



AGREEMENT FOR EDUCATIONAL STAFFING

THIS AGREEMENT, dated January 3rd, 2019, is between Teachers On Call, a Kelly Services® Company, ("TOC") with its principal offices located at 3001 Metro Drive, Suite 200, Bloomington, MN 55425, and Nova Classical Academy, with its principal offices located at 1455 Victoria Way, St. Paul, MN 55102 ("Customer").

1) DESCRIPTION, LOCATION AND PRICING OF SERVICES

TOC will assign to the Customer, TOC temporary employees ("Assigned Employees"), to provide education-related services, under the Customer's operational supervision, at the location(s) and for the pricing (and other related costs) described in Exhibit A ("Pricing"). The Pricing in Exhibit A is confidential between TOC and Customer. Customer will be permitted to use the Exhibit in connection with its business operations, responses to Freedom of Information Act requests, and other uses as required by law.

2) TOC GUARANTEE

TOC guarantees that the Assigned Employees it places with the Customer will satisfactorily perform the services ordered by Customer. If not, TOC will cancel charges for unsatisfactory services and furnish a replacement as soon as possible when the Customer has provided notice of its dissatisfaction within the first day of an Assigned Employee's assignment. If TOC receives notice after an Assigned Employee's first day, TOC will furnish a replacement as soon as possible, but not cancel the charges for the unsatisfactory services.

3) TOC'S RESPONSIBILITIES

As the provider of staffing services, TOC will be the employer of Assigned Employees, and will be responsible for the staffing services listed below.

- (a) Recruit, select, and hire Assigned Employees;
- (b) At TOC's expense, conduct an annual background check on all Assigned Employees;
- (c) Place Assigned Employees according to Customer's requirements;
- (d) Instruct Assigned Employees to verify time worked in TOC's timekeeping system;
- (e) Pay Assigned Employees their wages and provide them the benefits that TOC offers to them as TOC employees;
- (f) Pay or withhold payroll taxes (e.g., FICA) and insurance premiums (e.g., Medicare) and fulfill its obligations for unemployment compensation (e.g., FUTA, SUTA);
- (g) Provide workers' compensation benefits and coverage for Assigned Employees;
- (h) Maintain Assigned Employees' personnel and payroll records related to their employment by TOC;
- (i) Comply with laws, rules or regulations applicable to providers of staffing services;
- (j) Require Assigned Employees to agree in writing to protect the confidentiality of Customer's proprietary information;
- (k) Require Assigned Employees to execute agreements that Customer requests with regard to intellectual property developed by them in performance of their work for Customer;
- (l) Require Assigned Employees to acknowledge in writing that they have no right to participate in Customer's employee benefit plans;
- (m) Require Assigned Employees to comply with all rules and policies of Customer (e.g., those relating to premises access and security);
- (n) Make legally required employment law disclosures to Assigned Employees; and
- (o) Comply with the Patient Protection and Affordable Care Act ("Affordable Care Act") and its regulations, as applicable, and have established internal procedures to review and maintain its compliance with the Affordable Care Act.



4) CUSTOMER'S RESPONSIBILITIES

As the recipient of TOC's temporary staffing services, the Customer will be responsible for controlling the environment in which Assigned Employees perform their work, the details of their work, and, teaching board-approved curriculum and approved lesson plans. The Customer also will:

- (a) Promptly invite all Assigned Employees to apply with TOC and attend a training session, so that TOC may enter their information into the TOC database. If a large enough pool of the Customer's sub base does not sign up to work with TOC in the initial training sessions, the start date with TOC may have to be delayed;
- (b) Provide Assigned Employees with a safe and suitable workplace, including all required site-specific training related to the chemical, physical and biological hazards in the workplace, emergency procedures, school rules and protocols, policies and procedures regarding student disciplinary actions, and the confidentiality of student records and information;
- (c) Provide TOC with prompt notice of any injury suffered by an Assigned Employee;
- (d) Use Assigned Employees only in assignments that match the job descriptions for which TOC places them, and will not give duties to an Assigned Employees that the Assigned Employee must perform outside of Customer's premises;
- (e) Provide adequate internal controls, supervision, and instructions for Assigned Employees;
- (f) Assume responsibility for the conduct of the Assigned Employees when they are required to handle keys, cash, confidential information and records of students and the Customer's regular employees;
- (g) Not allow Assigned Employees to drive any students in any vehicle as part of their assignment;
- (h) Assume responsibility for the use of any vehicle, machinery, and/or equipment used by Assigned Employees in connection with their assignment (except for workers' compensation claims);
- (i) Assume sole responsibility for any bodily injury claims asserted against TOC or its Assigned Employees by students, their parents or representatives, Customer personnel or business invitees, or other third parties (except to the extent that such claims are based on the negligence of TOC or the failure of TOC full time staff personnel to fulfill their obligations regarding the recruitment, screening, and hiring of the Assigned Employees);
- (j) Ensure that the Assigned Employees do not have sole custody of a single student, be solely responsible for supervising more than one classroom of students at a time, or administer or maintain custody of any student medications;
- (k) Provide TOC with prompt, written notice of any concern or complaint about the conduct of an Assigned Employee by the end of the same day that it learns of the concern or complaint, and permit TOC to actively participate in Customer's investigation of such a concern or complaint;
- (l) Provide TOC with written notice within one business day after the Customer learns of any formal or informal complaint, litigation, potential litigation, or an administrative or governmental charge, that involves an Assigned Employee, and permit TOC a reasonable opportunity to participate actively in the matter, as TOC sees fit;
- (m) Assume responsibility for the conduct of its own officers, employees, and agents; and
- (n) Comply with duties imposed on it by law, rule, or regulation.

5) CUSTOMER REPRESENTATIONS

The Customer represents and warrants that:

- (a) Its actions under this Agreement do not violate its obligations under any agreement that Customer has with any labor union;
- (b) TOC's responsibilities listed in this Agreement regarding screening, the payment of wages, and the provision of benefits to the Assigned Employees do not violate a policy or practice of the Customer;
- (c) The Customer has disclosed to TOC all screening requirements that Customer would use for the positions covered by this Agreement if the Customer were directly employing individuals in such positions;
- (d) The Customer has the right, power, and any requisite authorization to enter into this Agreement;



- (e) The Customer has satisfied any applicable procedural requirements necessary for it to be authorized to enter into this Agreement;
- (f) The Customer representative who is signing this Agreement has been delegated authority by the school board or district to execute this Agreement; and
- (g) The Customer neither requests nor requires that the Assigned Employees perform duties outside of Customer's premises (e.g., participate on field trips) unless TOC gives it written consent in advance.

6) BILLING & PAYMENT TERMS

(a) Invoices.

- i) The Customer will be invoiced for Assigned Employees only when they are confirmed for an assignment. (An assignment is confirmed when it is created in Absence Management; a confirmation number is assigned. If changes are made to the assignment before the Assigned Employee drives to the Customer location, TOC will not pay the Assigned Employee nor invoice the Customer. However, if changes are made after the Assigned Employee drives to the Customer location, TOC or the Customer will try to re-assign them. If the Assigned Employee cannot be re-assigned, the Assigned Employee will be paid and the Customer will be invoiced for a half day.)
- ii) When all efforts to find a substitute paraprofessional are exhausted, TOC will assign a licensed teacher, and pay and bill at the teacher rate.
- iii) TOC will invoice Customer each week for the services of the Assigned Employees at agreed-upon rates; the rates at which TOC will invoice the Customer (and any reimbursable expenses) are listed in Pricing Exhibit A. Payment terms are net fifteen (15) days from receipt of TOC invoice. TOC reserves the right to charge past due accounts 1.5% interest per month from due date. Any dispute to an invoice must be communicated within fifteen (15) days of issuance of such invoice, or the Customer waives the right to object to the invoice and will be held accountable for payment.
- iv) Customer will not use any kind of procurement card for payment to TOC.
- v) In the event of termination of this Agreement, Customer will pay TOC promptly for services performed up to the time of termination. If the Customer's rates are not set out in Pricing Exhibit A, TOC and the Customer will agree on rates at the time of an order, which TOC will record electronically in its systems.

(b) **Taxes.** Any sales or use taxes that apply to sales to Customer will be added to Customer's invoices as a separate item.

(c) **Pricing Adjustments.** TOC may adjust Pricing if agreed upon by Customer, throughout the duration of this Agreement:

- i) To reflect the impact of inflation upon our costs by an amount not to exceed the year over year change in the Consumer Price Index for the preceding 12 months; or
- ii) To reflect increases in wages or related taxes, benefit and other costs as the result of any determination, order, or action by or under any applicable governmental authority, collective bargaining agreement or insurance or benefit program; or
- iii) For changes in sales, use, or gross receipts taxes; or
- iv) For changes in (A) the Customer's requirements (e.g., requisition, billing and invoicing processes; the introduction of third party software systems and processes), (B) service levels, or (C) service delivery method; or
- v) To ensure that the pay rates comply with federal and state laws and regulations regarding minimum wages and overtime compensation.

(d) **Record of Time Worked; Automated Scheduling.** Customer agrees to verify the Assigned Employee's time through TOC's online Customer Portal every Monday between 1 PM and 6 PM Central time. By approving the timecard, the Customer agrees that the hours submitted are accurate and the



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Customer is responsible for payment. If a timecard in the Customer Portal is not approved by 6 PM Central time Monday but was appropriately submitted, TOC will tacitly approve and process for payment; the Assigned Employee will be paid, and the invoice will be submitted for full payment by the Customer.

- (e) **Expenses.** Expenses (e.g., mileage) and all costs and administrative fees associated with required screenings and drug tests will be charged to the Customer, passed through without mark up.

7) WORKERS' COMPENSATION AND LIABILITY INSURANCE

TOC will, at its own expense, provide and keep in full force and effect during the term of this Agreement the following kinds and minimum amounts of insurance:

- (a) **Workers' Compensation.** Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the services are performed and includes alternate employer endorsement;
- (b) **Commercial General Liability.** Commercial general liability insurance with a \$1,000,000 combined single limit per occurrence and includes contractual liability and personal injury coverage;
- (c) **Umbrella Liability Insurance.** Umbrella liability insurance to be used in excess of the liability policies with \$15,000,000 combined single limit per occurrence; and
- (d) **Commercial Blanket Bond.** A commercial blanket bond with limits of \$3,000,000 in the aggregate per occurrence and includes coverage of employee dishonesty to the extent TOC failed in its responsibilities and customer protection.

TOC will provide Customer with a certificate of this insurance coverage upon request.

8) INDEMNIFICATION BY TOC

- (a) TOC will indemnify, defend and hold harmless Customer and its directors, officers, employees and agents, to the extent of the insurance limits set forth in Section 7, from and against all demands, claims, actions, losses, judgments, costs and expenses (including reasonable attorney fees) (collectively "Damages") imposed upon or incurred by Customer to the extent arising out of any of the following:
 - i) TOC's failure to comply with its obligations under applicable employment-related laws, regulations or orders in TOC's capacity as the general employer of the Assigned Employees;
 - ii) Breach of any obligation of TOC contained in this Agreement; or
 - iii) Any direct claim for workers' compensation benefits for job-related bodily injury or death asserted against Customer by any TOC employees or, in the event of death, by their personal representatives.
- (b) TOC's obligation to indemnify, defend and hold harmless will not apply to: (i) indirect, special or consequential Damages, (ii) the extent that Damages are due to Customer's failure to fulfill its duties under Section 4, (iii) the extent that any Damages, except for the payment of workers' compensation benefits, are the result of any negligent act or omission or intentional misconduct of Customer, its officers, employees or agents, or (iv) the extent that Customer is required to indemnify TOC against such Damages under Section 9.

9) INDEMNIFICATION BY CUSTOMER

- (a) To the extent permitted by law, Customer will indemnify, defend and hold harmless TOC and its directors, officers, employees and agents from and against all Damages imposed upon or incurred by TOC, other than for job-related bodily injury or death of an Assigned Employee, arising out of any of the following:
 - i) Customer's failure to comply with its obligations under applicable laws, regulations or orders;
 - ii) Breach of any obligation of Customer contained in this Agreement;
- (b) Customer's obligation to indemnify, defend and hold harmless will not apply (i) to indirect, special or consequential Damages or (ii) to the extent any Damages are caused by any negligent act or omission or intentional misconduct of TOC, its officers, employees or agents.



10) NOTIFICATION OF CLAIMS

- (a) Customer and TOC agree (i) to notify each other in writing of any asserted claim within ten (10) days of either discovery of the occurrence upon which the claim may be based or learning of the claim, whichever occurs first, and (ii) to permit TOC or Customer, as the case may be, to defend the claim at the option of the party against whom the claim is asserted, with counsel acceptable to such party, which consent will not be unreasonably refused.
- (b) Neither party will pay or agree to pay any asserted claim under this Agreement without prior written approval from the party against whom the claim is asserted, which approval will not be unreasonably withheld; provided that approval on behalf of TOC must be obtained from the TOC Law Department in Troy, Michigan.

11) TERM; TERMINATION

The term of this Agreement begins as of the date first shown above with a first date of service of January 18th, 2019, if all deadlines are met, and will continue in effect until canceled by either party after a minimum of one year and upon allowing not less than thirty (30) days prior written notice to the other. TOC reserves the right to terminate this Agreement immediately in the event of non-payment. In the event of termination, this Agreement will continue to govern the parties' rights and obligations with respect to services performed prior to termination.

12) NON-SOLICITATION

Unless otherwise agreed to in writing, neither party shall hire or solicit the employment of the other party's regular, full-time employees during the term of this Agreement and for a period of twelve (12) months thereafter. This provision shall not apply to a party's generalized recruiting practices.

13) MISCELLANEOUS

(a) Notices

- i) Any notices, consents or other communications required or permitted under this Agreement must be in writing (including telecommunications) and delivered personally or sent by telex, telecopy or other wire transmission (with request for assurance in a manner typical with respect to communication of that type), overnight air courier (postage prepaid), registered or certified mail (postage prepaid with return receipt requested), addressed as shown on the first page of this Agreement.
- ii) Unless otherwise stated in this Agreement, notices, consents or other communications will be deemed received (a) on the date delivered, if delivered personally or by wire transmission; (b) on the next business day after mailing or deposit with an overnight air courier; or (c) three business days after being sent, if sent by registered or certified mail.

(b) Severability; Waiver

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

(c) Assignment

Neither TOC nor Customer may assign this Agreement without the prior written consent of the other party; provided that TOC may use secondary vendors to fulfill any or all of its obligations hereunder without securing Customer's consent. This Agreement will be binding upon the parties hereto, and their successors, heirs and assigns, as permitted.

(d) Independent Contractor

In its performance of this Agreement, TOC will at all times act in its own capacity and right as an independent contractor, and nothing contained herein may be construed to make TOC an agent, partner or joint venturer of Customer.



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(e) Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement [(except for any obligations to make payments to the other party hereunder)], when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (i) acts of God; (ii) flood, fire, earthquake or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order or law; (v) actions, embargoes or blockades in effect on or after the date of this Agreement; (vi) action by any governmental authority; (vii) national or regional emergency; (viii) strikes, labor stoppages or slowdowns or other industrial disturbances; and (ix) shortage of adequate power or transportation facilities. The party suffering a Force Majeure Event shall give notice within five (5) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

(f) Amendments

This Agreement may not be amended or supplemented in any way except in writing, dated and signed by authorized representatives of both parties.

(g) Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

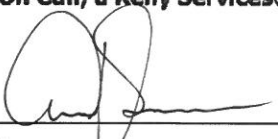
(h) Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of MN without giving effect to any choice or conflict of law provision or rule.


(i) Entire Agreement

This Agreement, its Exhibits (and any job descriptions signed by the Customer) are the entire understanding and agreement between the parties with respect to the subject matter covered, and all prior agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied, not incorporated in this Agreement are superseded.

Teachers On Call, a Kelly Services® Company

By: 
 Name: Al Sowers
 Title: Vice President, Practice Leader
 Date: January 9, 2019

Nova Classical Academy

By: 
 Name: Jon Gutierrez
 Title: Executive Director
 Date: 1/4/2019