

## DIRECT HIRE AGREEMENT

This DIRECT HIRE AGREEMENT (“Agreement”) is entered into as of the Effective Date set forth below, by and between the undersigned CLIENT (“CLIENT”), and My Staff, Inc. (“STAFFING FIRM”), with regard to candidates referred by STAFFING FIRM and directly hired by CLIENT. STAFFING FIRM and CLIENT shall be referred to collectively within this Agreement as “the parties.”

1. Term of Agreement. This Agreement shall commence on the Effective Date and shall continue for a period of one (1) year (“Term”). Upon expiration of the initial Term, the Agreement shall automatically renew for another Term in successive one (1) year periods, under the same conditions set forth in this Agreement, unless otherwise terminated pursuant to Section 7.
2. Definitions.
  - A. The term “Candidate” shall mean a candidate referred by STAFFING FIRM and directly hired by CLIENT during the Referral Period, whether as an employee, independent contractor, consultant, or temporary or seasonal hire, on either a full-time basis (defined as 30 hours or more per workweek) or part-time basis (defined as less than 30 hours per workweek).
  - B. The term “CLIENT” shall mean and include the undersigned CLIENT, as well as the CLIENT’S parent company, subsidiaries, related entities, or affiliates.
  - C. The term “Placement Fee” shall mean the fee due and owing from CLIENT to STAFFING FIRM for a Candidate referred by STAFFING FIRM and hired by CLIENT for a Position during the Referral Period, calculated as a percentage of the Candidate’s Total Compensation.
  - D. The term “Position” shall mean and include the position to be filled for CLIENT, including the initial position which CLIENT seeks to have filled by STAFFING FIRM as well as any comparable alternate position with CLIENT.
  - E. The term “Referral Period” shall mean the period commencing on the date of STAFFING FIRM’S last referral of the Candidate to CLIENT and continuing for one (1) year thereafter.
  - F. The term “Total Compensation” shall mean the total compensation offered by CLIENT and accepted by Candidate for the Position, and shall include Candidate’s annual base salary as well as any bonus, incentive compensation, and salary increase guaranteed to Candidate by CLIENT for the one (1) year period following Candidate’s date of hire.
3. Placement Fee.
  - A. CLIENT agrees to pay STAFFING FIRM a Placement Fee for a Candidate referred by STAFFING FIRM and hired by CLIENT for a Position during the Referral Period, in the amount of 27% of the Candidate’s Total Compensation.
    - i. For purposes of clarity and by way of illustration only, this means that if the Total Compensation for a full-time Candidate is \$50,000.00, the Placement Fee would be \$13,500.00 ( $\$50,000.00 \times .27 = \$13,500.00$ ).
    - ii. The Placement Fee for a part-time Candidate shall be calculated based on the Candidate’s Total Compensation, converted to an equivalent full-time annual base salary multiplied by the percentage of the Candidate’s estimated hours of work. For purposes of clarity and by way of illustration only, this means that if the part-time Candidate’s hourly rate is \$20, and the Candidate is expected to work 20 hours per workweek (or 1,040 hours annually), the Placement Fee would be \$5,616.00 ( $\$20 \times 1,040 = \$20,800.00$  annual base salary;  $\$20,800.00 \times .27 = \$5,616.00$ ).
  - B. The Placement Fee is due in full to STAFFING FIRM within ten (10) calendar days from the Candidate’s first day of working for CLIENT.

4. **Guarantee.** STAFFING FIRM is confident that CLIENT will be satisfied with the quality candidates referred. In the event that a Candidate ceases working for CLIENT within the applicable guarantee period, for any reason other than the elimination of Candidate's position with CLIENT, reorganization, furlough, merger, acquisition, or significant change in the Candidate's job duties, job description, or work location, STAFFING FIRM will offer CLIENT a guarantee in the form of a one-time replacement to CLIENT, in accordance with the following terms and conditions:
  - A. If CLIENT pays the Placement Fee to STAFFING FIRM within ten (10) calendar days from the Candidate's first day of working for CLIENT, STAFFING FIRM will offer CLIENT a ninety (90) calendar day guarantee for a one-time replacement for the Candidate.
  - B. If CLIENT pays the Placement Fee to STAFFING FIRM by more than ten (10) calendar days but less than thirty (30) calendar days from the Candidate's first day of working for CLIENT, STAFFING FIRM will offer CLIENT a thirty (30) calendar day guarantee for a one-time replacement for the Candidate.
  - C. No guarantee will be offered by STAFFING FIRM if CLIENT hires a replacement from any other source, or if CLIENT is no longer actively seeking to fill the Position.
  - D. This guarantee shall be available for use with a replacement for CLIENT for a period of six (6) months following the Candidate's last day of working for CLIENT, for the Position initially filled by CLIENT pursuant to this Agreement. The Position, job duties, work location, and other parameters must remain the same to be eligible for the guarantee. CLIENT must actively engage and timely communicate with STAFFING FIRM to secure a replacement, by responding to STAFFING FIRM's communications within twenty-four (24) hours.
  - E. This guarantee is only applicable for the initial Candidate directly hired by CLIENT for the Position at issue pursuant to this Agreement. It shall not apply to any replacement offered by STAFFING FIRM and sought by CLIENT.
5. **Exclusive Representation of Candidate.** Every Candidate referred by STAFFING FIRM to CLIENT is strictly confidential, with the knowledge and express authorization of the Candidate. If another entity purports to represent a Candidate represented and referred by STAFFING FIRM, STAFFING FIRM reserves the right to request and review documentation sufficient to confirm the Candidate's representation to evaluate whether the Placement Fee is owed by CLIENT.
6. **Protection and Nondisclosure of Confidential Information.** Both parties may receive information that is proprietary to or confidential to the other party (including related entities and affiliates) and their respective 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 CLIENT's confidential information will be imputed to STAFFING FIRM as a result of a Candidate's access to such information.
7. **Termination of Agreement.** The Agreement may be terminated by either party upon written notice to the other party. In the event of termination of this Agreement, STAFFING FIRM shall be paid for all services performed prior to the termination date that result in CLIENT's hiring of a Candidate referred by STAFFING FIRM within the Referral Period.
8. **Applicable Law; Mandatory Forum Selection.** This Agreement shall be governed in accordance with the laws of the State of Nebraska. The parties agree any action to enforce the terms of this Agreement shall be brought only in an appropriate state or federal court located in Douglas County, Nebraska, which court shall have exclusive jurisdiction over this matter. The parties waive all objections based upon lack of jurisdiction or improper or inconvenient venue of any such court.
9. **Additional Terms and Conditions.**
  - A. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, if any, between the parties. In entering into this Agreement, the parties agree they have done so freely and voluntarily and by each one on its own accord without a reliance on any promise or representation by any other party, except as to those matters which are expressly set forth in this Agreement. This Agreement may not be modified or amended other than by an agreement in writing signed by both parties. The provisions of this Agreement which, by their terms or nature, extend beyond termination of this Agreement shall survive termination of this Agreement.

B. This Agreement and the rights and obligations thereunder with respect to CLIENT are personal to CLIENT and may not be assigned by any act of CLIENT or by operation of law without STAFFING FIRM'S prior written consent. STAFFING FIRM shall have the unfettered right to assign this Agreement to a successor in interest or to the purchaser of any of the assets of STAFFING FIRM.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed below and intend to be bound by its terms and conditions with an Effective Date of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date").

**MY STAFF, INC.**

**FOUNDATION FOR LINCOLN PUBLIC SCHOOLS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature *John P. Neal*

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name *John P. Neal*

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title *Interim Executive President*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date *2024/1/16*





## Temporary Staffing Agreement

**MyStaff Inc.**, with its mailing address of PO Box 190, Boys Town, NE 68010 (“STAFFING FIRM”), and **Foundation for Lincoln Public Schools**, with its principal office located at 5905 O Street, Lincoln, NE 68510 (“CLIENT”) agree to the terms and conditions set forth in this Staffing Agreement (the “Agreement”).

### STAFFING FIRM

#### 1. Duties and Responsibilities

STAFFING FIRM will:

- a. Recruit, screen, interview, hire, and assign its employees (“Assigned Employees”) to perform the type of work described on Exhibit A under CLIENT’s supervision at the locations specified on Exhibit A and will, as the at-will-employer of Assigned Employees, be responsible for the following;
- b. Pay Assigned Employees’ wages and provide them with the benefits that STAFFING FIRM offers to them;
- c. Pay, withhold, and transmit payroll taxes; provide unemployment insurance and workers’ compensation benefits; handle unemployment and workers’ compensation claims involving Assigned Employees;
- d. 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 CLIENT;
- e. Require Assigned Employees to sign confidentiality agreements before they begin their assignments to CLIENT;
- f. Inquire about the working conditions to which Assigned Employees will be exposed at CLIENT’s work site, provide general safety training to Assigned Employees in a language that the Assigned Employees understand, and confirm that Client has provided site-specific safety and health training and safety and personal protective equipment (PPE) required by the Occupational Safety and Health Act of 1970, applicable state and local laws and regulations, as well as any work rules of CLIENT;
- g. 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; as set forth in subparagraph h. below, the Patient Protection and Affordable Care Act (ACA); and the Occupational Safety and Health Act of 1970; and
- h. 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.

#### 1.1 Right to Control

In addition to STAFFING FIRM’S duties and responsibilities set forth in paragraph 1, STAFFING FIRM, as the at-will-employer, has the right to physically inspect the work site and work processes to assess any potential work site hazards to Assigned Employees; to conduct post-accident/incident investigations; to audit CLIENT’S safety and

training records; to review and address, unilaterally or in coordination with CLIENT, Assigned Employee work performance issues; and to enforce STAFFING FIRM's employment policies relating to Assigned Employee conduct at the worksite.

## **CLIENT**

### **2. Duties and Responsibilities**

CLIENT will:

- a. Properly supervise and train, in the same manner as its own employees, Assigned Employees performing its work and be responsible for its business operations, products, services, and intellectual property;
- b. 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;
- c. Provide Assigned Employees with a safe work site and working conditions that comply with the Occupational Safety and Health Act of 1970 and applicable state and local laws and regulations;
- d. Not change Assigned Employees' job duties or work site without STAFFING FIRM's express prior written approval; and
- e. Exclude Assigned Employees from CLIENT's benefit plans, policies, and practices, and not make any offer or promise relating to Assigned Employees' compensation or benefits.

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

3. CLIENT 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 CLIENT for services provided under this Agreement on a bi-weekly basis. Payment is due upon receipt of invoice. Invoices will be supported by the pertinent time sheets or other agreed system for documenting time worked by the Assigned Employees, which CLIENT shall submit to STAFFING FIRM, signed and approved by each Assigned Employee, at the conclusion of each week throughout the term of this Agreement. CLIENT shall sign the applicable time sheets or other agreed document(s): (i) accepting that services were satisfactorily performed; (ii) agreeing that hours worked were documented accurately; and (iii) authorizing payment at the rate agreed upon between CLIENT and STAFFING FIRM. If a portion of any invoice is disputed, CLIENT will pay the undisputed portion.
4. Assigned Employees are presumed to be nonexempt from laws requiring premium pay for overtime, holiday work, or weekend work. STAFFING FIRM will charge CLIENT special rates for premium work time only when an Assigned Employee's work on assignment to CLIENT, viewed by itself, would legally require premium pay and CLIENT has authorized, directed, or allowed the Assigned Employee to work such premium work time. CLIENT'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, CLIENT will be billed at 150% of the regular bill rate.)
5. Client may require that STAFFING FIRM remove a specific Assigned Employee only for "cause" which will be documented in a written notice provided to the STAFFING FIRM. "Cause" is defined as any material violation of Client's policies, insubordination, unsatisfactory attendance or performance, misconduct, harassment, or violation of drug abuse policies.
6. If CLIENT: (1) 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 365 days after any assignment of the Assigned Employee to CLIENT from STAFFING FIRM; or (2) chooses the Direct Hire placement option rather than use of an Assigned Employee CLIENT must notify STAFFING FIRM of its use or choice and pay STAFFING FIRM a fee in the amount of 25% of the employee's anticipated first year "total compensation". If CLIENT chooses the Direct Hire option, STAFFING FIRM reserves the right to include any additional guaranteed increase in salary or bonus as "total compensation"

based on the details listed in the employee's offer letter. Employment fees for part-time employees will be calculated based on the equivalent full-time salary multiplied by the percentage of estimated time the employee works. A credit will be applied for any hours worked for the CLIENT in the past 180 days. Acceptance of candidate referrals from STAFFING FIRM constitutes acceptance of the terms and conditions of STAFFING FIRM'S fee schedule. All referrals made by STAFFING FIRM are strictly confidential with the knowledge of the candidate.

7. Referred temporary candidates are STAFFING FIRM Employees and are paid an hourly wage. CLIENT will be charged a **1.65%** markup above the hourly pay of the temporary employee; overtime is billed at time-and-a-half. During the Temp-to-hire evaluation period, CLIENT is under no obligation to retain the temporary employee in a permanent role. Should CLIENT decide to convert the employee prior to **860 hours**, a conversion credit will be applied as outlined on Exhibit A. In addition to the bill rates specified in Exhibit A of this Agreement, CLIENT will pay STAFFING FIRM the amount of all new or increased labor costs associated with CLIENT's Assigned Employees that STAFFING FIRM is legally required to pay—such as wages, benefits, payroll taxes, social program contributions, or charges linked to benefit levels—until the parties agree on new bill rates.

#### **Confidential Information**

8. Both parties may receive information that is proprietary to or confidential to the other party or its affiliated companies 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 CLIENT's confidential information will be imputed to STAFFING FIRM as a result of Assigned Employees' access to such information.

#### **Cooperation**

9. 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**

10. To the extent permitted by law, STAFFING FIRM will defend, indemnify, and hold CLIENT 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 paragraph 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.
11. To the extent permitted by law, CLIENT 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 CLIENT's breach of this Agreement; its failure to discharge its duties and responsibilities set forth in paragraph 2; or the negligence, gross negligence, or willful misconduct of CLIENT or CLIENT's officers, employees, or authorized agents in the discharge of those duties and responsibilities.
12. 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.
13. As a condition precedent to indemnification, the party seeking indemnification will inform the other party within fifteen calendar 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.
14. The provisions in paragraphs 10 through 14 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.

### **Miscellaneous**

15. The parties acknowledge that STAFFING FIRM is an independent contractor providing services for CLIENT, and nothing herein shall be deemed to constitute or be construed as making STAFFING COMPANY or any Assigned Employee the agents or employees of CLIENT.
16. Provisions of this Agreement, which by their terms extend beyond the termination or nonrenewal of this Agreement, will remain effective after termination or nonrenewal.
17. No provision of this Agreement may be amended or waived unless agreed to in a writing signed by the parties.
18. 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.
19. 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.
20. The provisions of this Agreement will inure to the benefit of and be binding on the parties and their respective representatives, successors, and assigns.
21. 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.
22. CLIENT will not transfer or assign this Agreement without STAFFING FIRM's written consent.
23. 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.
24. 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.
25. The validity, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Nebraska. Any proceeding arising between the parties in any manner pertaining to this Agreement shall, to the extent permitted by law, be held in the federal or state courts located in Douglas County, Nebraska

### **Term of Agreement**

26. This Agreement will be for a term of 365 days from the first date on which both parties have executed it. The Agreement may be terminated by either party upon 30 days prior written notice to the other party. To the extent either party terminates this agreement, CLIENT'S payment obligations to STAFFING FIRM incurred under this agreement remain in effect.
27. CLIENT agrees to pay STAFFING FIRM upon receipt of invoices and to pay interest on any unpaid balances after 45 days from the date of receipt at the compounded rate of 1.5% per day (Annual Percentage Rate of 18%) or the maximum legal rate, whichever is higher, calculated from the date of receipt.



Authorized representatives of the parties have executed this Agreement below to express the parties' agreement to its terms.

Foundation for Lincoln Public Schools

MyStaff Inc

CLIENT

STAFFING FIRM

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

*John P. Neal*

*John P. Neal*

*Interim President*

*2024/1/06*

