

STATE OF TEXAS

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COUNTY OF TRAVIS

AGREEMENT
Between
TEXAS BOARD OF NURSING
And
BEVERLY SKLOSS, MSN, RN

The Texas Board of Nursing, hereinafter referred to as the "Board", and Beverly Skloss, MSN, RN, hereinafter referred to as the Contractor, hereby make and enter into this agreement for the mutual consideration set forth below.

Authority for Agreement. This agreement is entered into pursuant to Tex. Gov't. Code Chapter 2254.

Contractor Responsibilities. Contractor agrees to provide nursing education survey services and additional projects pertaining to nursing education programs as assigned during the fiscal year 2017. It is not expected that the contracted program evaluator will engage in decision-making related to the approval status of any nursing programs but will gather information and data from programs to determine areas of noncompliance. Board Staff will provide guidelines for preparation for the survey visit, for conducting the survey visit, and documenting the findings in a Board report. Board Staff are available for assistance and reserve the right to revise and edit the reports before they are presented to the Board. Reports shall be submitted to Board Staff for a survey visit before the program evaluator conducts the next survey visit.

Payment Structure and Payment Cap.

The Board agrees to pay Contractor up to \$13,999.99 for services under this agreement. This contract shall not exceed \$13,999.99. The Contractor will be compensated as follows:

- \$80.00 per hour for conducting on-site visits of Texas nursing education programs and for any approved time spent in consultation with Board Staff;
- \$60.00 per hour in preparation for a survey visit and in writing a report, not to exceed four (4) hours per survey visit; and
- \$60.00 per hour for work related to additional assigned projects pertaining to nursing education programs.

Contractor shall be paid at state reimbursement rates for travel to and from survey visits, including airfare, hotel, car rental, taxi fare. Contractor shall be reimbursed at the State of Texas rate for automobile mileage to and from nursing education programs. Additionally, Contractor shall be paid \$35.00 per hour for travel time to nursing education programs, beginning from and ending at Contractor's home address. Payment will be made within thirty (30) days from receipt of a correct invoice or billing statement describing the work completed. The invoice must identify a description of the services provided and expenses incurred, if any. Expenses are to be itemized and copies of all available receipts must be

provided prior to payment. The invoice must be submitted to: Texas Board of Nursing, 333 Guadalupe St., Suite 3-460, Austin, TX 78701. Payment will be made in accordance with the Texas Prompt Payment law, Texas Government Code, Subtitle F, Chapter 2251. 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.

The parties further acknowledge and agree that nothing in this contract will be interpreted to create an obligation or liability in excess of the funds currently appropriated to the Board during this biennium.

Limitation on Payment. In accordance with Tex. Gov't Code § 403.055(h), the Contractor agrees that any payments due to the Contractor under this agreement 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 clause 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.

Term and Termination of Agreement. The term of this agreement shall be effective upon the signature of the Executive Director of the Board. The agreement shall terminate on August 31, 2017. This agreement may be terminated unilaterally by either party after providing the other party 30 days written notice. Upon mutual agreement of the parties, this agreement may be extended for up to one year on August 31, 2017.

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

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

Dispute Resolution and Venue. The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by the Board and the Contractor to resolve any dispute arising under the contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Contractor under the Contract. If the Contractor's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee and to the Board's General Counsel. 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 Board if the parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the contract by the Board nor any other conduct of any representative of the Board relating to the contract shall be considered a waiver of sovereign immunity to suit. For all other specific breach of contract claims or disputes under the contract, the Board and the Contractor shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the Board and the Contractor within fifteen (15) days after written notice by one them demanding mediation under this section. The Contractor shall pay all costs of the mediation unless the Board in its sole good faith discretion, approves its payment of all or part of such costs. By mutual contract, the Board and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this section is to reasonably ensure that the Board and the Contractor shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The Board's participation in, or the results of, any mediation or other non-binding dispute resolution process under this section or the provisions of this section shall not be construed as a waiver by the Board of (1) any rights, privileges, defenses, remedies or immunities available to the Board as an agency of the State of Texas or otherwise available to the Board; (2) the Board termination rights; or (3) other termination provisions or expiration dates of the contract.

Notwithstanding any other provision of the 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 dispute is pending under either of the above processes; 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, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

The venue of any suit brought for any breach of the contract is fixed in any court of competent jurisdiction in Travis County, Texas, and all payments shall be due and payable in Travis County, Texas.

Default. If the Contractor fails to provide the goods or services contracted for according to the provisions of the contract, or fails to comply with any terms or conditions of the contract, the Board may, upon written notice of default to the Contractor immediately terminate all or any part of the 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 the 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 the contract. The exercise of any of the foregoing remedies will not constitute a termination of the 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.

In the event that the contract is terminated for any reason, or upon its expiration, the Board shall retain ownership of all associated work products and documentation obtained from the Contractor under the contract.

Further, if the Contractor defaults on the contract, the Board reserves the right to cancel the contract without notice. The defaulting Contractor will not be considered in future contracts for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

Independent Contractor Status. 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, and is, furthermore, not eligible for any fringe benefits due state employees. All obligations of the Board are subject to the availability of legislative appropriations. The Contractor acknowledges that the ability of the Board to make payments under the 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 Contractor 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.

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

Audit. The Contractor 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 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. The Contractor 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 Contractor relating to this contract.

Confidentiality and Intellectual Property. Contractor 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. 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 contractors 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 agreement 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 agreement. 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 agreement without the prior written consent of the Board. All electronic data stored or transmitted on or through any systems that are not completely inside of the Board's security network must be encrypted with a minimum of 128 bit encryption. Notwithstanding any provisions of this contract to the contrary, the Contractor understands that the Board will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. The Board agrees to notify the Contractor in writing within a reasonable time from receipt of a request for information related to the Contractor's work under this contract. The Contractor will cooperate with the Board in the production of documents responsive to the request. The Board will make a determination whether to submit a Public Information Act request to the Attorney General. The Contractor will notify the Board's General Counsel within twenty-four (24) hours of receipt of any third party requests for information. The Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in an electronic format, if practicable, that is accessible by the public, at no additional charge to the state. If this is not practicable, the Contractor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a paper format that is accessible by the public at no additional charge to the state.

Indemnification. The Contractor shall indemnify and hold harmless the State of Texas and customers, 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 the Contractor or its agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution or performance of the contract. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney

General. The Contractor and the Board agree to furnish timely written notice to each other of any such claim.

The Contractor shall indemnify and hold harmless the State of Texas and customers, and/or their employees, agents, representatives, contractors, assignees, and/or designees from any and all third party claims involving infringement of united states patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performances or actions of the Contractor pursuant to this contract. The Contractor and the Board agree to furnish timely written notice to each other of any such claim. The Contractor shall be liable to pay all costs of defense, including attorneys' fees. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General.

The Contractor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without the Contractor's written approval, (iii) any modifications made to the product by the Contractor pursuant to the Board's specific instructions, (iv) any intellectual property right owned by or licensed to the Board, or (v) any use of the product or service by customer that is not in conformity with the terms of any applicable license contract.

If the Contractor becomes aware of an actual or potential claim, or the Board provides the Contractor with notice of an actual or potential claim, the Contractor may (or in the case of an injunction against the Board, shall), at the Contractor's sole option and expense: (i) procure for the Board the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that the Board's use is non-infringing.

The Contractor agrees and acknowledges that during the existence of this contract, the Contractor shall be entirely responsible for the liability and payment of the Contractor's and the Contractor's employees' taxes of whatever kind, arising out of the performances in this contract. The Contractor agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. The Board and/or the state shall not be liable to the Contractor, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a state employee or employee of another governmental entity customer.

The Contractor agrees to indemnify and hold harmless the Board, the State of Texas and/or their employees, agents, representatives, contractors, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses, relating to tax liability, unemployment insurance and/or workers' compensation in its performance under this contract. The Contractor shall be liable to pay all costs of defense, including attorneys' fees. The defense shall be coordinated by the Contractor with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and the Contractor may not agree to any settlement without first obtaining the

concurrence from the Office of the Attorney General. The Contractor and the Board agree to furnish timely written notice to each other of any such claim.

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

Force Majeure. Neither Contractor 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.

Accessibility Requirements. Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If applicable, the Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). If applicable, Contractors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

Buy Texas. Pursuant to Tex. Gov't Code § 2155.441, Contractor 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.

Official Act. The offer of this contract is an official act of the Board, or its designee, the Executive Director, who has been empowered to act on behalf of the Board in respect to this contract.

Work. For the purposes of this contract, the term "Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs,

specifications, systems, documentation, methodologies, concepts, research, materials, intellectual property or other property developed, produced, or generated in connection with this contract. All work performed pursuant to this contract is made the exclusive property of the Board. All right, title and interest in and to said property shall vest in the Board upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this contract. To the extent that title to any such work may not, by operation of law, vest in the Board, or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to the Board. The Board shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. The Contractor must give the Board and/or the State of Texas, as well as any person designated by the Board and/or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for the services rendered under this contract.

The Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this contract funds were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. The Contractor shall maintain all such documents and other records relating to this contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. The Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in this section of the contract. The Contractor and the subcontractor, if any, shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. The Contractor must retain all work and other supporting documents pertaining to this contract, for purposes of inspecting, monitoring, auditing, or evaluating by the Board and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor.

The Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. The Contractor's failure to comply with this section shall constitute a material breach of this contract and shall authorize the Board and the State of Texas to immediately assess appropriate damages for such failure.

It is agreed and understood that the contract may be amended only upon written contract between the Board and the 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 agreement, the parties hereto execute this agreement in their respective capabilities on the dates indicated.


TEXAS BOARD OF NURSING

By:



Katherine Thomas, MN, RN, FAAN

By:



BEVERLY SKLOSS, MSN, RN

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Date: 9-2-2016

