

Contract# C0001077

## STAFFING AGREEMENT

This STAFFING AGREEMENT (the “Agreement”) is effective the date the last signature is affixed below (“Effective Date”) between **Virginia Commonwealth University**, a corporation and an institution of higher education of the Commonwealth of Virginia (“University” or “VCU”), and **Aerotek Scientific, LLC.**, a limited liability corporation of the state of Maryland (“Staffing Agency”). Each VCU and Staffing Agency is referred to as a “Party” and collectively as the “Parties”.

### BACKGROUND

University wishes to engage Staffing Agency to provide support services that encompass tasks specific to clinical operations and research nursing for the VCU clinical investigators. Individuals provided by Staffing Agency under University’s management and supervision as to daily tasks will perform a variety of clinical research management with coordination and study data management support as well as support for protocol development, regulatory affairs management, compliance responsibilities, quality assurance, and monitoring functions, screening for potential research participants, support of patient recruitment and treatment, nursing, coordination with pharmacy and other clinical services, record keeping, adverse event reporting, information dissemination, and liaison with federal and industry sponsors and regulatory bodies. In addition, clinical research management staff may provide project management and support investigators in the development of Investigator-Initiated Trials (IIT), from concept development through activation and ongoing management, and ultimately, the reporting of results.

### DEFINITIONS

“Affiliates” means, with respect to either Party, any entity that is controlled by, controls, or is under common control with such Party unless specifically excluded in this AGREEMENT.

“Confidential Information” means all non-public information disclosed (whether in writing, orally or by another means) by or through either Party, or its Affiliates, or their respective employees, agents, consultants, auditors, accountants, examiners or attorneys, to the other Party, or its personnel, agents, authorized representatives or subcontractors by reason of the relationship established by this Agreement. Such information includes (i) all such Party’s software (regardless of its state of completion or form of recordation), specifications, documentation and work product; (ii) Personal Information; (iii) information including all forms and types of financial, economic, business, security related, scientific, technical, or engineering information including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically, or in writing; (iv) information traditionally recognized as proprietary trade secrets; (v) all other trade secret, confidential or proprietary information and documentation of such Parties, of entities with which such Party contracts or its customers, prospective customers, employees, directors, outside directors, retirees and their respective spouses and families (whether or not it is designated as such), including information which is not permitted to be disclosed to third parties under applicable laws; and (vi) all copies of any of the foregoing or any materials that contain, are derived from or reflect any of the foregoing.

“Direct-Hire Candidate” means an individual identified by Staffing Agency for potential placement with University as a full-time employee.

“Personal Information” means all information, in any form, that alone, or in combination with other information (a) uniquely identifies a current, former or prospective director, outside director, officer, employee, supplier, resource, patient, study participant, retiree or customer of either Party, or their respective spouses or families (e.g., names, addresses, telephone numbers, proprietary information concerning accounts, financial standing, investment holdings and other financial data provided by such parties or (b) is considered “sensitive personal data” such as political opinions, ethnicity, religious beliefs or information related to the physical or mental health of a current, former or prospective director, outside director, officer, employee, retiree, patient, study participant or customer of either Party, or their respective spouses or families; or as otherwise defined under applicable laws, including copies of such

information or materials derived from such information and information in respect of which a duty of confidence or secrecy is owed to the owner of such information or other contacts of such Party (including “nonpublic persona information” as defined under the Gramm-Leach-Bliley Act (15 U.S.C. §6801 et seq.), “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320d), and identifiable student information as defined under the Code of Virginia section 23.1-405(C) and the federal Family Educational Rights and Privacy Act (FERPA).

“Services” means staffing and recruiting services that Staffing Agency has agreed to provide as described further in this Agreement or related Addenda or Scope of Work.

“Temporary Employee” means a W-2 candidate identified by Staffing Agency for temporary assignment with University as listed in this Agreement or related Addenda or Scope of Work.

“University Group” means University and its Affiliates, officers, directors, employees, agents and subcontractors.

“University Inventions” means the following in any form or media, whether now existing or which shall be invented in the future, in whole or in part, whether complete or incomplete, including copies thereof, by or on behalf of Temporary Employee pursuant to a Scope of Work together with all related Intellectual Property Rights: (i) formulae, algorithms, processes, procedures and methods; (ii) designs, ideas, concepts, research, discoveries, inventions and invention disclosures; (iii) know-how, trade secrets and proprietary information and methodologies; (iv) technology; (v) computer software; (vi) databases; (vii) expressions, works and factual and other compilations; (viii) protocols and specifications; (ix) visual, audio and audiovisual works; and (x) records of each of the foregoing, including documentation, design documents and analyses, studies, programming tools, plans, models, flow charts, reports, letters memoranda and drawings that are in connection with this AGREEMENT.

## **1. PERFORMANCE BY STAFFING AGENCY**

- (a) Staffing Agency agrees to perform Services in compliance with the terms of this AGREEMENT, all specifications and timelines established by the Parties and all applicable generally-accepted industry standards.
- (b) Staffing Agency will perform the Services under the general direction of University or its designated contact. All Temporary Employees will be presented to University for initial screening and approval prior to being placed on assignment.
- (c) Modifications to the scope or the assumptions on which an assignment or Scope of Work is based shall be made only by agreement between the Staffing Agency and University in writing as an amendment to the Agreement or Scope of Work. Each such amendment will specify, at minimum, the change in scope, changes in assignment dates, fees, or costs described in the amendment or Scope of Work. Each Party shall respond promptly to a request for an amendment or provide a response to a change in scope as required.
- (d) Upon University’s request, Staffing Agency will require all assigned Temporary Employees to sign confidentiality agreements, in the form of Exhibit A, before they begin any assignment with University.
- (e) Staffing Agency provides staffing and recruiting services and as such, shall not be responsible for any deliverables or guarantee the Temporary Employee’s work product.

## **2. STAFFING AGENCY PERSONNEL, SUBCONTRACTING AND RESOURCES**

- (a) Staffing Agency shall conduct a background check consistent with University standards of each Temporary Employee Staffing Agency proposes to submit to University: (i) upon offer and acceptance of a position and request of such by University; and/or (ii) pursuant to applicable law. If the aforementioned conditions are not satisfied, Staffing Agency is not responsible for conducting any background checks of any Temporary Employee. If a background check is requested or required, the University will set forth the specific requirements for the background check, including the parameters of acceptance as determined by University, as well the training and qualifications required for each such Temporary Employee. The full cost of such background check shall be billed to University.
- (b) University shall notify Staffing Agency immediately if any Temporary Employee discontinues their work. In the event that Staffing Agency is hired solely to recruit Direct-Hire Candidates for review by University, the relevant specifications for those Services will be set forth in an amendment to this Agreement or additional Scope of Work.
- (c) University shall provide each Temporary Employee with one VCU identification badge (“ID”) that must be worn at all times while on campus. Should the Temporary Employee lose the ID, the Temporary Employee must pay the fee associated with obtaining a replacement ID.
- (d) Temporary Employees shall pay for their own parking while on campus.
- (e) If University requests in writing the replacement of any Temporary Employee due to reasonable concerns regarding performance or conduct, Staffing Agency will promptly remove that individual from the University’s premises and assign an appropriate replacement as soon as reasonably possible.
- (f) Staffing Agency may replace a Temporary Employee provided that:
  - (i) University shall be given prompt written notice of the Temporary Employee Staffing Agency proposes to replace and information regarding Staffing Agency’s proposed replacement;
  - (ii) University may refuse proposed replacement Temporary Employee that is, in University’s reasonable opinion, unacceptable to University. In such instance that University refuses the proposed replacement, Staffing Agency may propose another Temporary Employee, or University may determine it no longer requires a Temporary Employee for that particular role.
- (g) Health and Safety. University shall provide a safe, clean work environment that complies with all applicable local, state and federal laws. University agrees to train, certify, evaluate and orient all Temporary Employees in all applicable safety (IIPP), hazardous communication (SDS information, etc.) ergonomic and operational instructions in the same manner as University employees and as required by policy or by law, including but not limited to, all federal OSHA and equivalent state agency requirements, guidelines and standards. University agrees to document Temporary Employee site specific training, which documents the date and type of training conducted. The University further agrees to promptly provide verification of site specific training upon Staffing Agency’s request. Further, University agrees to notify Staffing Agency if any health and safety medical testing or medical surveillance will be required for Temporary Employee. University agrees to notify Staffing Agency of any changes in occupational exposures that would require medical testing or medical surveillance. To the extent a Temporary Employee is obligated to meet site-specific training requirements in order for University to comply with applicable site-specific legal requirements, the University shall provide the Temporary Employee with all necessary training before placing the Temporary Employee into the work environment and before allowing the Temporary Employee to commence the specific assignment. University shall provide and require all Temporary Employees to wear all appropriate safety equipment, including but not limited to personal protective equipment (PPE) and any other recommended safety gear to prevent exposure to COVID-19. University will notify Staffing Agency immediately in the event of an accident or medical treatment of any Temporary Employee, and will provide a completed supervisor’s report of injury. Staffing Agency may perform, if feasible, an inspection of the workplace to conduct its own hazard assessment or to ensure implementation of the University’s safety and health obligations. University agrees to provide the necessary and accurate information to complete this assessment. In the event of an accident or other incident involving a Temporary Employee, Staffing Agency shall have the right to conduct an onsite investigation. University shall cooperate with Staffing Agency in the

conduct of its investigation. University will be responsible for all OSHA recordkeeping responsibilities required by law in the performance and execution of the terms of this agreement.

### 3. COMPENSATION

(a) In consideration for its performance of Services, University shall pay Staffing Agency as set forth in Exhibit C, Fee Sheet. Invoices shall be paid thirty (30) calendar days after the receipt of a proper invoice, which will include VCU-approved time records, pursuant to *Code of Virginia*, Sections 2.2-4347 through 2.2-4355 commonly referred to as the Virginia Prompt Payment Act.

(b) Staffing Agency is responsible for paying any compensation due to a Temporary Employee as a result of such Temporary Employee's performance and if applicable, Staffing Agency is responsible for withholding and remitting all income taxes from the Temporary Employee's compensation and for paying all applicable insurance, if any, for Temporary Employees. Staffing Agency will provide benefits to which the Temporary Employees are entitled under applicable law and Staffing Agency's benefit plans. Staffing Agency shall also be solely responsible for all administrative functions standard in the employer/employee relationship for all Temporary Employees, such as conducting performance reviews (based on University's feedback), counselling, grievance and dispute resolution, and other required or agreed upon procedures. In the event that Staffing Agency provides any Services through an Independent Contractor, Staffing Agency shall require such Independent Contractor to be bound by obligations that are substantially similar to those of this Section 4(b) in regards to the Independent Contractor's employees.

(c) Temporary Employees provided by Staffing Agency shall not work beyond forty (40) hours in a work week without the prior written consent of University. Should a Temporary Employee be granted permission to work over 40 hours a week and are not exempt employees, Temporary Employee shall be paid 1.35 times the standard rate. The exemption status of all positions shall be determined solely by Staffing Agency. University shall promptly and in good faith provide Staffing Agency any and all information Staffing Agency deems necessary to appropriately determine exemption status including, but not limited to, actual day-to-day job duties, obligations, function as well as the importance and nature of Temporary Employees function to University's business operations.

(d) Buyout Fees: Upon Temporary Employee's completion of twelve (12) months of continuous service at University through Staffing Agency ("Assignment Duration"), there will be no fee for VCU to hire or engage such Temporary Employee. In the event University desires to hire or engage a Temporary Employee prior to such Temporary Employee's completion of the Assignment Duration, University shall pay Staffing Agency a conversion fee equal to a pro-rated amount of 25% of the Temporary Employee's annual salary, based on the number of days worked by such Temporary Employee, pursuant to the following table:

#### Months on Assignment Conversion Fee

0-3	25%
4-6	20%
6-9	15%
9-12	10%
12+	0%

(e) Nothing in this section prevents VCU from hiring any individual who responds to a general employment advertisement, is directed to VCU by employment search firms, where such employment search firms are not directed by VCU to initiate discussions with respect to the prospective employment of that individual, or contacts VCU on their own initiative without direct or indirect solicitation by VCU. Notwithstanding the foregoing if an individual has contacted VCU on their own initiative but no recruitment efforts have been made by VCU, Staffing Agency may still

be due a fee, for example, where the individual is applying for a position which he/she filled through Staffing Agency.

(f) All Temporary Employees provided by Staffing Agency shall submit timesheets, on a weekly basis, through Staffing Agency's online portal and, if required by University, through the University's timekeeping process. Staffing Agency will provide invoices to University that include a detailed accounting of all time billed to University. Staffing Agency shall submit invoices to University for fees related to Services rendered and authorized by University. University shall pay all invoices within thirty (30) days of the date of invoice. The following information will be indicated on each invoice:

- (i) Invoice number and purchase order number (to be provided by University);
- (ii) Invoice date;
- (iii) Dates on which Services were provided;
- (iv) Total amount of fees for the Services; and
- (v) Any applicable sales and use taxes, unless university is exempt

(g) All invoices will be sent electronically to University. Staffing Agency can either enter the invoice into the RealSource Vendor Portal or mail the invoice to the Digital Mailroom (which is VCU's third party provider used for scanning invoices into RealSource). The box number is Accounts Payable, Box 398, Scranton, PA 18505. A copy of invoices will be provided University department upon University's request.

#### **4. TERM; TERMINATION**

(a) This AGREEMENT will commence on the Effective date and shall remain in effect for two (2) years, with the option of up to three (3) one-year renewals, to be exercised upon mutual written agreement by authorized representatives of each Party. If this AGREEMENT is not renewed, the terms of this AGREEMENT shall nevertheless apply to any outstanding Scope of Work until completion of the Services described in such Scope of Work or appropriate termination of the Scope of Work. Each Scope of Work shall take effect as of an effective date designated in the Scope of Work and shall continue in full force and effect unless specifically terminated in accordance with the terms of this AGREEMENT or the terms of that Scope of Work.

(b) Either Party may terminate this AGREEMENT or any related Scope of Work, in whole or in part, with or without cause, upon giving five (5) business days prior written notice to the other Party.

(c) Either Party may terminate this AGREEMENT immediately upon written notice if the other Party becomes insolvent, or if proceedings are instituted against the other Party for reorganization or other relief under any bankruptcy law, or if any substantial part of the other Party's assets come under the jurisdiction of a receiver or trustee in an insolvency proceeding authorized by law.

(d) Either Party may terminate this AGREEMENT immediately upon written notice to the other Party if such other Party fails to remedy a material breach of this AGREEMENT or a Scope of Work within ten (10) business days after written notice to the breaching Party.

#### **5. EFFECT OF TERMINATION**

(a) Upon notice of termination of the AGREEMENT or a Scope of Work, Staffing Agency shall use all reasonable efforts to conclude any uncompleted Services. Staffing Agency shall not undertake further work, incur additional expenses, or enter into further commitments with regard to any Services, except as mutually agreed upon in writing by the Parties.

(b) Upon the effective date of termination of the AGREEMENT or a Scope of Work, Staffing Agency shall invoice University for payments due for Services completed. This invoice and any payment obligation of University

are subject to Section 3 of this AGREEMENT. If, upon the effective date of termination, University has advanced funds which are unearned by Staffing Agency, Staffing Agency shall repay such funds within ninety (90) days of the effective date of termination.

(c) Compliance with this Section 5 does not limit or waive either Party's potential remedies for a breach of this AGREEMENT or a Scope of Work. Termination of this AGREEMENT or a Scope of Work shall not release either Party from any obligation or right which accrued to that Party prior to the effective date of termination or which later accrues from an act or omission which occurred prior to the effective date of termination.

## **6. RECORDKEEPING; ACCESS**

(a) Both Parties shall keep and maintain complete and accurate records (financial and otherwise), files, books, accounts and sources of information relating to the Services provided under this AGREEMENT and shall allow the other party to audit such records for a period of two (2) years after the termination of this Agreement.

## **7. CONFIDENTIALITY**

(a) Staffing Agency agrees not to use University's Confidential Information for any purposes other than the performance of this AGREEMENT or a Scope of Work. Staffing Agency agrees not to disclose University's Confidential Information to third parties except as necessary for the performance of this AGREEMENT or a Scope of Work. Staffing Agency shall only disclose University Confidential Information with its personnel who have a need to know such information. Staffing Agency shall safeguard University Confidential Information with the same standard of care that is used with Staffing Agency Confidential Information, but in no event less than reasonable care.

(b) University agrees not to use Staffing Agency's Confidential Information for any purposes other than the performance of this AGREEMENT or a Scope of Work. University agrees not to disclose Staffing Agency's Confidential Information to third parties except as necessary for the performance of this AGREEMENT or a Scope of Work and under an agreement by the third party to be bound by obligations that are substantially similar to those of this Section. University shall safeguard Staffing Agency's Confidential Information with the same standard of care that is used with University's Confidential Information, but in no event less than reasonable care.

(c) The obligations of confidentiality and limited use under this Section shall not extend to any information:

- (i) which is or becomes publicly available, except through breach of this AGREEMENT or a Scope of Work;
- (ii) which University or Staffing Agency, as applicable, can demonstrate that it possessed prior to, or developed independently from, disclosure or development under this AGREEMENT or the relevant Scope of Work;
- (iii) which University or Staffing Agency, as applicable, receives from a third party which is not legally prohibited from disclosing such information;
- (iv) which University or Staffing Agency, as applicable, is required by law to disclose, provided that the other Party is notified of any such requirement with sufficient time to seek a protective order or other modifications to the requirement; or
- (v) which has to be disclosed in order to provide appropriate medical care to a Candidate.

(d) Both Parties shall treat the existence and the conditions of this AGREEMENT confidential unless required to be disclosed by law. For clarity, the terms of this Agreement, any related Addenda or Scopes of Work, and fees are not confidential pursuant to Virginia law as applicable to agencies of the Commonwealth of Virginia.

- (e) Nothing herein is intended to limit University's compliance with the Virginia Freedom of Information Act.
- (f) The obligations of this Section shall survive termination of this AGREEMENT and any applicable Scope of Work.

**8. DATA PRIVACY AND SECURITY**

All information containing personal data ("Personal Information") to the extent Staffing Agency takes possession of, receives or uses Personal Information at Staffing Agency's leased or owned premises or on computers leased or owned by Staffing Agency, shall be handled in accordance with all applicable privacy laws, rules and regulations ("Privacy and Data Security Laws"), including, without limitation, the Health Insurance Portability and Accountability Act (HIPAA) and the European Data Protection Directive [EC/95/46], as the same may hereafter be amended, modified or changed. Without limiting the Parties other obligations under this Section 8, the Parties shall (a) implement and maintain reasonable security procedures and practices appropriate to the nature of the Personal Information and take such other actions as are necessary to maintain conformance with industry standards of security and to protect the security and confidentiality of the Personal Information, protect against any anticipated or actual threats or hazards to the security or integrity of the Personal Information and prevent unauthorized access to or destruction, use, modification and disclosure of Personal Information, and (b) otherwise keep the Personal Information confidential in accordance with the terms of this AGREEMENT and any Privacy and Data Security Laws. Without limitation of the above, the Parties shall employ commercially reasonable technologies and procedures for the safe, secure and accurate collection, processing, storage, and distribution of Personal Information.

**9. INTELLECTUAL PROPERTY**

(a) Staffing Agency agrees that University Inventions shall be the sole property of University and that any University Inventions which are works of authorship subject to copyright shall be "works made for hire" of which University shall be deemed the author and owner of the rights comprised in copyright. Without limiting the foregoing, and without additional consideration, Staffing Agency hereby also assigns to University all rights, title, and interest Staffing Agency may have in any University Inventions upon the future creation of such University Inventions. If requested by University, Staffing Agency agrees to obtain written agreements (to be provided by University) with Temporary Employees, employees, agents, and subcontractors which assign, without additional consideration, all rights, title and interests in University Inventions to University.

(b) If University requests, Staffing Agency will execute and will cause its Temporary Employees, employees, agents, or subcontractors to execute any instruments or testify as University deems necessary for University to obtain patents or otherwise to protect University's in a University Invention. University will reasonably compensate Staffing Agency for the time devoted to such activities and will reimburse Staffing Agency for reasonable and necessary expenses incurred.

(c) The obligations of this Section shall survive termination of this AGREEMENT and any applicable Scope of Work.

**10. REPRESENTATIONS AND WARRANTIES**

(a) Both Parties represent and warrant that it is not bound by any other agreement under which there would be a default as a result of the execution and performance of this AGREEMENT or a Scope of Work.

(b) Both Parties represent and warrant that it will require all employees, agents, Temporary Employees, and subcontractors in connection with this AGREEMENT and any Scope of Work to comply with the provisions of this AGREEMENT and the applicable Scope of Work.

- (c) Staffing Agency represents and warrants that all Services will be performed in compliance with all applicable laws and regulations.
- (e) Although it is acknowledged the University is not an employer of Temporary Employee pursuant to this Agreement, University represents and warrants that it shall not discriminate against Temporary Employees based on race, color, religion, sex, national origin, disability, sexual orientation, or any other characteristic protected by applicable laws, or retaliate against Temporary Employees for protected activity in violation of applicable laws, and shall indemnify the Staffing Agency for any breach thereof.
- (f) Both Parties represent and warrant that it shall abide by all applicable laws and regulations.
- (g) Staffing Agency shall comply with all provisions of the Affordable Care Act (“ACA”) applicable to Temporary Employees, including the employer shared responsibility provisions relating to the offer of “minimum essential coverage” to “full-time” employees (as those terms defined in Code §4980H and related regulations) and the applicable employer information reporting provisions under Code §6055 and §6056 and related regulations.

## **11. INDEMNIFICATION**

(a) Staffing Agency agrees to indemnify, defend and hold harmless University and its Affiliates, officers, directors, employees, agents, and subcontractors (“University Indemnitees”) from and against any loss, expense, cost (including reasonable attorneys’ fees), liability, damage, or claim by third parties that arises out of the (i) failure of Staffing Agency to comply with the terms of this AGREEMENT or a Scope of Work, or (ii) the negligence or willful misconduct of Staffing Agency in its performance of the Services (“Claim”); provided that:

- (i) Staffing Agency shall not indemnify any University Indemnitee for any Claim to the extent the Claim arose out of the negligence or wilful misconduct of University or its employees, agents or subcontractors;
- (ii) Staffing Agency shall not indemnify any University Indemnitee for any Claim to the extent the Claim arose out of a breach by University of this AGREEMENT or a Scope of Work;
- (iii) Staffing Agency is promptly notified in writing of any Claim for which University Indemnitees seek coverage under this Section so that Staffing Agency’s ability to defend or settle the Claim is not adversely affected; and
- (iv) Staffing Agency has sole control over the defense or settlement of any Claim for which University Indemnitees seek coverage under this Section, and University Indemnitees fully cooperate with Staffing Agency in the defense or settlement of such Claim, pursuant to the provisions and applicable statutory requirements, including Va. Code §§ 2.2-507 and 2.2-514, and any necessary approvals necessitated by statute, provided that no University Indemnitee shall be required to admit fault or responsibility in connection with any settlement.

(b) The obligations of this Section shall survive termination of this AGREEMENT and any applicable Scope of Work.

## **12. LIMITATION OF LIABILITY**

To the extent provided by the laws of the Commonwealth of Virginia, each party shall be responsible for the negligent acts or omissions of its own agents and employees. University is an agency of the Commonwealth of



Virginia and is afforded the protection of sovereign immunity under Virginia law. Any claims against University or the Commonwealth are subject to the requirements established under Virginia law for bringing such claims, including the Virginia Tort Claims Act, Va. Code §§ 8.01-195.1 et seq., and other applicable statutes relating to claims against the Commonwealth or its agencies. Notwithstanding any other provision, nothing in this contract shall be deemed to be or construed as a waiver of University's or the Commonwealth's sovereign immunity or any other applicable requirements under Virginia law for bringing claims against University or the Commonwealth. To the extent any provision of this Agreement is prohibited by Virginia law, or is otherwise not authorized by Virginia law, due to University's status as an agency of the Commonwealth of Virginia, such provision is null and void. In no event will either Party have any liability to the other Party under or in connection with this Agreement howsoever arising in respect of loss of profits or contracts or for special, indirect or consequential loss or damage, whether or not the possibility of such damages has been disclosed in advance or could have been reasonably foreseen.

### **13. INSURANCE**

The Parties shall each carry and maintain, at its sole expense, with financially sound and reputable insurers during the term of this AGREEMENT and any Scope of Work, insurance policies at the minimum levels required by all applicable laws and regulations in the state in which the Services will be provided. Independent Contractors of Staffing Agency shall be required to carry Worker's Compensation and General Liability Insurance. Certificates evidencing such insurance shall be made available to a Party upon its request. Such coverages shall include the following: all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Minimum Insurance Coverages and Limits Required are as follows:

- a. Worker's Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- d. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

### **14. INDEPENDENT CONTRACTOR**

The relationship of the Parties is that of independent contractors. Neither Party is the partner, joint venturer, or agent of the other and neither Party has authority to make any statement, representation, commitment, or action of any kind which purports to bind the other without the other's prior written authorization. Except where expressly stated otherwise, at no time shall any person or Temporary Employee provided by Staffing Agency be eligible to participate in any employee benefit plan or program or employee welfare plan provided by University, and in no way will any such person or other employee of Staffing Agency be considered an employee of University.

### **15. USE OF PARTIES' NAMES**

The Parties shall not make (or have made on its behalf) any oral or written release of any statement, information, advertisement or publicity in connection with this AGREEMENT which uses or makes reference to the other Party's name, symbols, or trademarks, unless such Party has otherwise expressly consented to same in writing. The obligations of this Section shall survive termination of this AGREEMENT.

### **16. FORCE MAJEURE**

- (a) If either Party is delayed in performing an obligation under this AGREEMENT or a Scope of Work by strike, lockout, or other labor troubles of a third party; by restrictive governmental or judicial order not directly related to this AGREEMENT or the relevant Scope of Work; or by riots, insurrection, terrorism, war, pandemic, inclement weather, or Acts of God; illegal actions (or inactions) of state bodies, performance is excused for the period of such delay. The delayed Party shall promptly notify the other in writing of the delaying event.
- (b) The Party affected by such force majeure shall use all reasonable efforts, to eliminate, compensate and overcome any of such contingencies and resume performance of its duties.
- (c) If any of such force majeure circumstances directly affected the performance of the obligation in the time period stipulated in the AGREEMENT this time period is extended correspondingly for a period during which such circumstance lasts.
- (d) If partial or complete non-performance of either Party lasts for over three (3) months, the other Party may terminate the AGREEMENT without obligation.

## **17. COOPERATIVE PROCUREMENT**

- (a) This AGREEMENT is being executed by VCU, in part, on behalf of the Virginia Higher Education Procurement Consortium (“VHEPC”) which includes all members from the Virginia Association of State College and University Purchasing Professionals (“VASCUPP”). Reference the VASCUPP Zone Map <https://www.vascupp.org/VASCUPPzonemap.pdf>
- (b) It is the intent of this AGREEMENT to allow for cooperative procurement. Accordingly, this may include any and all state, local governments, school districts, public body, public or private health or higher education institutions or the University’s affiliated foundations in the United States may access this AGREEMENT if authorized by Aerotek. Participation in this cooperative procurement is strictly voluntary. If authorized by Aerotek, this AGREEMENT may be extended to the entities indicated above to purchase at contract prices in accordance with this AGREEMENT. Aerotek will notify the University in writing of any such entities accessing the contract, AS SET FORTH IN GREATER DETAIL in the Publicly Accessible Contract (“PAC”), which will be executed simultaneously with this AGREEMENT. No modification of this AGREEMENT or execution of a separate contract is required to participate; however, the participating entity and Aerotek may modify the terms and conditions of this contract to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and Aerotek. Aerotek will provide usage reports for all entities accessing this AGREEMENT, as set forth in the PAC. Participating entities shall place their own orders directly with Aerotek and shall fully and independently administer their use of the contract to include contractual disputes, invoicing and payments without direct administration from the University. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by Aerotek to extend this AGREEMENT. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of this AGREEMENT no matter the circumstances.

## **18. ADDITIONAL SERVICES**

University reserves the right, subject to mutual written agreement, for Aerotek to provide services under the same pricing, and terms and conditions, and to make modifications or enhancements to the existing services. Such additional goods and services may include other products, components, accessories, subsystems, or related services newly introduced during the term of this Agreement.

## **19. NOTICES**

(a) All notices under this AGREEMENT or a Scope of Work shall be sent by registered or certified mail, postage prepaid, or by overnight courier service. Notices may be sent by facsimile or e-mail, if confirmed by also sending as described above.

(b) Notices pertaining to this AGREEMENT shall be sent to:

If to Staffing Agency:  
Attn: Aerotek Legal  
Aerotek Scientific, LLC  
7301 Parkway Drive,  
Hanover, MD 21076

If to University:  
John McHugh, Director  
Procurement Services  
Virginia Commonwealth University  
912 West Grace Street, 5<sup>th</sup> Floor  
Box 980327  
Richmond, Virginia 23298

## **20. ASSIGNMENT**

Any assignment by either Party is valid only upon the prior written consent of the other Party. To the extent permitted above, this AGREEMENT shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

## **21. WAIVER; MODIFICATION OF AGREEMENT**

No waiver, amendment, or modification of any of the terms of this AGREEMENT or a Scope of Work shall be valid unless in writing and signed by authorized representatives of both Parties. Failure by either Party to enforce any rights under this AGREEMENT or a Scope of Work shall not be construed as a waiver of such rights nor shall a waiver by either Party in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances.

## **22. GOVERNING LAW**

This AGREEMENT and any Scope of Work shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia without giving effect to the principles of choice of law of that jurisdiction. Any dispute arising from or in connection with this AGREEMENT shall be brought before a court of competent jurisdiction located in Richmond, Virginia.

## **23. ENTIRE AGREEMENT**

The terms and conditions included in this AGREEMENT, the PAC, and any other applicable Addenda or Scope of Work appropriately and completely executed, represent the entire and integrated agreement between Staffing Agency and University and supersedes all prior negotiations, representations or agreements, either written or oral, regarding the Services.

## **24. CONCLUDING CONDITIONS**

(a) An electronically scanned copy of the AGREEMENT and any Addenda or Scope of Work shall be considered authentic and having the same legal force as the original copy.

(b) This AGREEMENT, in conjunction with any Addenda or Scope of Work entered into under this

AGREEMENT, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral, regarding its subject matter.

(c) All addenda and scopes of work to the AGREEMENT are an integral part of this AGREEMENT.

(d) If any provision(s) of this AGREEMENT should be illegal or unenforceable in any respect, the legality and enforceability of the remaining provisions of this AGREEMENT shall not in any way be affected.

IN WITNESS WHEREOF, the Parties hereto, each by a duly authorized representative, have executed this AGREEMENT as of the Effective Date.

**VIRGINIA COMMONWEALTH UNIV**

**AEROTEK Scientific, LLC.**

**John McHugh**

Matthew Snyder

By:

DocuSigned by:  
*John McHugh*  
EE6DA7427C67468  
Authorized Signature

By:

*Matthew Snyder*

Title:

Director of Procurement Services

Title:

Sr. Contracts Manager

Date:

4/1/2021

Date:

March 25, 2021

**List of Exhibits**

Exhibit A – Confidentiality Agreement & Assignment (to be signed by Temporary Employee)

Exhibit B – University’s Policies & Procedures

Exhibit C – Fee Sheet

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## EXHIBIT A

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### Confidentiality Agreement and Assignment

As a condition of my assignment by Aerotek Scientific, LLC (“Staffing Agency”) to Virginia Commonwealth University (“University”), I hereby agree as follows:

I will not use, disclose, or in any way reveal or disseminate to unauthorized parties any information I gain through contact with materials or documents that are made available through my assignment at University or which I learn about during such assignment.

I will not disclose or in any way reveal or disseminate any information pertaining to University or its operating methods and procedures, including, without limitation, information protected by the Health Insurance Portability and Accountability Act (HIPAA) that come to my attention as a result of this assignment.

Under no circumstances will I remove physical or electronic documents or copies of documents from the premises of University.

“University Inventions” shall mean the following in any form or media, whether now existing or which shall be invented in the future, in whole or in part, whether complete or incomplete, including copies thereof, by or on behalf of Temporary Employee pursuant to a Scope of Work together with all related Intellectual Property Rights: (i) formulae, algorithms, processes, procedures and methods; (ii) designs, ideas, concepts, research, discoveries, inventions and invention disclosures; (iii) know-how, trade secrets and proprietary information and methodologies; (iv) technology; (v) computer software; (vi) databases; (vii) expressions, works and factual and other compilations; (viii) protocols and specifications; (ix) visual, audio and audiovisual works; and (x) records of each of the foregoing, including documentation, design documents and analyses, studies, programming tools, plans, models, flow charts, reports, letters memoranda and drawings that are in connection with this temporary employment position.

I agree that any University Inventions shall be the sole property of University and that any University Inventions which are works of authorship subject to copyright shall be “works made for hire” of which University shall be deemed the author and owner of the rights comprised in copyright. Without limiting the foregoing, and without additional consideration, I do hereby also assign to University all rights, title, and interest I may have in any University Inventions upon the future creation of such University Inventions. I agree that no additional consideration shall be paid to me in consideration for my assignment of all rights, title and interests in University Inventions to University.

I understand that I will be responsible for any direct or consequential damages resulting from any violation of this Agreement.

The obligations of this Agreement will survive the duration my engagement by Staffing Agency.

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TEMPORARY EMPLOYEE

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Signature

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Printed Name

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Date

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## **EXHIBIT B**

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### **VCU'S POLICIES AND PROCEDURES**

University's policies and procedures will be discussed at the beginning of temporary assignment. University policies are available at the following web site: <https://policy.vcu.edu/>

**AGREEMENT  
PUBLICLY ACCESSIBLE CONTRACT (PAC)**

This Publicly Accessible Contract (the “PAC”), effective the date the last signature is affixed below, is by and between Virginia Commonwealth University (the “University”), on behalf of the Virginia Higher Education Procurement Consortium (the “Consortium”) (collectively the "University"), and Aerotek Scientific, LLC (“Staffing Agency”).

**WITNESS**

WHEREAS, the University and Staffing Agency have executed an agreement, dated March 31, 2021 (the “Primary Agreement”), and included in the Primary Agreement is a third party access / cooperative clause.

WHEREAS, the University and Staffing Agency wish to express in this PAC the specific terms that will allow third party access to the Primary Agreement.

NOW THEREFORE, in consideration of the mutual promises and provisions hereof, the parties agree as follows:

I. Definitions:

- A. Consortium membership shall mean the 12 Virginia Public Higher Education institutions and the Virginia Community College System. Current membership is available at <http://vhpec.org/>
- B. Non-Consortium entities shall mean any and all state and local governments, school districts, public bodies, and public or private health or higher education institutions.

II. Staffing Agency will:

- A. Pay the University one percent (1%) of all sales to non-Consortium entities outside of the Consortium membership associated with the Primary Agreement (as the “PAC Annual Fee”). The PAC Annual Fee will be paid in exchange for marketing services provided by the University and the Consortium described below in Section II.
- B. Fully support this marketing relationship by promoting the availability of the Primary Agreement to non-Consortium entities;
- C. Provide quarterly sales reports detailing the amount of sales to each non-Consortium entity;
- D. Extend same discounts as delineated in the Primary Agreement for all accessing entities.

III. The University/Consortium will:

- A. Promote the Primary Agreement on its website and through other channels (e.g., conferences) to non-Consortium entities;
- B. Maintain an approved version of Staffing Agency's logo on the Consortium website.

IV. Term

- A. The term of this Agreement is two (2) years from the date of signature below, with the option of up to three (3) one-year renewals. The end date coincides with the Primary Agreement's end date.

V. Payment

- A. Payment of PAC Annual Fee will arrive at the University no later than [REDACTED] of each year. The University and Consortium will share the payments equally and allocate payments to the appropriate accounts.

In the event of early termination of the Primary Agreement, this residual payment will arrive at the University no later than 45 calendar days from termination date of the Primary Agreement.

- B. Payment of PAC Annual Fee will take the form of a check. Checks will be made payable to **Virginia Commonwealth University** and sent to:

Alex McWhorter, Office Manager  
Procurement Services  
Virginia Commonwealth University  
912 WestGrace Street, 5<sup>th</sup> Floor  
Box 980327  
Richmond, Virginia 23298

VI. Notices

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; or (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt. All such notices will be addressed to a party at such party's address shown below.

If to the University:

John McHugh, Director  
Procurement Services  
Virginia Commonwealth University  
912 West Grace Street, 5<sup>th</sup> Floor  
Box 980327  
Richmond, Virginia 23298



Email: [mchughj2@vcu.edu](mailto:mchughj2@vcu.edu)

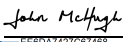
If to Staffing Agency:

Attn: Aerotek Legal  
Aerotek Scientific, LLC  
7301 Parkway Drive,  
Hanover, MD 21076

IN WITNESS WHEREOF, the Parties hereto, each by a duly authorized representative, have executed this PAC as of the Effective Date.

**Virginia Commonwealth University**

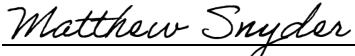
**Aerotek Scientific, LLC**

DocuSigned by:  
  
EE6DA7427C67468

John McHugh  
Director, Procurement Services

4/1/2021

Date



Name: Matthew Snyder  
Title: Sr. Contracts Manager

March 31, 2021

Date