



FACILITY USER AGREEMENT

Facility User Agreement (hereinafter "Agreement") is entered into this _____, by and between _____ located at _____, referred to in this Agreement as "FACILITY", and RestUp, LLC, a Indiana Limited Liability Company (d.b.a. MyShyft, LLC) including its affiliates and subsidiaries, with an office located at 429 East Vermont Street, Suite 110, Indianapolis, Indiana 46202 referred to in this Agreement as "RESTUP."

RECITALS

WHEREAS, _____ operates a Senior Living Facility located in Indiana and wishes to engage RESTUP to provide a technology platform that connects FACILITY to healthcare professionals to supplement FACILITY's emergency staffing needs.

WHEREAS, RESTUP operates a technology platform that allows independent freelance health care professionals to match with and provide healthcare services to FACILITY.

THEREFORE, in consideration of the above premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, and intending to be legally bound, FACILITY and RESTUP hereby agree to the following terms and conditions.

ARTICLE 1. TERM OF AGREEMENT

Section 1.1 **Term.** This Agreement will be in effect for three (3) months and will continue indefinitely until terminated pursuant to section 1.2 of this Agreement.

Section 1.2 **Termination.** Either party may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days advance written notice of the termination date to the other party. Such termination will have no effect upon the rights and obligation resulting from any transactions occurring prior to the effective date of the termination.

ARTICLE 2. RESPONSIBILITIES OF RESTUP

- Section 2.1 **Services.** RESTUP will provide FACILITY with an account on RESTUP's technology platform that will allow the FACILITY to match and engage with one or more licensed health care providers (i.e., LPNs, QMAs, RNs, CNAs, HHAs) as specified by FACILITY (collectively, "Healthcare Professionals"), subject to availability of qualified Healthcare Professionals via the RestUp technology platform.
- Section 2.2 **Healthcare Professionals.** RESTUP will connect FACILITY with Healthcare Professionals who meet the following criteria and will provide evidence of the following to Facility upon written request:
- 1) Possess active state license/registration and/or certification with no findings of abuse.
 - 2) Possess proof of pre-activation screening to include:
 - a. a TB skin test or chest X-ray ray (and/or applicable health care screening in reference to preventing communicable diseases as required by law),
 - b. Proof of Covid-19 vaccination, if vaccinated, or exemption
 - c. Attempt to obtain two (2) professional references,
 - d. criminal background and identity (verification of government issued identification, social security number, and date of birth) checks(s) as currently provided by the Indiana State Police Repository or Checkr, Inc. (or other reputable online background check service with API),
 - e. National sex offender search via the U.S. Dept. of Justice website,
 - f. U.S. Dept. of Health and Human Services List of Excluded Individuals and Entities ("LEIE") check,
 - g. CPR Certification (if applicable), and
 - h. verification of being older than eighteen (18) years of age.
- Section 2.3 **Insurance.** RESTUP will maintain (at its sole expense), or require the Healthcare Professionals it provides under this Agreement to maintain, valid policies of insurance evidencing general and professional liability coverage of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate, covering the sole negligent acts or omissions which may give rise to liability for services provided under this Agreement. RESTUP will provide a certificate of insurance evidencing such coverage upon request by FACILITY. RESTUP will also maintain Worker's Compensation Insurance for its independent contractor Healthcare Professionals.
- Section 2.4 **Use of Independent Contractors.** Healthcare Professionals provided to FACILITY are independent contractors of RESTUP and are subject to RESTUP's

standard screening process, as well as additional qualifications as required in this Agreement. RESTUP will ensure that any independent contractors will comply with all applicable terms of this Agreement.

Section 2.5 Employment and Taxes. RESTUP will follow its standard recruitment and screening policies and procedures to verify that all Healthcare Professionals meet applicable licensing requirements. RESTUP and its subcontractors, will maintain direct responsibility for the payment of wages and other compensation, and for any applicable mandatory withholdings and contributions such as federal, state, and local income taxes, social security taxes, and unemployment insurance, only if the U.S. Department of Labor or IRS disagree with the classification of the RestUp Healthcare Professionals as independent contractors.

Section 2.6 Record Access. In instances where FACILITY is Medicare and/or Medicaid certified, RESTUP agrees that in accordance with Section 952 of the Omnibus Budget Reconciliation Act of 1980, its contracts, books, documents and records will be made available to the Comptroller General of the United States, the United States Department of Health and Human Services and their duly authorized representatives (“USDHHS”) until the expiration of four (4) years after the date on which such services were furnished under this Agreement.

Section 2.7 No-Show Healthcare Professionals. If RESTUP Healthcare Professionals respond to a shift request and confirm they are willing to work the shift, and then do not show up to work in a reasonable time, FACILITY agrees to send another shift request via the app or website in order to fill the shift. As independent contractors, FACILITY acknowledges that RESTUP has no authority to force its Healthcare Professionals to work. However, RESTUP shall have a policy in place to deactivate accounts if Healthcare Professionals do not show up for a confirmed shift.

ARTICLE 3. RESPONSIBILITIES OF FACILITY

Section 3.1 Orientation. FACILITY will promptly provide RESTUP Healthcare Professionals with an adequate and timely orientation to FACILITY. FACILITY shall review instructions with RESTUP Healthcare Professionals regarding confidentiality (including patient and contractor), and orient RESTUP Healthcare Professionals to the specific Exposure Control Plan of the FACILITY as it pertains to OSHA requirements for bloodborne pathogens, as well as any of the FACILITY’S specific policies and procedures provided to RESTUP for such purpose.

Section 3.2 Requests for Healthcare Professionals. FACILITY will make shift requests via the RESTUP website or mobile application platform. FACILITY will use its best

efforts to make a request via the RestUp website or mobile application of Healthcare Professionals as soon as is practicable prior to shift start time in order to assure opportunity for Healthcare Professionals to apply to the request as well as FACILITY's ability to review and select from Healthcare Professionals who apply. All information regarding time and assignment will be provided by FACILITY at the time of the initial request. FACILITY will provide a point of contact for troubleshooting and questions related to use the RESTUP platform and those Healthcare Professionals who use the platform to find work with FACILITY.

- Section 3.3 **Staff Order Cancellation.** If FACILITY cancels an order less than one (1) hour prior to the start of a shift, RESTUP will bill FACILITY for two (2) hours at that specific Healthcare Professionals' self-designated and previously published hourly rate for each scheduled Healthcare Professionals. FACILITY will be responsible for contacting RESTUP Healthcare Professionals prior to reporting time.
- Section 3.4 **Responsibility for Resident Care.** FACILITY retains full authority and responsibility for professional and medical management of care for each of its residents and for ensuring that services provided by RESTUP Healthcare Professionals under this agreement are furnished in a safe and effective manner and in accordance with applicable standards.
- Section 3.5 **Non-Performance.** If FACILITY concludes, in its sole discretion, that any Healthcare Professionals provided by RESTUP have engaged in misconduct, or have been negligent, FACILITY may require the Healthcare Professionals to leave the premises and will notify RESTUP immediately in writing, providing in reasonable detail the reason(s) for such dismissal. FACILITY'S obligation to compensate RESTUP for such Healthcare Professionals' services will be limited to the number of hours actually worked.
- Section 3.6 **Insurance.** FACILITY will maintain at its sole expense valid policies of general and professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$3,000,000 annual aggregate covering the acts or emissions of its employees, contractors and agents which may give rise to liability in connection with the Services under this Agreement. FACILITY will give RESTUP prompt written notice of any material change in FACILITY coverage.
- Section 3.7 **Incident Reports.** FACILITY shall report to RESTUP any unexpected incident known to involve any Healthcare Professionals (such as Healthcare Professionals errors, unanticipated deaths or other unanticipated patient-related events or injuries known to be attributable to Healthcare Professionals, and any safety

hazards known to be related to the services provided by Healthcare Professionals) if the incident may have an adverse impact on the FACILITY and/or RESTUP. In order to comply with RESTUP's incident tracking program, complaints and grievances regarding RESTUP Healthcare Professionals may be reported to the local RESTUP representative (or CEO and COO) at any time.

ARTICLE 4. MUTUAL RESPONSIBILITIES

Section 4.1 **Non-discrimination.** Neither RESTUP nor FACILITY will discriminate on the basis of age, race, color, national origin, religion, sex, disability, being a qualified disabled veteran, being a qualified of the Vietnam era, or any other category protected by law.

ARTICLE 5. COMPENSATION

Section 5.1 **Invoicing.** RESTUP will submit invoices to FACILITY every week for Healthcare Professionals provided to FACILITY during the preceding week. FACILITY agrees to pay the cost per hour displayed on the health care professional's profile in the RESTUP app at the time the FACILITY selected the health care professional to work to the shift. FACILITY agrees that total hours invoiced shall be those hours captured by the RESTUP app time-clock. Invoices shall be submitted to the following address:

ATTN: _____

Section 5.2 **Payment.** All amounts due to RESTUP are due and payable within thirty (30) days from date of invoice. FACILITY will send all payments to the address set forth on the invoice. RESTUP will waive reasonably documented disputed amounts that are disputed within ten (10) days of a shift. FACILITY shall send reasonable evidence of the disputed shift time or amount to info@myshyft.org within ten (10) days of the end of a shift.

Section 5.3 **Late Payment.** Payments not received within thirty (30) days from the applicable invoice date will accumulate interest, until paid, at the rate of one and one-half percent (1.5%) per month on the unpaid balance, equating to an annual percentage rate of eighteen (18%), of the maximum rate permitted by applicable law, whichever is less.

ARTICLE 6. GENERAL TERMS

- Section 6.1 **Independent Contractors.** RESTUP, FACILITY, and Healthcare Professionals are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. RESTUP, FACILITY nor Healthcare Professionals nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement.
- Section 6.2 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, and such consent will not be unreasonably withheld. No such consent will be required for assignment to an entity owned by or under common control with assignor or in connection with any acquisition of all the assets or capital stock of a party; provided however, the assigning party will provide notice of such transaction to the other non-assigning party and remain fully responsible for compliance with all of the terms of this Agreement.
- Section 6.3 **Indemnification.** RESTUP agrees to indemnify and hold harmless FACILITY, and its directors, officers and agents from and against any and all claims, actions, or liabilities which may be asserted against them by third parties in connection with the solely negligent performance of RESTUP, its directors, officers, employees or agents under this Agreement only.
- FACILITY agrees to indemnify and hold harmless RESTUP, its directors, officers, shareholders, employees and agents from and against any all claims, actions, or liabilities which may be asserted against them by third parties in connection with the negligent performance of FACILITY, its directors, officers, employees, contractors or agents under this Agreement.
- Section 6.4 **Attorney's Fees.** In the event either is required to obtain legal assistance (including in-house counsel) to enforce its rights under this Agreement, or to collect any monies due to such party for services provided, the prevailing party shall be entitled to receive from the other party, in addition to all other sums due, reasonable attorney's fees, court costs and expenses, if any, incurred enforcing its rights and/or collecting its monies.
- Section 6.5 **Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which

notices are sent by sending written notice of such change of address to the other party.

_____	RestUp, LLC dba MyShyft
_____	429 East Vermont Street, Suite 110,
_____	Indianapolis, Indiana, 46202
ATTN: _____	ATTN: <u>Clifton A. Dennis</u>

- Section 6.6 **Headings.** The Headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
- Section 6.7 **Entire Contract; Counterparts.** This Agreement and RESTUP's Terms of Service, as updated from time-to-time and incorporated by reference, constitutes the entire contract between FACILITY and RESTUP regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document. No amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of both parties except as provided in Section 6.9.
- Section 6.8 **Availability of Healthcare Professionals.** The parties agree that RESTUP's ability to supply Healthcare Professionals on request of FACILITY is subject to the availability of qualified RESTUP Healthcare Professionals. The failure of RESTUP to provide Healthcare Professionals or the failure of FACILITY to request Healthcare Professionals shall result in no penalty to FACILITY or RESTUP and shall not constitute a breach of this Agreement.
- Section 6.9 **Compliance with Laws.** RESTUP agrees that all services provided pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, RESTUP reserves the right to notify FACILITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
- Section 6.10 **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
- Section 6.11 **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Indiana, without regard to its principles

of conflict of laws. Any dispute or claim from this Agreement shall be resolved exclusively in the federal and state courts of the State of Indiana and the parties hereby irrevocably submit to the personal jurisdiction of said courts and waive all defenses thereto.

Section 6.12 **Limitation on Liability.** Neither RESTUP nor FACILITY will be responsible for special, indirect, incidental, consequential, or other similar damages, including but not limited to lost profits, that the other party may incur or experience in connection with this Agreement or the services provided, however caused, even if such party has been advised of the possibility of such damages.

Section 6.13 **Incorporation of Recitals.** The recitals forth at the top of this Agreement are incorporated by references as if fully set forth herein.

ARTICLE 7. CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION

Section 7.1 Confidentiality.

A. RESTUP/FACILITY Information. The parties and acknowledge that, by virtue of entering into this Agreement and providing services hereunder, the parties will have access to certain information of the other party that is confidential and constitutes valuable, special, and unique property of the party. Each of the parties agrees that neither it nor his/her staff shall, at any time either during or subsequent to the term of this Agreement, disclose to others, use, copy, or permit to be copied, except pursuant to his duties for on behalf of the other party, any secret or confidential information of the party, including, without limitation, information with respect to the party's patients, costs, prices, and treatment methods at any time used, developed or made by the party during the term of this Agreement and that is not available to the public, without the other party's prior written consent.

B. Terms of this Agreement. Except for disclosure to his/her legal counsel, accountant or financial or other advisors/consultants neither party nor its respective staff disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement. Unauthorized disclosure of the terms of this Agreement shall be material breach of this Agreement and shall provide the party with the option of pursuing remedies for breach or immediate termination of this Agreement in accordance with the provisions stated herein.

C. Patient/Customer Information: Neither party shall disclose any financial or medical information regarding patients/customers treated hereunder to any

third-party, except where permitted or required by law or where such disclosure is expressly approved by FACILITY, RESTUP and patient/customer in writing. Further, each party shall comply with the other party's rules, regulations and policies regarding the confidentiality of such information as well as all federal and state laws and regulations including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH").

D. The obligations set forth in this Section shall survive the termination of this Agreement.

Section 7.2 HIPAA/HITECH Obligations. Each party shall comply with all federal and state laws and regulations, and all rules, regulations, and policies of the other party, regarding the confidentiality of patient information, to include, without limitation, HIPAA and HITECH. In addition, if necessary, the parties agree to resist any effort to obtain access to such records or information in judicial proceedings, except such access as is expressly permitted by federal/ state regulations.

To the extent that FACILITY may be a "Covered Entity" as defined by HIPAA, and would therefore be subjected to applicable requirements, including, but not limited to, requirements to enter into certain contracts with their "business associates", by HIPAA, the parties acknowledge that a business associate agreement is not needed due to the nature or services provided by RESTUP. Specifically, the parties acknowledge that under HIPAA, Healthcare Professionals provided hereunder are considered part of FACILITY's workforce and to that end, all Protected Health Information ("PHI") is created, viewed, used, maintained and otherwise stored and safeguard in FACILITY's work environment. The parties further acknowledged that PHI is not exchanged between the parties in order for RESTUP to provide Healthcare Professionals as part of FACILITY's temporary workforce.

Notwithstanding the foregoing, RESTUP and all staff provided to FACILITY hereunder shall comply with confidentiality, medical records and/or other applicable laws and regulations with regard to any and all information directly or indirectly accessed or used by RESTUP and their Healthcare Professionals, including without limitation HIPAA and HITECH.

FACILITY and RESTUP have acknowledged their understanding of and agreement to the mutual promises written above by executing and delivering this Agreement as of the date set forth above.

FACILITY:

RESTUP, LLC:

Signature

Signature

Printed Name & Title

Clifton A. Dennis, Chief Legal Officer of RestUp, LLC
Printed Name & Title

Date

Date