occupations Code. 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.

1. 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.
2. 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.

3. 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 and Payment Cap

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

1. 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.
2. **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.
3. **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 or by phone with Board Staff in preparation of giving deposition testimony. This fee shall also include the Expert's review of his own deposition transcript following a deposition.
4. **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 per case.
5. **Fixed Fee for Trial Preparation** shall be one thousand dollars ($1,000.00) per case. This will include review of the file in preparation for testifying and any conference/s in person or by phone with Board Staff in preparation for trial testimony at the State Office of Administrative Hearings.
6. **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 his own deposition transcript following a deposition.
7. **Fixed Fee for Trial Testimony**. Expert shall be paid a fixed fee of one thousand dollars ($1,000.00) per day for live hearing trial testimony (either in person or by phone) 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 physically present at the hearing/trial, and is not called to provide hearing/trial testimony.
8. **Fixed Formal Hearing/Trial Cancellation Fee.**
    i. Should a scheduled Formal Hearing/Trial 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, 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 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, 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 Cancellation Fee, for cancelled or continued hearings/trials less than fourteen (14) calendar days prior to the date of the hearing/trial, Expert will remain available for any Board of Nursing litigation service, including, but not limited to: rescheduled formal hearings/trials, depositions, and hearing/trial 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 Cancellation Fee. 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 Cancellation Fee, Expert will receive the Fixed Formal Hearing/Trial Cancellation Fee.

iii. Should a scheduled Formal Hearing/Trial 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, 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 Cancellation Fee, for cancelled or continued hearings/trials less than twenty-one (21) calendar days prior to the date of the hearing/trial, Expert will remain available for any Board of Nursing litigation service, including, but not limited to: rescheduled formal hearings/trials, depositions, and hearing/trial 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 Cancellation Fee. 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 Cancellation Fee, Expert will receive the Fixed Formal Hearing/Trial Cancellation Fee.

9. **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.

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
    333 Guadalupe St., Suite 3-460
    Austin, Texas 78701; and
    507acctng@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 will terminate on August 31, 2020.

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.

The Board reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice, if the Board determines that such termination is in the best interest of the State. In the event of such a termination, the Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. The Board shall be liable only to the portion of work the Board authorized in writing and which Contractor 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 General

4.1 Disaster Recovery Plan.

In accordance with 13 Texas Administrative Code § 6.94(a)(9), relating to third-party custodians of records, the Contractor shall provide to the Board the descriptions of its business continuity and disaster recovery plans in regards to the Board's vital state records.

4.2 Dispute Resolution.

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under this Contract. If the Contractor's claim for breach of contract cannot be resolved informally with the Board, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice to the Board, as required by Chapter 2260. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under Section 2260.051 of the Texas Government Code. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by the OAG if the parties are unable to resolve their disputes as described above.

Notwithstanding any other provision of this Contract to the contrary, unless otherwise requested or approved in writing by the Board, the Contractor shall continue performance and shall not be excused from performance during the period any breach of contract claim or while the dispute is pending. However, the Contractor may suspend performance during the pendency of such claim or dispute if the 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.

4.3 Excess Obligations Prohibited; 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.

4.4 Governing Law and Venue.

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the Board.

4.5 Indemnification.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND THE BOARD, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND THE BOARD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

4.6 Texas Public Information Act.

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.

4.7 State Auditor's Right to Audit.

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds directly under this Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The Contractor will ensure that this Section concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate

is included in any subcontract it awards, should subcontracting be authorized. The Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. 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 Contractor relating to this Contract.

4.8 Technology Access Clause.

Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to the Board that the technology provided to the Board for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- providing equivalent access for effective use by both visual and non-visual means;
- presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
- being integrated into networks for obtaining, retrieving, and disseminating information used
- by individuals who are not blind or visually impaired.

For purposes of this Section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans With Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

In accordance with Section 2157.005 of the Texas Government Code, the Technology Access Clause contract provision remains in effect for any contract entered into before September 1, 2006.

4.9 Terms and Conditions Attached to Response.

Any terms and conditions attached to Contractor's Response will not be considered unless specifically referred to in the Response.

4.10 Agency's Right to Audit.

Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by the Board and the State of Texas.

4.11 Assignment.

Neither Party may assign this Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, this Contract without the prior written consent of the other Party, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void. Notwithstanding the foregoing, upon prior written notification to the other Party, either Party may assign this Contract or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, this Contract without such prior written consent to: (1) a successor in interest (for the

Board, another state agency as designated by the Texas Legislature) or (2) a subsidiary, parent company, or other entity in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

4.12 Binding Effect.
This Contract shall be binding upon and shall inure to the benefit of the Board and Contractor and to their representatives, successors, and assigns.

4.13 Change in Law and Compliance with Laws.
Contractor shall comply with all laws, regulations, requirements and guidelines applicable to a vendor providing services and products required by the Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Contract. The Board reserves the right, in its sole discretion, to unilaterally amend the Contract prior to award and throughout the term of the Contract to incorporate any modifications necessary for the Board's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

4.14 Damage to Government Property.
In the event of loss, destruction or damage to any Board or State of Texas property by Contractor or Contractor's employees, agents, subcontractors, and suppliers, Contractor shall be liable to the Board and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property. Contractor will reimburse the Board and the State of Texas for such property damage within ten (10) calendar days after Contractor's receipt of the Board's notice of amount due.

4.15 Discounts.
If Contractor at any time during the term of the Contract provides a discount on the final contract costs, Contractor will notify the Board in writing ten (10) calendar days prior to the effective date of the discount. The Board will generate a Purchase Order Change Notice and send a revised Purchase Order to the Contractor.

4.16 Electrical Items.
All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

4.17 Force Majeure.
Neither Contractor nor the Board shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract 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.

4.18 Independent Contractor.

The Contractor 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 Contract. Furthermore, the Contractor is not eligible for any fringe benefits due to state employees. Contractor and Contractor's employees, representatives, agents, subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services under this Contract. Neither the Board nor Contractor is an agent of the other and neither may make any commitments on the other party's behalf. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the Board is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with this Contract. Contractor shall have no claim against the Board for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. This Contract shall not create any joint venture, partnership, agency, or employment relationship between Contractor and the Board.

4.19 License Grant.

Contractor hereby grants to the Board a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Contractor; and (b) to sublicense any or all such rights to third parties.

4.20 Limitation on Authority.

Contractor shall have no authority to act for or on behalf of the Board or the State of Texas except as expressly provided for in this Contract. No other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of the Board or the State of Texas.

4.21 No Implied Waiver.

No provision of the Contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Board as an agency of the State of Texas or otherwise available to the Board. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to the Board by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

4.22 No Third-Party Beneficiaries.

The Contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

4.23 Property Rights.

For purposes of the 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. The Board and the Contractor intend this

agreement to be a Contract for services and each considers the Work and any and all documentation or other products and results of the services to be rendered by Contractor to be a work made for hire. Contractor and Contractor's employees will have no rights in or ownership of the Work and any and all documentation or other products and results of the services or any other property of the Board.

Contractor acknowledges and agrees that the Work (and all rights therein) belongs to and shall be the sole and exclusive property of the Board. If for any reason the Work would not be considered a work-for-hire under applicable law, Contractor does hereby sell, assign, and transfer to the Board, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights, as the Board may deem necessary to secure for the Board or its designee the rights herein assigned.

In the event that Contractor has any rights in and to the Work that cannot be assigned to the Board, Contractor hereby grants to the Board an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, such rights to make, have made, use, sell and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the contract or upon the Board's request, Contractor shall deliver to the Board all completed, or partially completed, Work and any and all documentation or other products and results of the services. Failure to timely deliver such Work or any and all documentation or other products and results of the services will be considered a material breach of the Contract. Contractor will 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 the Board.

4.24 Records Retention.

Contractor shall maintain and retain all records relating to the performance of this Contract, including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the Contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

4.25 Secure Erasure of Hard Disk Capability.

All equipment provided to the Board by Contractor that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

4.26 Severability.

If any provision of the Contract is construed to be illegal, invalid or unenforceable, such construction will not affect the legality, validity or enforceability of any of its other provisions. It is the intent and agreement

of the parties to this Contract that that this Contract shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

4.27 Sovereign Immunity.
The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the Board or the State of Texas of any immunities from suit or from liability that the Board or the State of Texas may have by operation of law.

4.28 Subcontractors.
Contractor may not subcontract any or all of the work and/or obligations due under this Contract without prior written approval of the Board. Subcontracts, if any, entered into by the Contractor shall be in writing and be subject to the requirements of this Contract. Should Contractor subcontract any of the services required in this Contract, Contactor expressly understands and acknowledges that in entering into such subcontract(s), the Board is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with this Contract.

4.29 Survival.
Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

4.30 Taxes.
Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. The Board will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. The Board shall not be liable for any taxes resulting from the Contract.

4.31 Use of State Property.
Contractor is prohibited from using State Property for any purpose other than performing the services authorized under the Contract. State Property includes, but is not limited to, the Board's office space, identification badges, Board information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any Board-issued software, and the Board's Virtual Private Network (VPN client)), and any other resources of the Board. Contractor shall not remove State Property from the continental United States. In addition, Contractor may not use any computing device to access the Board's network or e-mail while outside of the continental United States. Contractor shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor shall be responsible for (i) all repair and replacement charges incurred by the Board that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor shall fully reimburse such

charges to the Board within ten (10) calendar days of Contractor's receipt of the Board's notice of amount due. Use of State Property for a purpose not authorized by the Contract shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to the Board under the Contract, at law, or in equity.

4.32 Waiver of Consequential Damages.

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OF THIS CONTRACT.

4.33 Vendor Performance Tracking System.

Contractor understands that the Board is required to report vendor performance through the Vendor Performance Tracking System ("VPTS") on every purchase over $25,000 in the manner prescribed by the Comptroller. The Board, at its discretion, may also report vendor performance on purchases under $25,000.

4.34 Amending the Contract.

All alterations, additions, or deletions of the Contract must be in writing and mutually agreed upon by both Parties and put into effect with a Contract Amendment issued by the Texas Board of Nursing. Contractor will not be entitled to payment for any additional services, work, or products that are not authorized by a properly executed Contract amendment.

4.35 Headings.

The headings contained in this Contract are for reference purposes only and shall not in any way affect the meaning or interpretation of the Contract.

5 Certifications

5.1 Antitrust Affirmation.

Contractor represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Contractor nor the firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such a firm, corporation or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of its Response to any competitor or any other person engaged in the same line of business as Contractor.

5.2 Buy Texas Affirmation.

In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of this Contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this State.

5.3 Child Support Obligation Affirmation.

Under Section 231.006 of the Family Code, the Contractor certifies that the individual or business entity named in this Contract 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.

5.4 Computer Equipment Recycling Program.
Contractor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 Texas Administrative Code Chapter 328.

5.5 Dealings with Public Servants Affirmation.
Pursuant to Section 2155.003 of the Texas Government Code, Contractor represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.

5.6 Debts and Delinquencies Affirmation.
Contractor agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed to the State of Texas. In accordance with Section 403.0551 Texas Government Code, the Contractor acknowledges that any payments due to the Contractor under this Contract will be first applied toward any debt and/or back taxes the Contractor owes the State of Texas. Payments will be so applied until such debts and taxes are paid in full. This Section does not apply if federal law requires payment to be made to the Contractor for the services and may not apply if federal law conditions the receipt of the money for this service to the State or the basis of payment being made to the Contractor.

5.7 Disclosure of Prior State Employment.
In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by the Board or another agency at any time during the two years preceding this Contract or, in the alternative, Contractor has disclosed to the Board the following: (i) the nature of the previous employment with the Board or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

5.8 Entities that Boycott Israel.
In accordance with Section 2270.002 of the Texas Government Code, Contractor hereby represents and warrants that it does not, and shall not for the duration of this Contract, boycott Israel as the term is defined by Section 808.001(1) of the Texas Government Code.

5.9 E-Verify Program.
Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- All persons employed by Contractor to perform duties within Texas; and
- All persons, including subcontractors, assigned by Contractor to perform work pursuant to the Contract within the United States of America.

5.10 Excluded Parties.
Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

5.11 Executive Head of a State Agency Affirmation.
In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of the Board, (2)

a person who at any time during the four years before the date of the Contract was the executive head of the Board, or (3) a person who employs a current or former executive head of the Board.

5.12 False Statements.
Contractor represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making material misrepresentations to the Board during the performance of this Contract constitute a material breach of the Contract and may void the Contract.

5.13 Financial Participation Prohibited Affirmation.
Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

5.14 Foreign Terrorist Organizations.
Section 2252.152 of the Texas Government Code prohibits the Board from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Contractor certifies that it not ineligible to receive the Contract.

5.15 Former Agency Employees.
Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under this Contract, were former employees of the Board during the twelve (12) month period immediately prior to the date of execution of the Contract.

5.16 No Conflicts of Interest.
Contractor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

5.17 Prior Disaster Relief Contract Violation.
Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

5.18 Signature Authority.
The undersigned certifies that he or she is authorized to execute a contract as an authorized representative of the Contractor.

5.19 Suspension and Debarment.
Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.

5.20 Television Equipment Recycling Program.
Contractor certifies its compliance Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

5.21 Texas Bidder Affirmation.
Contractor certifies that if a Texas address is shown as the address of the Contractor on its Response, Contractor qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

5.22 Americans with Disabilities Act.
Contractor represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA) and its implementing regulations, as each may be amended.

5.23 Disclosure of Interested Parties.
Contractor represents and warrants that if selected for award of a Contract as a result of the solicitation, Contractor will submit to the Board a Certificate of Interested Parties prior to contract execution in accordance with Section 2252.908 of the Texas Government Code.

5.24 Drug-Free Workplace.
Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 *et seq.*) and maintain a drug-free work environment.

5.25 Equal Employment Opportunity.
Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

5.26 Federal Occupational Safety and Health Law.
Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

5.27 Immigration.
Contractor represents and warrants that it shall comply with the requirements of the Immigration and Nationality Act (8 U.S.C.§ 1101 et seq.) and all subsequent immigration laws and amendments.

5.28 Legal and Regulatory Actions.
Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Contractor's Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to the Board's consideration of the Response.

If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to the Board's consideration of the Response. In addition, Contractor represents and warrants that it shall notify the Board in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update the Board shall constitute breach of contract and may result in immediate termination of the contract.

5.29 Lobbying Prohibition.
Contractor represents and warrants that the Board's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

5.30 No Felony Criminal Convictions.
Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised the Board of the facts and circumstances surrounding the convictions.

5.31 Permits, Certifications, and Licenses.
Contractor represents and warrants that it has determined what licenses, certifications and permits are required under the Contract and has acquired all applicable licenses, certifications, and permits.

5.32 Restricted Employment for Certain State Personnel.
Pursuant to Section 572.069 of the Texas Government Code, Contractor certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the Board involving Contractor within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

5.33 Unfair Business Practices.
Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit, and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations, or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

[Remainder of page left intentionally blank]

6 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 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. 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 _____

Katherine Thomas, MN, RN, FAAN
Executive Director
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, TX 78701

Date 8/14/19

CONTRACTOR

Date 8/15/19