The ARC of San Diego

Temporary Staffing Support Agreement

The Arc of San Diego, with its principal office located at 3030 Market St, San Diego, CA 92102 (“**ARC**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with its principal office located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Staffing Support Recipient**”) agree to the terms and conditions set forth in this Temporary Staffing Support Agreement (“**Agreement**”). ARC and Staffing Support Recipient may be referred to individually as “**Party**,” and collectively as “**Parties**.”

# **Recitals**

## ARC has numerous personnel qualified and experienced supervising individuals with disabilities who, pursuant to the local and state *Shelter in Place* orders, who are not reporting to ARC but available for work.

## Recently, the California Department of Developmental Services (“**DDS**”) requested ARC provide temporary labor support to certain residential programs supporting qualified individuals with disabilities in exchange for DDS’s commitment to subsidize the resulting wages and other work-related expenses (“**DDS Subsidy**”).

## Staffing Support Recipient contracts with ARC to assign ARC employees (“**Assigned Employees**”) to work for and under the direction of Staffing Support Recipient, subject to the conditions:

# **ARC (Staffing Support Provider)**

## Duties and Responsibilities. ARC will:

### Recruit, screen, interview, hire, and deploy Assigned Employees to perform the type of work described on **Exhibit** “**A**” [Job Description and Limitations] under Staffing Support Recipient’s supervision at the agreed-upon work sites.

### As the common law employer of Assigned Employees, ARC will be responsible for the following:

#### Pay Assigned Employees’ wages (subject to Paragraph IX herein) and provide them with the benefits that ARC offers to them;

#### Pay, withhold, and transmit payroll taxes; provide unemployment insurance and workers’ compensation benefits; and handle unemployment and workers’ compensation claims involving Assigned Employees;

#### 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 Staffing Support Recipient;

#### Require Assigned Employees to sign confidentiality agreements (with HIPAA Business Associate language) before they begin their assignments to Staffing Support Recipient;

#### Comply with federal, state and local labor and employment laws applicable to Assigned Employees, including the Immigration Reform and Control Act of 1986; the Internal Revenue Code (“**Code**”); the Employee Retirement Income Security Act (“**ERISA**”); the Health Insurance Portability and Accountability Act (“**HIPAA**”); the Family Medical Leave Act; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; the Fair Labor Standards Act; the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”); the Uniformed Services Employment and Reemployment Rights Act of 1994;and, as set forth in subparagraph f below, the Patient Protection and Affordable Care Act (“**ACA**”); and

#### Comply with all provisions of the ACA applicable to Assigned Employees, including the employer shared responsibility provisions relating to the offer of “minimum essential coverage” to “full-time” employees (as those terms are defined in Code §4980H and related regulations) and the applicable employer information reporting provisions under Code §6055 and §6056 and related regulations.

## Insurance. ARC will cover ARC’s staffing operations and Assigned Employees, as applicable, with insurance or other coverage, including:

### Workers’ compensation benefits or coverage on the Assigned Employees, in amounts no less than required by law;

### Employer’s Practices Liability insurance; and

### Commercial general liability insurance.

## Respond to Requests for Support. ARC will provide Staffing Support Recipient with Assigned Employees according to Staffing Support Recipient requests (“**Support Request**”), and deploy Assigned Employees from the ARC office to Staffing Support Recipient, including assignments beyond the specific geographic territory that the ARC office regularly services (“**ARC Office Service Area**”).

### Notice. Staffing Support Recipient agrees that it will provide the ARC with at least Forty-Eight-(48) hours written notice of any Support Request need, and agrees that the ARC may rely on telephone instructions and orders from Staffing Support Recipient personnel provided the ARC confirms the request in writing to Staffing Support Recipient.

#### Cancellation. Staffing Support Recipient agrees that it is personally responsible (and will indemnify ARC) for any cancellation-related expense that occurs when cancels a prior Support Request within Twenty-Four-(24) hours of the Notice, including but not limited to reporting-up time obligations pursuant to Cal. IWC Orders 1-16, Section 5. ARC will invoice Staffing Support Recipient directly for this and any other related expense.

## Supervision and Right to Control. Staffing Support Recipient agrees that it is at all times exclusively responsible for the supervision, control, conduct work quality, and final results of the work of Assigned Employees performing work for Staffing Support Recipient. Staffing Support Recipient accepts sole responsibility for the quality of work by Assigned Employees. Staffing Support Recipient’s supervision responsibility includes assurance that Assigned Employees record all time worked, and receive any meal period or rest breaks required by state or federal law.

### Staffing Support Recipient is responsible for conducting regular and project-specific safety meetings, for maintaining and regularly updating its Injury, Illness and Prevention Program materials, and ensuring that the premises and project where Assigned Employees are utilized meet Cal-OSHA requirements.

## ARC’s Inspection Rights. Notwithstanding Staffing Support Recipient’s supervision responsibility, ARC may, from time to time, physically inspect Staffing Support Recipient’s worksite and processes, and enforce ARC’s employment related policies relating to Assigned Employee conduct at Staffing Support Recipient’s worksite.

# **Staffing Support Recipient**

## Duties and Responsibilities. Staffing Support Recipient will:

### Properly supervise Assigned Employees performing its work and be solely responsible for its business operations, products, services, and intellectual property;

### Properly supervise, control, and safeguard its premises, processes, or systems, and not permit Assigned Employees to perform unapproved work outside the job description described in Exhibit A (including but not limited to supervision of other employees, healthcare services, including medical care, medication delivery, or any tasks not covered by Cal. IWC Orders 5-2001), or 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 ARC’s express prior written approval or as strictly required by the job description provided to ARC;

### 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;

### Not change Assigned Employees’ job duties without ARC’s express prior written approval; and

### Exclude Assigned Employees from Staffing Support Recipient’s benefit plans, policies, and practices, and not make any offer or promise relating to Assigned Employees’ compensation or benefits.

## Insurance. Staffing Support Recipient will cover its personnel, its operations where Assigned Employees will be deployed, and ARC (as additional insured) with at least the following types and limits of insurance or other coverage:

### Workers’ compensation benefits or coverage, in amounts no less than required by law;

### Employer’s Practices Liability insurance;

### Commercial general liability insurance, including personal injury, contractual liability, property damage, and Commercial blanket bond insurance ; and

### Umbrella liability insurance.

On ARC’s request, Staffing Support Recipient will give ARC certificates of this insurance coverage or, with the insurer’s concurrence, make ARC an additional insured for Staffing Support Recipient’s services.

1. **Term and Termination**. This Agreement shall begin on Effective Date, and will continue until one Party provides notice of its intent to terminate the Agreement (the “**Term**”).
   1. Either Party may terminate this Agreement, without any additional obligation, on Seven-(7) days advance written notice to the other party in accordance with Paragraph X (Notices) of this Agreement. In addition, a Party may terminate this Agreement immediately upon the breach of this Agreement by the other Party or violation of any policy applicable to employees, or state or federal employment laws.
2. **Independent ARC Relationship**. ARC will provide the Assigned Employees, and Staffing Support Recipient will direct and determine the method and details of the labor provided.
   1. ARC and Staffing Support Recipient agree that ARC is acting as an independent contractor, and not as an agent, employee, partner or joint venturer of Staffing Support Recipient. Staffing Support Recipient understands that ARC is or may perform like services for other clients.
      1. Staffing Support Recipient shall have no right to control the manner or means of performing the services required by this Agreement.
      2. ARC represents that ARC shall at all times be responsible for providing any/all necessary insurance (including but not limited to disability, liability, workers’ compensation, and automobile insurance) as is appropriate to the services provided under this Agreement and/or required by law for ARC and ARC’s employees (if any), at ARC’s expense and in ARC’s own business name. ARC shall also be solely responsible for securing any business or similar licenses required by any federal, state or local authority.
      3. ARC will not be entitled to any benefit that Staffing Support Recipient may make available to Staffing Support Recipient’s employees, including, but not limited to, group health, life insurance, retirement benefits, paid vacation, holidays or sick leave. ARC agrees that this provision shall continue to govern if the independent contractor classification is challenged or disregarded by any state or federal agency.
   2. ARC and Staffing Support Recipient further agree that ARC shall have no authority whatsoever to bind Staffing Support Recipient by contract or otherwise.

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

## Employee Compensation. ARC is initially responsible for Assigned Employees’ wage payment, and related withholdings and payroll taxes, and the maintenance of Assigned Employees’ Workers Compensation insurance as required by state law. This Agreement and ARC’s commitment to provide labor is dependent on DDS’s representation that it will pay ARC will receive the DDS Subsidy. In any event, Staffing Support Recipient remains liable to ARC for all wages and other expenses incurred by Assigned Employees and ARC related to the Agreement and Support Request.

### ARC, in its sole discretion, will determine Assigned Employees wages and benefits.

## Time Records. Staffing Support Recipient agrees to complete, verify and return time records completed by Assigned Employees to ARC within One-(1) Day of the completion of every workweek (Friday, unless otherwise agreed), confirming the hours worked by the Assigned Employees, and confirmation that the Assigned Employees.

### Staffing Support Recipient’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 ARC to Assigned Employees for those hours. Staffing Support Recipient agrees that ARC may rely on the accuracy of the information provided. If a time record is lost or destroyed, Staffing Support Recipient agrees that ARC may rely on telephone confirmation of the lost or destroyed time record, and time from Staffing Support Recipient personnel.

### If any portion of any timesheet is disputed, Staffing Support Recipient agrees that ARC will, subject to Paragraph IX, nonetheless pay Assigned Employees all hours identified in the timesheet, and agree that the Parties can continue to negotiate the disputed portion.

### Staffing Support Recipient will immediately notify ARC if Assigned Employees perform work in excess of assigned work schedule, including but not limited to any overtime or double-time worked, or in the event of any violation of the California Labor Code, including but not limited to missed meal periods or rest breaks.

# **Confidential Information.** Both Parties may receive information that is proprietary or confidential to the other Party and their clients. Both parties 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 one Party’s confidential information will be imputed to the other as a result of this Agreement.

# **Cooperation.** 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.

# **Indemnification and Limitation of Liability**

## Indemnity. To the extent permitted by law, the Parties will defend, indemnify, and hold one another, and their respective parents, subsidiaries, directors, officers, agents, representatives, volunteers and employees harmless from all claims, losses, and liabilities (including reasonable attorneys’ fees) to the extent caused by the other Party’s breach of this Agreement; the failure to discharge its duties and responsibilities set forth in this Agreement; or the negligence, gross negligence, or willful misconduct of one of the Party’s officers, employees, or authorized agents in the discharge of those duties and responsibilities.

### 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.

## Indemnity Re Support Request. Staffing Support Recipient agrees that it is ultimately responsible to ARC for the all wages and other Support Request expenses relating to Assigned Employees, and any shortfall after any setoff from the DDS Subsidy, if any. ARC may immediately demand for Staffing Support Recipient to advance payment relating to wages and other Support Request expenses relating to Assigned Employees, provided that ARC agrees to reimburse Staffing Support Recipient from any proceeds received from DDS Subsidy.

## Indemnity Prerequisites. As a condition precedent to indemnification, the party seeking indemnification will inform the other party within business days after 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.

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## Complete Agreement. 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.

# **Notices.** Any notices required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, by certified mail, or via email addressed to the relevant Party at the address listed below or at any other address designated by the service of notice in compliance with this Paragraph. Any notice given personally shall be deemed to have immediately been delivered. Any notice given by overnight courier service shall be deemed to have been delivered two-(2) business days after the same shall have been delivered to the relevant courier. Any notice given by email shall be deemed to have been served upon confirmation of transmission. The addresses for notices are as follows:

If to ARC or Staffing Support Recipient: In accordance with the information   
provided above.

# **Savings Provision.** If any provision of this Agreement or any term, sentence, phrase, section and/or word of this Agreement shall be found to be invalid, illegal, unenforceable or void for any reason, such provision, section, term, sentence, phrase, clause and/or word shall be deemed modified or deleted in such a manner as to make this Agreement, as so modified, legal and enforceable under applicable laws. The remaining provisions hereof shall continue in full force and effect.

# **Applicable Law.** This Agreement shall be interpreted pursuant to the internal laws of the State of California without regard to any conflicts of laws principles.

# **Sole and Entire Agreement.** This Agreement, including Assigning Employees’ At-Will employment status, constitutes the sole, complete and entire contract, agreement and understanding between the Parties. This contract supersedes all prior agreements, correspondence, understandings or negotiations between the Parties, whether written or oral, and may only be amended, modified or extended by a writing signed by both Parties.

# **Successors and Assigns.** The provisions of this Agreement shall be binding upon the Parties and each of their respective heirs, legal representatives, successors and assigns. The obligations of ARC hereunder are personal and are not assignable in any manner whatsoever.

# **Waiver.** No waiver of any breach of any term and/or provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other term and/or provision hereof.

# **Construction.** This Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either Party, and without regard to the identity or status of the drafter of all or any portion of this Agreement.

[Signature Page to Follow.]

# **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though the Parties do not sign the same counterpart.

|  |  |
| --- | --- |
| DATED: | Staffing Support Recipient  By:   Print: |
|  |  |
| DATED: | The Arc of San Diego  By:  Its: President / Chief Executive Officer |

**Exhibit A: [Job Description and Limitations / Rate Schedule]**

The ARC will provide Staffing Support Recipient with direct service to people with Intellectual and Developmental Disabilities participating in an agreed-upon residential program run by Staffing Support Recipient (referred to herein as a “**Consumer**”), including but not limited to the following service areas:

|  |  |  |  |
| --- | --- | --- | --- |
| Job Title / Description |  | | Base Rate |
|  |  | |  |
| Residential Support |  | | $\_\_\_\_\_\_\_ / Hour |
|  |  | |  |
| Personal Support |  | | $\_\_\_\_\_\_\_ / Hour |
|  |  | |  |
| Independent Living |  | | $\_\_\_\_\_\_\_ / Hour |
|  |  | |  |
| Supported Living |  | | $\_\_\_\_\_\_\_ / Hour |
|  |  | |  |
| Supported Employment |  | | $\_\_\_\_\_\_\_ / Hour |
|  |  | |  |
|  |  | |  |
| On-Site Coordinator  (Staffing Support Recipient will provide the On-Site Coordinator with the necessary office space, furnishings, and other resources as the parties may agree on from time to time.) | |  | $\_\_\_\_\_\_\_ / Hour |
|  | |  |  |
| Other (as specifically requested Staffing Support Recipient and agreed to by ARC) | |  | As Quoted |

1. Limitations:
   1. Staff Qualifications: Assigned Employees will have on file:
      1. A current state license/registration and/or certification, if applicable;
      2. A pre-employment TB screening;
      3. A pre-employment professional reference check and criminal background check- with clearance from the Department of Justice/ Federal Bureau of Investigation at minimum;
      4. A LIC9182- Criminal Background Transfer Request with Community Care Licensing, if applicable.
   2. Staff Scope of Work: Assigned Employees may:
      1. Provide nonmedical, personal attendant, and general supervision services to Consumers.

[Left Intentionally Blank.]

* 1. Staff Scope of Work: Assigned Employees may not:
     1. Perform medical procedures for residents, or administer controlled or prescription medication to or for any Consumer.
     2. Offer medical, nursing or skilled medical services, including but not limited to diagnose of an illness or other health condition, or treatment of a Consumer’s illness, injury or changes in medical condition.
     3. Remain at, or be on the Staffing Support Recipient’s premises during non-working hours.
  2. Staffing Support Recipient Obligations: Staffing Support Recipient must:
     1. Provide structure, guidance, and direct supervision to Assigned Employees.
     2. Take all reasonable steps to protect Assigned Employees from workplace health and safety issues (more fully described in Paragraph III.A), including but not limited to exposure to COVID-19.
  3. Staffing Support Recipient Obligations: Staffing Support Recipient must not:
     1. Request services from Assigned Employees during Assigned Employee’s non-working hours.