

CLINICAL STAFF GROUP PURCHASING AGREEMENT

This **CLINICAL STAFF GROUP PURCHASING AGREEMENT** (this "Agreement") is dated as of _____ (the "Effective Date") by and between the CITY OF NEW YORK (the "City"), a municipal corporation organized under the laws of the State of New York, acting by and through its NEW YORK CITY EMERGENCY MANAGEMENT DEPARTMENT ("**NYCEM**") and [**STAFFING AGENCY**] (the "Staffing Agency"). Each of the City and the Staffing Agency is referred to herein as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, the City wishes to enter into an Agreement with the Staffing Agency pursuant to which the Staffing Agency will provide clinical staffing services to acute care, nursing homes, adult care facilities, behavioral health, home care and dialysis, in all five Boroughs of NYC that face staffing shortages as a result of COVID-19; and

WHEREAS, the Staffing Agency desires to provide such services, and has agreed to the terms under which the staffing Agency will provide such services;

NOW, THEREFORE, the Parties agree as follows:

Article I. Provision of Clinical Staff

1. Staffing Agency will provide clinical staff to the categories of health care facilities described on **Exhibit C** hereto (each, a "Facility" and collectively, the "Facilities") in accordance with the terms of this Agreement and in accordance with the Contract Leading Practices attached as **Exhibit B** to this Agreement. The categories of clinical staff (the "Clinical Staff") that Staffing Agency will provide to Facilities and the hourly rates for such Clinical Staff are set forth on the Clinical Staff Rate Sheet attached as **Exhibit A** to this Agreement (the "Rate Sheet"). The City may update **Exhibit C** at any time upon five (5) business days' written notice to the Staffing Agency in order to add new categories of Facilities or delete existing categories of Facilities.
2. The Staffing Agency acknowledges and agrees that no Facility or Organization is required to obtain Clinical Staff from the Staffing Agency, and that nothing in this Agreement prevents the Facility from obtaining clinical staff from other Contractors. The City makes no guarantees regarding the number of Facilities that may obtain Clinical Staff under this Agreement, or the volume or value of any Clinical Staff services that may be purchased by the Facilities under this Agreement.
3. The City shall promptly notify the Staffing Agency in the event a Facility ceases to be eligible to participate in the Clinical Staff group purchasing arrangement established under this Agreement. Upon receipt of such notice, the Staffing Agency may exclude the former Facility from obtaining the benefits of this Agreement; provided, however, that any such exclusion shall not affect the terms of any contracts entered into prior to the termination of the Facility's participation.
4. If the Staffing Agency fails to adhere to the terms of this Clinical Staff Purchasing Agreement including but not limited to the agreed upon staff rates, this Agreement will become null and void and the Staffing Agency will be removed from the Group Purchasing structure.
5. The Staffing Agency shall not be entitled to any fees from the City under this Agreement. The Staffing Agency shall be compensated solely by each Facility that obtains Clinical Staff from the Staffing Agency, pursuant to the separate Agreement entered into between the Staffing Agency and the Facility of Organization.

Article II. Term and Termination

1. This Agreement shall commence on the Effective Date and shall terminate on June 30, 2021.
2. The City shall have the right to terminate this Agreement, in whole or in part, without cause.
3. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract. Provided, however that the Contractor must fulfill any contractual commitments made under this Agreement prior to its withdrawal.
4. The City shall have the right to terminate this Agreement immediately in the event that voluntary or involuntary proceedings in bankruptcy or insolvency are instituted by or against the Staffing Agency, or a receiver, trustee or custodian is appointed for the Staffing Agency, or an assignment for the benefit of creditors is made by the Staffing Agency, and any such proceedings are not dismissed or withdrawn within sixty (60) calendar days of filing.

Article III. Confidentiality

1. Each Party shall maintain the confidentiality of any proprietary or confidential information of the other Party ("Confidential Information") and shall use such Confidential Information solely for the purpose of implementing this Agreement. Except as expressly required herein, Confidential Information shall not be disclosed to any third party without the prior written consent of the non-disclosing Party. Confidential Information shall not include any information that: (i) becomes public knowledge through no fault of the recipient; (ii) is lawfully received from a third party with no obligation of confidentiality to the disclosing Party; (iii) as shown by written records was known to or already in the possession of recipient prior to the receipt from the disclosure Party; (iv) is developed by recipient independently of any disclosure; or (v) is required by law to be disclosed, so long as the procedures set forth immediately hereafter are followed.
2. In the event that either Party hereto is requested or required (by oral questions interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any Confidential Information, the Party requested or required to make the disclosure shall provide the other Party with prompt notice of any such request or requirement so that the other Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the non-disclosing Party, the Party requested or required to disclose Confidential Information must nonetheless, in the opinion of its counsel, disclose any Confidential Information, such Party may, without liability hereunder, disclose only that portion of the Confidential Information which such counsel advises is legally required to be disclosed; provided that such Party exercises its reasonable efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by providing commercially reasonable cooperation in connection with the non-disclosing Party's efforts, taken at such Party's expense, to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

Article III. Limitation on Liability

1. The City shall have no liability for any breach by a Facility of its obligations under this Agreement or under any agreement entered into between the Facility and the Staffing Agency.

Article IV. Authority to Execute Agreement; No Conflicts

1. Each Party represents and warrants that it has full power and authority to execute and perform this Agreement. Without limiting the foregoing, each Party represents and warrants that neither the execution nor the

performance of this Agreement will conflict with any agreement, arrangement or understanding to which such Party is subject.

Article V. Intellectual Property

1. The City and the Staffing Agency each reserve the right to control the use of its own name, trademarks, or other intellectual property currently existing or later established. Neither Party may advertise or use any trademark or other intellectual property belonging to the other without the other Party's prior written consent.

Article VI. Changes in Law

1. In the event of any change in applicable laws or regulations, or the interpretation by courts or government agencies thereof, in the opinion of either Party's counsel, makes this Agreement or any provision thereof illegal, the Parties shall negotiate in good faith for a period of thirty (30) days to conform this Agreement to applicable legal requirements. In the event the Parties are unable to amend this Agreement accordingly during such period, either Party may terminate this Agreement on notice to the other Party.

Article VII. Miscellaneous.

1. The invalidity or unenforceability of any of the terms or provisions of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.
2. The Parties to this Agreement are independent of each other and engaged in the operation of their own businesses. Nothing contained herein shall be deemed or construed to create any other relationship between the Parties.
3. This Agreement may not be assigned or otherwise transferred to a third party or affiliate of a Party without the prior written consent of the non-assigning Party hereto. Any such attempted assignment or transfer shall be null and void.
4. This Agreement shall be governed by the laws of the State of New York.
5. The Parties' obligations under Sections 0, 0 and 0 of this Agreement shall survive the expiration or termination of this Agreement.
6. This Agreement and any attachments hereto constitute the entire agreement between the Parties concerning the subject matter hereof, and supersede all prior or contemporaneous agreements and communications concerning the subject matter hereof. This Agreement may be amended only upon the written consent of both Parties.
7. This Agreement may be executed in multiple copies, each of which shall be deemed an original, and all of which, taken together, shall be deemed the same Agreement
8. Any notice required to be given hereunder shall be in writing and shall be deemed given when sent by certified mail, return receipt requested, or overnight mail service, to the following persons:

The City:

[STAFFING AGENCY]:

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

NEW YORK CITY EMERGENCY MANAGEMENT

[STAFFING AGENCY]

By: _____

By: _____

Name:

Name:

Title:

Title:

EXHIBIT A

REQUIRED CLINICAL STAFF RATE SHEET

The low range is expected to be used to staff backfill of respiratory illness situations when ICU beds are not in an overflow situation. The high range is expected to be used to assist with surge ICU bed overflow during respiratory illness times.

AGENCY HOURLY RATES		
	Crisis Ranges	
	Low Range	High Range
RN	\$80-\$85	\$130-\$145
LPN	\$50-\$55	\$70-\$85
CNA	\$35-\$40	\$40-\$55
Respiratory Therapist	\$65-\$70	\$100-\$115
MD (General/Internist)		
MD (Radiologist)		
Advanced Practioner (CRNA/NP/PA)	\$85-90	\$140-\$155
Lab Tech- Phlebotomy	\$38-43	\$46-\$61
Lab Tech- Asst/Technologist	\$33-\$38 / \$48-\$53	\$36-\$51 / \$86-\$101
Imaging/Radiology Tech	\$50-\$55 / \$65-70	\$70-\$85 / \$100-\$115
	<i>backfill of current bed capacity/ICU</i>	<i>to assist with surge ICU bed overflow</i>

EXHIBIT B

CONTRACT LEADING PRACTICES

- Agency must agree to follow Facility's processes to submit, confirm and book personnel in the Facility.
- Agency must use its best efforts to meet the requested needs of Facility based on the skill, functional levels, and expertise of available Agency personnel.
- Agency will only submit personnel who both meet Facility's specific request and credentialing requirements submitted by Facility.
- Facility will pay Overtime or Holiday pay at no more than 1.3x the established rates on the Rate Sheet.
- Agency shall provide basic orientation to Agency personnel on Agency's own internal policies and practices. Agency will ensure that such personnel complete any Facility specific orientation.
- Facility may cancel a short-term assignment (day-to-day staffing i.e. not guaranteed hours with less than 2 week contracts) for per diem Agency personnel without penalty if Facility gives notice prior to 3 hours before the start of the assignment.
- For long term assignments (i.e., assignments other than short-term assignments), Facility may cancel pre-scheduled shifts for long term assignment Agency personnel within a two week period as long as Facility offers the Agency personnel the opportunity to work on a scheduled day off within the same two-week period.
- If Facility cancels a long-term assignment, based on low census or budgetary constraints etc., Facility will not incur a penalty for such cancellation provided that Facility provides a minimum of 10 days' notice of such cancellation.
- Notwithstanding the foregoing, Facility may cancel long term assignments with no penalty if the Agency personnel is not performing within Facility standards.
- The agreement between Facility and Agency may be terminated by either party upon thirty (30) days written notice. In addition, Facility may terminate such agreement with respect to any individual Agency employee providing services in the event of inadequate performance or non-performance by such Agency employee.
- If Agency accepts staffing request from a Facility, Agency must produce qualified staff within seven (7) to ten (10) days of request for long term placement.
- Agency will provide an account manager.
- Agency will provide weekly reporting that includes, but is not limited to: contracted staff, deployed staff, accrued expenses, fill rates, etc.
- Agency must attend to all the supplemental terms and conditions a Facility will need resolved, including:
 - Indemnification
 - Certificates of insurance
- For each clinical staff member placed at a Facility, Agency will be responsible for the onboarding/credentialing requirements set forth below plus any additional onboarding/credentialing requirements that are required by applicable laws or regulations or that are consistent with generally accepted industry practice for the type of Facility at which such clinical staff is being placed:
 - Medical clearance
 - License primary source verification – active license verification upon hire
 - Drug screen or instant drug screen – within one year prior to start of placement (9 panel)
 - Background check – within one year prior to start of placement (includes SSN trace, 7-year county resided, nationwide search, sex offender search)
 - Confirmation that such clinical staff is not included on the OIG LEIE – within one month prior to start of placement
- No agreement entered into under this arrangement will supersede any existing agreement between a Facility and an Agency unless the Facility and Agency expressly agree otherwise in writing.

EXHIBIT C

CATEGORIES OF ELIGIBLE FACILITIES

The Staffing Agency will provide Clinical Staff to the following categories of health care facilities, provided that such facilities are located within the five boroughs of New York City:

- General hospitals licensed by the New York State Department of Health (“NYS DOH”) under Article 28 of the New York State Public Health Law (the “PHL”)
- Residential health care facilities or nursing homes licensed by NYS DOH under Article 28 of the PHL
- Adult care facilities licensed by NYS DOH under Article 7 of the New York State Social Service Law (the “SSL”)
- Home care providers licensed by NYS DOH under Article 36 of the PHL
- Residential treatment programs licensed by the New York State Office of Mental Health (“NYS OMH”) under Article 31 of the New York State Mental Hygiene Law (“MHL”)
- Outpatient mental health clinics licensed or granted an operating certificate by NYS OMH under Article 31 of the MHL
- Diagnostic and treatment centers and clinics licensed by NYS DOH under Article 28 of the PHL, including Chronic Renal Dialysis Services