

STATE OF TEXAS
COUNTY OF TRAVIS

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**AGREEMENT BETWEEN
THE TEXAS BOARD OF NURSING
AND
RECOVERYTREK LLC**

The Texas Board of Nursing (the “Board”) and RecoveryTrek LLC (the “Contractor”) hereby make and enter into this agreement for the mutual consideration set forth below (the “Contract”). 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.

I. Authority for Agreement; Compliance with Procurement Laws

- A. This Contract is the result of compliance with applicable procurement laws of the State of Texas. The Board issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Proposal No. 507-17-027 (“RFP”), on October 27, 2016, in accordance with Texas Government Code Sections 2156.121 - 2156.125, and 34 Texas Administrative Code Section 20.208.
- B. On January 19, 2017, the Board awarded the Board’s contract for licensee drug screening to Contractor, and the Parties executed an agreement on March 16, 2017 (the “March 2017 Contract”). Pursuant to Section V of the March 2017 Contract and Section A.3 of the RFP, the Parties exercised their first option to renew the contract on August 11, 2017 (the “August 2017 Contract”). Pursuant to Section V of the March 2017 Contract and Section A.3 of the RFP, the Parties hereby exercise their second and final option to renew the contract for a period of one (1) year.

II. Contract Documents; Designation of Board Contract Manager

- A. Contract Documents. This Contract formally incorporates by reference all of the requirements, affirmations, specifications, responsibilities, and the terms and conditions found in the attached RFP, its attachments, addendum, and Contractor’s response/proposal, as follows:
 - 1. Request for Proposal No. 507-17-027
 - i. Part A: Special Instructions
 - ii. Part B: General Instructions and Contract Terms and Conditions
 - iii. Attachment A: Execution of Offer
 - iv. Attachment B: Drug Testing Panels and Pricing
 - v. Attachment C: Respondent’s Information and Best Value Questionnaire
 - vi. Attachment D: Drug Testing Locations
 - vii. Contractor’s Response/Proposal
- B. Amendments to Request for Proposal No. 507-17-027:
 - 1. Regarding RFP Section A.6.5, the Parties hereby agree the execution of this Contract will serve to award the Contract and bind the Parties, and that a Purchase Order will not be issued.

2. Regarding RFP Part B, and specifically Section B.4.2, Controlled Correspondence, the Parties hereby agree that controlled correspondence will **not** be used throughout the term of this Contract. Any and all references to Controlled Correspondence in the RFP, its attachments, and Contractor's response/proposal are hereby no longer applicable. Instead, the Parties hereby agree that any and all changes and communications with respect to the terms of the Contract shall be made in writing and in a manner otherwise consistent with the terms and conditions of the RFP, its attachments, and Contractor's response/proposal.

C. Designation of Board Contract Manager: Keith LaSalle, Purchaser

III. Services to be Performed; Responsibilities of the Parties

- A. Except as otherwise provided in this Contract, the Parties agree to abide by the specifications, scope of services, requirements, and all other responsibilities and terms and conditions outlined in the attached RFP, its attachments, addendum, and Contractor's response/proposal.

IV. Payment Structure and Payment Cap

- A. Pursuant to Section A.4 of the RFP, no payment by the Board to the Contractor is contemplated by this Contract.

V. Term; Termination

- A. Term. This Contract shall be effective on September 1, 2018, and end on August 31, 2019. The Board may extend the contract for six (6) months following the last period of renewal or for such additional time as the Texas Comptroller of Public Accounts deems necessary to secure and transition to a new contract.
- B. 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.
- C. 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, Contractor 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 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.

VI. General

A. 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 his 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 his own expense, keep copies of all his writings for his 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.
4. Contractor acknowledges that pursuant to Section 2254.041 of the Texas Government Code, the Board, at its sole discretion, may distribute a consultant report prepared by the Contractor under Chapter 2254, Subchapter B of the Texas Government Code, and may post the consultant report on the Board's website.

B. 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.

- C. 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.
- D. 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.
- E. 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, 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.
- F. 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.

- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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.

- L. 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.
- M. 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.
- N. 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.
- O. 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.
- P. Severability. If one or more provisions are deemed invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision and this Contract shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.
- Q. 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.
- R. 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.
- S. 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.

VII. Certifications

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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.

- G. No Conflict 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.
- H. 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 this Response to any competitor or any other person engaged in the same line of business as Contractor.
- I. 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.
- J. 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.
- K. 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.
- L. Excluded Parties. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- M. 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.
- N. 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.
- O. 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.

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

VIII. 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

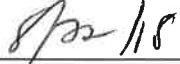
CONTRACTOR

By 

By 

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

F.J. Cizerle, President
 RecoveryTrek LLC
 440 Monticello Avenue, Suite 100
 Norfolk, Virginia
 P: (757) 754-5475

Date 

Date 14 August 2018