

## STAFFING AGREEMENT

Dated: \_\_\_\_\_

COMPANY with its principal office located at \_\_\_\_\_ (“Company”), and \_\_\_\_\_, with its principal office located at \_\_\_\_\_ (“Staffing Firm”) agree to the terms and conditions set forth in this Staffing Agreement (the “Agreement”).

1. **Staffing Firm’s Duties and Responsibilities.** Staffing Firm will perform the following:
  - 1.1. Recruit, screen, interview, and assign its employees (“Assigned Employees”) to perform the type of work described on Exhibit A under Company’s supervision at the locations specified on each Exhibit A. A separate Exhibit A will be created for each Assigned Employee and will be identified as Exhibit A-1, A-2, A-3 ... .
  - 1.2. Pay Assigned Employees’ wages and provide them with the benefits that Staffing Firm offers to them.
  - 1.3. Pay, withhold, and transmit payroll taxes; provide unemployment insurance and workers’ compensation benefits; and handle unemployment and workers’ compensation claims involving Assigned Employees.
  - 1.4. Require Assigned Employees to sign agreements acknowledging that they are not entitled to holidays, vacations, disability benefits, insurance, pensions, or retirement plans, or any other benefits offered or provided by Company.
  - 1.5. Require Assigned Employees to sign confidentiality agreements (in the form of Exhibit B) before they begin their assignments to Company.
  
2. **Company’s Duties and Responsibilities.** Company will perform the following:
  - 2.1. Properly supervise Assigned Employees performing its work and be responsible for its business operations, products, services, and intellectual property.
  - 2.2. Properly supervise, control, and safeguard its premises, processes, or systems, and not permit Assigned Employees to operate any vehicle or mobile equipment, or entrust them with unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secret information, negotiable instruments, or other valuables without Staffing Firm’s express prior written approval or as strictly required by the job description provided to Staffing Firm.
  - 2.3. Provide Assigned Employees with a safe work site and provide appropriate information, training, and safety equipment with respect to any hazardous substances or conditions to which they may be exposed at the work site.
  - 2.4. Not change Assigned Employees’ job duties without Staffing Firm’s express prior written approval.
  - 2.5. Exclude Assigned Employees from Company’s benefit plans, policies, and practices, and not make any offer or promise relating to Assigned Employees’ compensation or benefits.

### 3. **Payment Terms, Bill Rates, and Fees**

- 3.1. Company will pay Staffing Firm for its performance at the rates set forth on Exhibit A and will also pay any additional costs or fees set forth in this Agreement. Staffing Firm will invoice Company in accordance with Exhibit A. Invoices will be supported by the pertinent time sheets or other agreed system for documenting time worked by the Assigned Employees. Company's signature or other agreed method of approval of the work time submitted for Assigned Employees certifies that the documented hours are correct and authorizes Staffing Firm to bill Company for those hours. If a portion of any invoice is disputed, Company will pay the undisputed portion.
  - 3.2. Assigned Employees are presumed to be nonexempt from laws requiring premium pay for overtime, holiday work, or weekend work. Staffing Firm will charge Company special rates for premium work time only when an Assigned Employee's work on assignment to Company, viewed by itself, would legally require premium pay and Company has authorized, directed, or allowed the Assigned Employee to work such premium work time and such designation will appear on Exhibit A. Company's special billing rate for premium hours will be the same multiple of the regular billing rate as Staffing Firm is required to apply to the Assigned Employee's regular pay rate. (For example, when federal law requires 150% of pay for work exceeding 40 hours in a week, Company will be billed at 150% of the regular bill rate.)
  - 3.3. If Company uses the services of any Assigned Employee as its direct employee, as an independent contractor, or through any person or firm other than Staffing Firm during or within 90 days after any assignment of the Assigned Employee to Company from Staffing Firm, Company will pay staffing firm the conversion fee set forth on Exhibit A.
4. **Qualifications.** Staffing Firm warrants that the Assigned Employees that Staffing Firm recruits and assigns to Company will have the qualifications Company requests. If Company finds any Assigned Employee's qualifications or general work-related behavior lacking and lets Staffing Firm know within five (5) days, Staffing Firm will not charge for such period of the assignment and will make reasonable efforts to replace the Assigned Employee immediately.
  5. **Confidential Information.** Staffing Firm may receive information that is proprietary to or confidential to Company or its affiliated companies. Staffing Firm agree to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever other than performing under this Agreement or as required by law. No knowledge, possession, or use of Company's confidential information will be imputed to Staffing Firm as a result of Assigned Employees' access to such information.

6. **Proprietary Information.** Company shall be sole and exclusive owner and have full title and unrestricted rights to any proprietary information and intellectual property developed, utilized or modified in the performance of the services and deliverables under this contract (“Deliverables”). Except to the extent necessary to perform the duties assigned to him or her by the Company, the agency, agency’s employees and representatives, and Assigned Employee, will hold such Deliverables in trust and strictest confidence, and will not use, reproduce, distribute, disclose or otherwise disseminate the Deliverables and may in no event take any action causing or fail to take the action necessary in order to prevent Deliverables, developed by the Assigned Employee, to lose its character or cease to qualify as proprietary information and intellectual property, without in each instance securing the prior written approval of the Company. It is agreed that this is a work-made-for-hire agreement and that all Deliverables are works made for hire that shall be the exclusive property of Company. Further, Staffing Firm agrees to assign and assigns to Company any rights it may have in such Deliverable and will assist Company, upon request, during and following the term of this agreement, at the expense of Company, to obtain and maintain for its own benefit, intellectual property protection under the law for such Deliverables in any and all countries. Such assistance shall include, but not be limited to, the execution and delivery of specific assignments of any such intellectual property rights in the Deliverables that relate to securing and maintaining such intellectual property rights, and the performance of all other lawful acts, as may be deemed necessary or advisable by Company.

7. **Indemnification and Limitation of Liability.**

7.1. To the extent permitted by law, Staffing Firm will defend, indemnify, and hold Company and its parent, subsidiaries, directors, officers, agents, representatives, and employees harmless from all claims, losses, and liabilities (including reasonable attorneys’ fees) to the extent caused by Staffing Firm’s breach of this Agreement; its failure to discharge its duties and responsibilities set forth in Section 1; or the negligence, gross negligence, or willful misconduct of Staffing Firm or Staffing Firm’s officers, employees, or authorized agents in the discharge of those duties and responsibilities.

7.2. To the extent permitted by law, Company will defend, indemnify, and hold Staffing Firm and its parent, subsidiaries, directors, officers, agents, representatives, and employees harmless from all claims, losses, and liabilities (including reasonable attorneys’ fees) to the extent caused by Company’s breach of this Agreement; its failure to discharge its duties and responsibilities set forth in Section 2; or the negligence, gross negligence, or willful misconduct of Company or Company’s officers, employees, or authorized agents in the discharge of those duties and responsibilities.

7.3. Neither party shall be liable for or be required to indemnify the other party for any incidental, consequential, exemplary, special, punitive, or lost profit damages that arise in connection with this Agreement, regardless of the form of action (whether in contract, tort, negligence, strict liability, or otherwise) and regardless of how characterized, even if such party has been advised of the possibility of such damages.

- 7.4. As a condition precedent to indemnification, the party seeking indemnification will inform the other party immediately if it receives notice of any claim, loss, liability, or demand for which it seeks indemnification from the other party; and the party seeking indemnification will cooperate in the investigation and defense of any such matter.
- 7.5. The provisions in Section 7 of this Agreement constitute the complete agreement between the parties with respect to indemnification, and each party waives its right to assert any common-law indemnification or contribution claim against the other party.
  
8. **Compliance with HIPAA and HITECH laws.** Staffing Agency shall agree to use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act of 1996 and to comply with the Health Information Technology for Economic and Clinical Health Act (HITECH). The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501). Staffing Agency agrees to take any required training designated by Company.
  
9. **Insurance.** Staffing Agency agrees to maintain general liability insurance coverage for the services provided hereunder in an amount and pursuant to a policy approved by Company. Staffing Agency agrees to provide Company upon request with proof of such insurance coverage, proof of workers’ compensation insurance coverage and proof of compliance with all of the laws stated above.

## 10. Miscellaneous

- 10.1. The parties agree to cooperate fully and to provide assistance to the other party in the investigation and resolution of any complaints, claims, actions, or proceedings that may be brought by or that may involve Assigned Employees.
- 10.2. The services that Staffing Firm will render to Company under this Agreement will be as an independent contractor. Nothing contained in this Agreement will be construed to create the relationship of principal and agent, or employer and employee, between Staffing Firm and Company.
- 10.3. Provisions of this Agreement, which by their terms extend beyond the termination or nonrenewal of this Agreement, will remain effective after termination or nonrenewal.
- 10.4. Each provision of this Agreement will be considered severable, such that if any one provision or clause conflicts with existing or future applicable law or may not be given full effect because of such law, no other provision that can operate without the conflicting provision or clause will be affected. No provision of this Agreement may be amended or waived unless agreed to in a writing signed by the parties. This Agreement and the exhibits attached to it contain the entire understanding between the parties and supersede all prior agreements and understandings relating to the subject matter of the Agreement.
- 10.5. The failure of a party to enforce the provisions of this Agreement will not be a waiver of any provision or the right of such party thereafter to enforce each and every provision of this Agreement.
- 10.6. The rights and obligations of agency under this agreement are personal to Staffing Agency and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of Company. The provisions of this Agreement will inure to the benefit of and be binding on the parties and their respective representatives, successors, and assigns.
- 10.7. Any notice or other communication will be deemed to be properly given only when sent via the United States Postal Service or a nationally recognized courier, addressed as shown on the first page of this Agreement.
- 10.8. Neither party will be responsible for failure or delay in performance of this Agreement if the failure or delay is due to labor disputes, strikes, fire, riot, war, terrorism, acts of God, or any other causes beyond the control of the nonperforming party.
- 10.9. If a dispute arises out of or relates to this contract, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. Any dispute arising out of or relating to this contract, or the breach thereof, that cannot be resolved by mediation within 30 days shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules before a single arbitrator appointed by the AAA, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration will be conducted within 20 miles of the Company location where Assigned Employee is working. The Parties share equally any cost imposed on both parties by the AAA.

10.10. This agreement will be governed by and construed in accordance with the laws of the state of Company location where Assigned Employees are working, without reference to any conflicts of law principles thereof.

11. **Term of Agreement.** This Agreement will be for a term of 2 years from the first date on which both parties have executed it. The Agreement, and/or any Exhibit A, may be terminated by either party upon 10 days written notice to the other party.

The individuals signing below warrant that each has the authority to bind its respective party, and when signed by both parties, this Agreement shall be a binding contract. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, both parties agree any reproduction of the Agreement made by reliable means (e.g., photocopy, scan, or facsimile) is considered an original.

**Agreed and Accepted by:**

**Staffing Firm**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_