

STATE OF TEXAS

COUNTY OF TRAVIS

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**AGREEMENT**  
**Between**  
**TEXAS BOARD OF NURSING**  
**And**  
**TEXAS NURSES FOUNDATION**

The Texas Board of Nursing, hereinafter referred to as the "Board", and Texas Nurses Foundation, 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 by the parties as the result of Request for Proposal 507-16-001, issued by the Board on July 27, 2015. An addendum was issued on August 5, 2015. On October 22, 2015, the Board awarded the contract to Contractor, who was the sole bidder in response to the Request for Proposal. This agreement incorporates herein by reference the requirements, affirmations, services, and responsibilities found in Request for Proposal 507-16-001 and its addendum.

**Contractor Responsibilities.** Contractor shall operate and provide services through the Texas Peer Assistance Program for Nurses (TPAPN). Except as otherwise provided in this Contract, the parties agree to the specifications, scope of services, requirements, and all responsibilities outlined in the Board's Request for Proposal 507-16-001 and its addendum, which is incorporated by reference herein. Additionally, Contractor agrees to provide all services identified in Contractor's response to the Board's Request for Proposal 507-16-001 and its addendum and agrees to meet the responsibilities outlined in this document.

**Payment Structure and Payment Cap.** In compliance with the General Appropriations Act, the Contractor will be funded with monthly transfers from fees collected by the Board not to exceed the appropriated amount of \$873,558 per fiscal year unless future approved appropriations for this program exceed this amount. Funds will be awarded for a period through August 31, 2017 coinciding with the fiscal biennium and for any extension authorized under this contract. The contract will be in accordance with the General Appropriations Act and its provisions shall be at least as rigorous as the rules of the Texas Department of State Health Services (Title 25, Health Services; Part I, Texas Department of State Health Services; Chapter 451, Peer Assistance). Peer assistance fees will be collected by the Board in accordance with State law but will not exceed the line-item appropriation for peer assistance in the Board appropriation. Contingent upon the amount collected and the number of participants, funding could be less than the line-item appropriation and is subject to legislative restraints and/or limitations on the Board's appropriation for the fiscal year.

**Limitation on Payment.** In accordance with Section 403.055(h) of the Texas Government Code, 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.

**Term and Termination of Agreement.** The term of this contract shall begin on October 23, 2015 and shall terminate August 31, 2017 but may be renewed for two additional, two-year periods by mutual consent of the parties. The contract shall renew automatically unless terminated by one of the parties with 30 days' notice before the end of the renewal period. As outlined in Request for Proposal 507-16-001 and its addendum, this contract may be terminated upon 30 days written notice of either party based upon any of the following provisions.

1. By mutual written agreement between Board and Contractor.
2. If Board withdraws recognition of Contractor as an approved peer assistance program under Chapter 467, Texas Health and Safety Code.
3. If the Texas Department of State Health Services withdraws certification granted to Contractor under Chapter 467, Texas Health and Safety Code.
4. If Contractor voluntarily ceases to operate as an approved peer assistance program under Chapter 467, Texas Health and Safety Code.
5. By Board, if the Texas Legislature does not appropriate the funds necessary for it to meet its obligations under this contract unless a new fee has been negotiated under Article VIII.

Should the contract be terminated, no fees other than fees due and payable at the time of termination shall be paid to the Contractor. Payment shall be based on work completed at time of termination. The termination of the contract shall extinguish all rights, duties, obligations and liabilities of the Board and the Contractor under the Contract. The decision of Board with respect to the amount due Contractor shall be final and conclusive unless, within thirty (30) days from the date of receipt of a written copy of the decision, Contractor notifies Board of its dissent from its decision. If Contractor's dissent cannot be resolved, the matter shall be resolved through the dispute resolution provision of this contract.

In order to facilitate the final termination or satisfactory completion of all services and obligations required under this contract, the Board and Contractor may provide for a winding down period as part of the termination of this contract. The date of termination of this Contract shall be the last day of such winding down period.

**Reporting.** Contractor shall submit financial statements to Board at such intervals as requested by the Board. These statements shall be prepared in accordance with generally accepted accounting principles. In addition to financial statements, Contractor shall submit to Board reports covering each quarter of Board's fiscal year. These reports shall be due on the 15th day of the month immediately following the last day of that quarter and shall include: (1) progress/status of major projects; (2) progress on meeting short and long range objectives; (3) minutes of the TPAPN Advisory Committee; (4) delays or problems encountered; (5) activities and Accomplishments; (6) changes in key personnel; and (7) changes in program design.

The reports shall also include statistical information about TPAPN's activities, including the following:

1. Number and source of referrals and type of referral, i.e., substance use disorder, dual diagnosis, mental disorder, extended evaluation monitoring;

2. Number of nurses signing participation agreements;
3. Type of participation agreement signed, i.e., chemical dependency, dual diagnosis, mental disorder, extended evaluation monitoring;
4. Number of nurses referred to TPAPN including demographic information and referral source (Board, self, other);
5. Number of self-referral cases closed, no action (breakdown by reason);
6. Number of active cases;
7. Number of participants employed in nursing;
8. Number of participants completing program;
9. Monitoring activities, including number of drug screens requested, conducted and results of these tests;
10. All applicable performance measures required by the Legislative Budget Board; and
11. Any other pertinent information requested by the State Auditor or the Legislative Budget Board as mutually agreed to by Board and Contractor.
12. Any information which may be requested under the audit section of this contract.

**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 or the terms, conditions, or requirements of Request for Proposal 507-16-001 and its addendum. It is understood by the parties that the terms of this Contract are subject to modification if either the income realized by the Board from the surcharge on license renewal fees or funds appropriated by the Texas Legislature are insufficient to pay Contractor the monthly fee or the number of Nurse participants significantly varies from the number anticipated. In the event of a significant change in the funds available to pay Contractor or in the number of participants in the TPAPN program, Board and Contractor shall negotiate in good faith an appropriate adjustment in the fee paid or in the services provided. As used herein, significant shall mean either a reduction in the fees paid that averages 15% or more for any two-month period or a 15% or more change in the number of nurse participants in TPAPN as of October 23, 2015.

**Equal Opportunity Employment.** During the performance of this Contract, Contractor agrees it will not discriminate against any employee or applicant for employment or any participant in the TPAPN program because of race, color, religion, sex, or national origin.

**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 Chapter 2260 of the Texas Government Code must be used by the Board and Contractor to attempt to resolve all disputes arising under this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought for any breach of the Agreement is fixed in any court of competent jurisdiction in Travis County, Texas, and all payments shall be due and payable in Travis County, Texas.

**Independent Contractor Status.** Contractor acts in the capacity of an independent contractor under this Agreement. Contractor will indemnify and hold the Board harmless from and against all claims arising out of Contractor's performance including, but not limited to, the use of automobiles and/or other means of transportation. 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 agreement, and is, furthermore, not eligible for any fringe benefits due state employees.

**Limitations.** Contractor warrants that, to the best of its knowledge, there are no state or federal laws which would prevent it from entering into this agreement. Contractor represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this agreement.

**Audit.** Contractor agrees that the Texas State Auditor's Office, or any successor agency, may conduct an audit or investigation in connection with funds received under this agreement. Contractor agrees to cooperate with the Auditor in the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with any subcontractors should subcontracting be authorized. Additionally, program must submit to financial and/or performance audit(s) at the discretion of the Board of Nursing or Legislative Budget Board. The audit may be performed by the Board of Nursing, the Board of Nursing's designee (which may be a contracted third-party), the State Auditor's Office, or the Legislative Budget Board. The program must maintain documentation showing ongoing compliance with all statutory and contract criteria. Further, the program must be able to demonstrate sufficient managerial control over the program; an ability to construct, produce, and maintain meaningful performance measures for the program; an ability to meet and adjust to the changing needs of the participants; a commitment to providing non-punitive, rehabilitative services to participants; an ability to construct budgetary constraints designed to sustain and enhance the longevity of the program; an ability to timely enroll new participants in the program, minimize attrition, and incentivize completion of the program. A program may, as part of an audit, be required to produce evidence of the program's overall performance under the contract, whether the program is performing as expected and whether it is in the public interest to continue the contract. The audit should review all internal performance metrics, the existence of and adherence to internal guidelines and policies, adherence to the policies of the Board of Nursing, consistency and fairness in the treatment of participants, the program's method(s) of internal record keeping, the appropriateness of fees paid by participants, enrollment trends, including waiting period(s) for enrollment into the program and the program's sustained enrollment rate(s), satisfaction ratings of participants who complete and/or do not complete the program, the completion rate of participants, and any other factor relevant to the furtherance of the Board of Nursing's mission, as determined by the Board of Nursing.

**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.

**Historically Underutilized Businesses.** Contractor agrees to make a good faith effort to award any necessary subcontracts to Historically Underutilized Businesses (HUB) as defined in 34 Tex. Admin. Code § 20.11. Contractor will report HUB usage in its quarterly report to the Board. If the HUB goal is not being met, Contractor will provide reasons for not meeting the goal in the quarterly report to the Board.

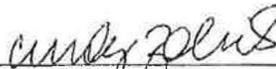
**Buy Texas.** Pursuant to Tex. Gov't Code § 2155.441, Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared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

All prior contracts executed between the parties relating to the provision of peer assistance program services are hereby terminated and the duties and obligations of the parties shall be governed by this agreement. 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

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Date: 11-3-15