**Cooperative Staffing Agreement**

This agreement [“Agreement”] dated \_\_\_\_\_\_, 2020, is entered into by and between \_\_\_\_\_\_\_\_(Party A name & address) [“\_\_\_\_\_\_\_\_\_\_\_\_”] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Party B name & address) [“\_\_\_\_\_\_\_\_\_\_\_\_\_\_”]. \_\_\_\_Party A\_\_\_\_\_\_\_ and \_\_Party B\_\_\_\_\_\_\_\_\_are referred to herein as “Party” or “Parties”. Any references to “Party” or “Parties” includes that entity’s agents and employees.

**W I T N E S S E T H**:

**Whereas**, Each Party is certified by the New York State Office for People With Developmental Disabilities [“NYS OPWDD”] to provide services to intellectually disabled individuals, and the field in general has been greatly affected by the COVID-19 pandemic, particularly with respect to staff shortages and staffing emergencies; and

**Whereas**, During this COVID-19 pandemic, each Party may require staffing support to cover vacancies created by employees who are out sick or otherwise unable or unwilling to work, and at any given time, one Party may potentially have staff available to lease to the other Party to provide needed coverage; and

**Now, Therefore**, it is agreed between the Parties, in consideration of their mutual agreements, as follows:

1. Description of Services. Each Party agrees to provide Direct Support Professional staff [“Staff’] to the other Party, upon request, if it is feasible and possible to do so. Actual deployment of Staff pursuant to this Agreement will be subject to availability of Staff to work their hours, or in some cases additional hours, for the other Party. The Scope of Services is further defined in Addendum A attached hereto. Compensation for such services is defined in Addendum B attached hereto.
2. Term and Termination. This Agreement shall commence on the execution of this Agreement by both Parties and shall be for an indefinite period of time and shall govern the relationship between the Parties until expressly revoked, in writing, by either Party. At any time, either Party may terminate the provision of services without cause upon not less than sixty (60) days’ notice. In the event of a material breach of this Agreement, the non-breaching Party may terminate this Agreement upon written notice to the breaching Party if such breach remains uncured for a period of thirty (30) days upon the breaching Party’s receipt of the written notice. Further, either Party may, at its option, terminate this Agreement by written notice to the other Party upon reasonable determination by the terminating Party that there is an immediate and significant threat to the health or safety of any person receiving services provided by the other Party under this Agreement.
3. Each Party’s Status. Each Party represents, acknowledges and agrees that as it pertains to this agreement it is an independent contractor and that none of its employees are employees of the other Party. No provision of this Agreement shall be deemed to create an employment relationship between the Parties, including its agents or employees, and the other Party. Each Party expressly warrants and agrees that it will not hold itself out as, or otherwise represent to any person or entity that it is employed by or an agent of the other Party, or that any of its employees are employed by or an agent of the other Party. Each Party agrees to hold the other Party harmless and indemnifies the other Party in full for any and all damages, claims, assessments, penalties, liabilities, charges, costs, including reasonable attorneys’ fees, or other losses incurred during or following the term of this Agreement, which result from any assertion, claim, determination or adjudication that a Party or its employees or agents are employees of the other Party, including, but not limited to, any claim, determination or adjudication made pursuant to the Internal Revenue Code, the New York Unemployment Insurance Law, the State Workers Compensation Law, or any other federal, state or local wage, employment, insurance, labor and other laws, statutes, ruling, regulations and ordinances. Each Party agrees to provide written proof that it has complied with the requirements of all applicable taxing and other authorities. Each Party will notify the other Party within two (2) business days of any inquiries by any third Party, including, but not limited to federal, state or local employment or tax authorities inquiring into the relationship between the Parties. Each Party further agrees to provide the other Party with copies of any documents deemed necessary by the other Party to demonstrate that its employees and agents are not employees of the other Party, including, but not limited to, an employer identification number, certificates or other documentation indicating that the Party maintains its own workers’ compensation and general liability insurance covering both itself and any employees or subcontractors it may choose to hire or engage. Each Party agrees to provide 30 days prior written notice to the other Party in the event of cancellation or modification of such insurance coverages.
4. Limitation of Services. This Agreement governs all services that the Parties will provide to each other. The Parties have mutually agreed to provide Staff to work in the other Party’s ICFs, IRAs, supervised, and supportive apartment programs providing residential opportunities to individuals with intellectual and developmental disabilities (I/DD).

It is the Parties’ intention that their employees will use their own skill and expertise in accordance with the accepted standards of care and corresponding statutes and regulations in the performance of the services governed by this Agreement. Each Party will comply with all applicable statutes regarding its own employees, including making all appropriate withholdings and deductions, and forwarding said monies to appropriate authorities.

Each Party is not restricted from providing its services to other providers or entities, to the extent such services are not in conflict with any provision of this Agreement. However, the Parties may not use the facilities or equipment of the other Party without the express advance permission of that Party.

Each Party will be reimbursed in accordance with the terms in Addendum B, attached hereto.

1. Responsibilities. During the term of this Agreement, each Party shall retain the sole and exclusive right and authority, in its capacity as employer of its personnel, to direct, supervise, and discipline (including hire, retain, and terminate) such personnel. Each Party further agrees that its employees will maintain any applicable certifications and/or required trainings, and that its employees will abide by all guidelines, policies, and procedures of the other Party and applicable regulations, including, but not limited to, legally required documentation of service delivery.

Each Party shall be responsible for the payroll, benefits, insurance, background checks, professional license if applicable, driver’s license checks and any and all other direct and/or indirect expenses associated with their employees, including, but not limited to, authorized travel expenses. Proof of background checks and or license checks shall be provided to the other Party, or any governmental or regulatory agency upon request.

Each Party shall be responsible for directly supervising, monitoring and managing the performance of its Staff who provide services under this Agreement, up to and including termination, to ensure compliance with the terms of this Agreement. Each Party reserves the right to require that the other Party no longer assign a particular Staff, if that Party determines, in its sole discretion, that the assigned Staff is unacceptable for any reason.

Each Party will immediately notify the other Party if it becomes aware of any disciplinary or corrective action proceedings or investigation brought or initiated against any of their Staff providing services pursuant to this Agreement, by any governmental or regulatory agency, person supported, family member or other provider.

Each Party will immediately notify the other Party within upon receipt of any legal summons, background check change of status including CBC notification and LENS result, or otherwise becoming aware of any legal action or proceeding against them related to the provision of services pursuant to this Agreement.

1. Insurance. Each Party shall maintain professional liability insurance covering its employees acting on its behalf and within the scope of employees’ duties, with primary limits of not less than One Million Dollars ($1,000,000) per occurrence, and Three Million Dollars ($3,000,000) in the aggregate and shall name the other Party as an additional named insured on its insurance policy. Each Party will maintain workers compensation and disability insurance for all its employees and Staff, and shall provide proof of such insurance upon the other Party’s reasonable request.
2. Revenue and Expenses. All revenues generated from operation of each Party’s business shall belong solely to that Party, from which it will pay its expenses and payroll.

Each Party shall have the exclusive right to bill and collect for services provided by Staff under this Agreement and shall be solely responsible for billing for such Services. The Party receiving Staff services will be responsible for all billing, monitoring for quality, and compliance with regard to any and all services provided by such Staff.

1. Indemnification. Each Party shall indemnify and hold harmless the other Party from any and all claims, causes of action, liabilities, expenses and damages for any loss, injury, disability or death to any person, or loss, damage, or injury to any property, resulting from or in connection with this Agreement, that Parties performance or non-performance under this Agreement, or any other breach of this Agreement.
2. Confidentiality. Each Party agrees that it, and its employees, associates or others related to the business of that Party, shall not disclose, use or transfer, during or after the term of this Agreement, directly or indirectly, any confidential or privileged information, which has been made available to them and/or their employees, associates, or others related to the their business through its performance of this Agreement. The Parties are each considered a Business Associate of the other Party, and as such, each Party shall execute the Business Associate Agreement of the attached hereto in Addendum C.
3. Rules and Policies. Each Party and its Staff, employees and agents will adhere to all of the other Party’s rules applicable to contractors, vendors and suppliers.
4. Miscellaneous.

a. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

b. This Agreement shall inure to the benefit of and shall be binding upon the Parties, their successors and assigns, in accord with its terms.

c. This Agreement constitutes the entire understanding between the Parties with reference to the subject matter hereof and shall not be changed or modified except by a written instrument executed by both Parties or, alternatively, by a court or other entity construing this Agreement to the extent necessary to render it enforceable. Such entity or court shall have the right to interpret or modify the Agreement so that it is enforceable.

d. The waiver by either Party of a breach of any provision of this Agreement by the other Party shall not be construed as a waiver of any subsequent or other breach by such other Party.

e. Section headings are used herein for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

f. If any part of this Agreement is held invalid and cannot be interpreted or modified to be enforceable, such invalidity shall not affect the remainder of the Agreement, which shall be enforceable to the fullest extent permitted by law.

1. Remedies. Compliance with the covenants set forth in this Agreement is necessary to protect the business and good will of the Parties. Any material breach of these covenants will result in irreparable and continuing damage to the non-breaching Party, for which monetary damages may not provide adequate relief. Accordingly, in the event of any material breach of these covenants by a Party, the Parties agree that the non-breaching Party is entitled to the following relief as a result of any such breach, in addition to remedies otherwise available at law or in equity: (i) injunctions, both preliminary and permanent, enjoining or restraining such breach or anticipatory breach; and (ii) recovery of all sums and costs expended, including reasonable attorneys’ fees incurred by the non-breaching Party to enforce the provisions of this Agreement. Each Party expressly consents to the issuance of an order or orders providing the foregoing remedies (without the posting of any bond) by any court of competent jurisdiction.

AGREED TO:

Party A Party B

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

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

**Addendum A**

**Scope of Services**

A. Upon request, and to the extent feasible and possible, the Parties will provide Residential Habilitation Services to people supported by the other Party, by providing Direct Support Professional staff. Actual deployment of such staff pursuant to this Agreement will be subject to availability of Staff to work their hours, or in some cases additional hours, for the other Party.

B. Each Party shall ensure that their staff providing services pursuant to this Agreement meet the following training requirements in accordance with NYS OPWDD’s regulations:

 \* Infection Control/TB/Blood borne Pathogens

 \* Safety/Emergency Response

 \* SCIP (if the person has a behavior plan which requires SCIP)

 \* Incident reporting

 \* Professionalism

\* Core Competencies

 \* HIPAA/Corporate Compliance

 \* Human Growth and Development

 \* Diversity

 \* Positive Approaches to Behavior

 \* AMAP (if required for a specific shift)

C. Medication administration will only be provided by AMAP Certified Staff

D. Prior to the provision of services under this Agreement, the Parties shall develop a protocol for requesting and providing staff for each other. This shall include a system of sharing applicable Staff’s hourly rate, and whether each Staff providing services will be doing so at a regular or overtime rate. Additionally, policies applicable to attendance, hours worked and waiting for relief must be discussed with all Staff prior to providing services to the other Party. The same applies to mandated quarantines occurring in the residence.

**ADDENDUM B**

**COMPENSATION**

Each Party shall compensate the other Party for the hours their Staff worked in accordance with NYS laws and regulations, and at the following agreed upon rates:

Direct Support Professional at $\_\_\_/hour

Other at $\_\_\_/hour

Each Party will pay their Staff directly for any hours worked pursuant to this Agreement.

By the fifth (5th) day of each month, each Party shall submit an invoice for the hours worked by their staff for the other Party, to the other Party, to the attention of the Chief Financial Officer. Given that this is a mutual agreement, the Chief Financial Officers will conduct a review of the hours worked by each Party, and will true up the account on a regular basis to be agreed upon by the Parties. The Party owing payment to the other Party shall issue payment within 30 days of the reconciliation. The Chief Financial Officers shall work collaboratively with each other to reconcile the accounts regularly so that payments can be credited against what is owed the next month.