

## SUPPLEMENTAL STAFFING AGREEMENT

**THIS SUPPLEMENTAL STAFFING AGREEMENT** ("Agreement") is entered into as of August 12, 2003 by and between the Hospital Authority of the Metropolitan Government of Nashville and Davidson County, a public and governmental body acting as an agency and instrumentality of the Metropolitan Government of Nashville and Davidson County, hereinafter called "Hospital Authority" and Kindred Hospitals Limited Partnership, a Delaware limited partnership, hereinafter called "Kindred," in consideration of the following facts.

### RECITALS:

- A. The Hospital Authority, as landlord, and Kindred, as tenant, have entered into a Sublease bearing even date herewith, (the "Sublease") whereby Kindred has leased space in Landlord's hospital located at 1414 County Hospital Road, Nashville, Tennessee 37218, commonly known as Nashville Metropolitan Bordeaux Hospital (the "Hospital"), for the operation of a long term acute care hospital (the "LTAC").
- B. In addition to the Sublease, the Hospital Authority and Kindred have entered into an Ancillary and Support Services Agreement of even date herewith, (the "Ancillary and Support Services Agreement") whereby the Hospital Authority agrees to provide services including support staff, equipment and systems for the operation of the LTAC.
- C. Kindred needs nursing services to operate the LTAC.
- D. The Hospital authority maintains a sufficient quantity of personnel capable of providing nursing services in the LTAC and is willing on a temporary basis to provide the services of a limited number of nurses and unit secretaries to Kindred as needed for its operation of the LTAC.

### AGREEMENT:

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **Description of Services.** Subject to availability, the Hospital Authority shall, upon request by Kindred, furnish nurses employed by the Hospital Authority for staffing of the LTAC. The Hospital Authority will furnish the services of up to four (4) registered nurses ("RN") and three (3) licensed practical nurses ("LPN") who served in the LTAC under the administration of the Hospital Authority as well as five (5) additional pool LPN's and a Unit Secretary. All nursing personnel referred to Kindred shall meet the criteria and requirements that follow. Additional competency requirements may be defined by Kindred and agreed upon at a later date.

- a. All personnel referred to Kindred by the Hospital Authority must:
  - (1) If a nurse, possess a valid registered nurse license or licensed practical

(vocational) nurse license and CPR certification, if required.

(2) Have recent experience in the Hospital Authority's LTAC or an acute hospital setting.

(3) If a nurse, carry an original of his or her certificate and CPR card, if required, and present these to Kindred representatives upon request.

(4) Have current health clearance that includes a negative TB test result or negative chest X-ray.

(5) Possess proof of significant recent clinical experience and training in specialty areas.

(6) Remain subject to the current Hospital Authority policy on substance abuse.

b. Upon the request of Kindred the Hospital Authority shall provide to Kindred background information on each nurse, including completed application, references and a copy of each nurse's state license.

2. **Responsibility of Kindred.**

a. Kindred shall endeavor to request personnel at least 48 hours prior to the time personnel are to start work.

b. Kindred has the right to cancel its request for personnel **up to four (4) hours** before the time the requested nursing personnel are scheduled to report for an assignment without incurring liability. It shall be the responsibility of Hospital Authority to notify the personnel of such cancellation.

c. If Kindred cancels requested nursing personnel less than four (4) hours prior to start of an assignment, and the Hospital Authority is unable to place such personnel elsewhere, Kindred shall be liable for four (4) hours pay at the applicable rate for the requested personnel. If the Hospital Authority is unable to place the nursing personnel elsewhere, Kindred shall have the option to utilize the nursing personnel for those four (4) hours.

d. Kindred shall not openly solicit or offer employment to any employee of the Hospital Authority without the express consent of the Hospital Authority.

3. **Fee Schedule.**

a. The Hospital Authority shall bill Kindred for its services in accordance with the schedule of rates reflected on Exhibit A attached hereto and made a part hereof. All billings shall clearly reflect the services for which the billing is

made.

- b. Holidays shall be billed at time and one-half (1-1/2) the billing rate. The recognized holiday starts at the beginning of the day shift on that holiday and ends on the conclusion of the night shift in the same day. The recognized holidays are: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, Christmas Eve and Christmas Day.
- c. Overtime will be billed at time and one-half (1-1/2) the hourly billing rate. All hours in increments of fifteen (15) minutes after forty (40) hours per week will be considered overtime. Vacation and holiday time are construed, for purposes of overtime pay only, as worked time.
- d. The Hospital Authority will invoice Kindred on a bi-monthly basis and in accordance with the Hospital Authority pay period for each employee respectively. Kindred will remit payment to the Hospital Authority within thirty (30) days following receipt of an itemized invoice which identifies the name of each employee, , date and hours worked, and charges.

4. **Term of Agreement.** This Agreement shall commence on the date hereof and shall continue in effect one (1) year or until canceled for any reason with thirty (30) days' prior written notice by either party. The parties hereto contemplate that this Agreement will be temporary in nature, extending four (4) months, but wish to retain flexibility for Kindred to meet unanticipated staffing needs. Either party may terminate this Agreement immediately upon written notice to the other party in the case of a breach by the other party of the terms and conditions of the Agreement.

5. **Kindred Rules and Regulations.** While providing services to Kindred, all personnel shall comply with all provisions of the licensing law under which such personnel are licensed, with regulation promulgated thereunder, with all policies adopted by Kindred to protect the health and welfare of its patients, and with all other Kindred rules and regulations then in effect; said policies, rules and regulations of Kindred to be provided to the personnel.

6. **Right to Dismiss.** If Kindred concludes, in its sole discretion, that any person provided by the Hospital Authority is incompetent, negligent, has failed to observe Kindred's practices or has otherwise engaged in misconduct, Kindred may require such person to leave the LTAC and shall promptly inform the Hospital Authority of this action. Kindred's obligation to compensate the Hospital Authority for such person's services shall be limited to the actual time worked by the person.

7. **Compliance.** The Hospital Authority acknowledges that it is aware of Kindred's compliance program and code of conduct. The Hospital Authority shall provide each of its employees providing services to Kindred with a summary of the code of conduct upon receipt of same from Kindred. The Hospital Authority employees will act in accordance with both the

Kindred code of conduct and the Hospital Authority code of conduct while performing services under this Agreement.

8. **Status of Personnel Provided by Hospital Authority.** The Hospital Authority shall be an independent contractor and all personnel provided under this Agreement shall be its employees, and nothing herein shall be construed as creating a partnership, joint venture or employment arrangement. The Hospital Authority shall assume sole and exclusive responsibility for the payment of wages to personnel for services performed by them to Kindred. The Hospital Authority shall, with respect to said personnel, be responsible for withholding federal and state income taxes and contributing to federal and Social Security taxes, and unemployment insurance as required by Tennessee Law. Upon request, the Hospital Authority will provide evidence of the above to Kindred.

9. **Certification.** The Hospital Authority certifies, by executing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal department or agency or by the state.

10. **Additional Terms.**

- a. **Insurance.** The nurses employed by the Hospital Authority, along with nurses employed elsewhere by The Metropolitan Government of Nashville and Davidson County, are insured against professional liability in the amount of one million dollars (\$1,000,000) per medical incident and three million dollars (\$3,000,000) aggregate. All other employees of the Hospital Authority are self-insured by The Metropolitan Government of Nashville and Davidson County to the limits of the Tennessee Governmental Tort Liability Act. The Hospital Authority shall give Kindred at least thirty (30) days' written notice prior to the change in limits or cancellation of any such insurance policy.
- b. **Indemnification.** Each party agrees to indemnify the other to the extent and in identical fashion as provided in Section 12.1 of the Ancillary and Support Services Agreement, the provisions of which are incorporated herein by reference.
- c. **Incurring Financial Obligation.** The Hospital Authority will not incur any financial obligation on behalf of Kindred without the prior written approval of Kindred.
- d. **Notices; Consents.** All notices, consents or other communications which either party is required or may desire to give to the other under this Agreement shall be in writing and shall be given by personal delivery or by deposit, postage prepaid, in the United States mail, certified or registered mail, return receipt requested, addressed to the parties at their respective addresses set

forth below:

If to Hospital:

Kindred Hospitals Limited Partnership  
c/o Kindred Healthcare, Inc.  
680 South Fourth Avenue  
Louisville, KY 40202  
Attn: President-Hospital Division

and to

Kindred Healthcare, Inc.  
680 South Fourth Avenue  
Louisville, KY 40202  
Attn: Leased Property Manager  
Cc: General Counsel

If to Hospital Authority:

Attn: Chief Operating Officer  
Bordeaux Long-Term Care  
1414 County Hospital Road  
Nahsville, TN 37218

Any notice mailed in compliance with this section shall be deemed to have been given upon the earlier of receipt or three (3) days after deposit, except that notice of change of address shall not be deemed effective until actual receipt by the intended recipient.

- e. **Mediation.** The parties agree that they will endeavor to settle any dispute, controversy or claim arising out of or relating to this Agreement, which they are unable to settle through direct discussions, by mediation administered by the American Arbitration Association under its rules before resorting to arbitration, litigation or other dispute resolution procedure. The requirement of filing a notice of claim with respect to the dispute submitted to mediation shall be suspended until the conclusion of the mediation process. Each party shall share equally in the costs associated with any required mediation.
  
- f. **Access to Books and Records.** To the extent required by Section 1861(v)(1)(I) of the Social Security Act and its implementing regulations, the parties agree that until the expiration of four (4) years after the furnishing of the services provided under this contract, the Hospital Authority will make available to the Secretary, U.S. Department of Health and Human Services,

and the U.S. Comptroller General, and their representatives, this contract and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If the Hospital Authority carries out the duties of the contract through a subcontract worth \$10,000 or more over a twelve (12) month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the related organization's books and records.

- g. Regulatory Agencies.** The Hospital Authority agrees to cooperate with Kindred in meeting the standards of the Joint Commission on Accreditation of Healthcare Organizations, the state Department of Public Health, OSHA and the American Nursing Association regarding the use of supplemental staff. In doing so, the Hospital Authority agrees to provide education and training and demonstration of competency in the following areas: hazardous material handling, fire and electrical safety, universal precautions/body substance isolation, body mechanics and lifting techniques, and CPR. The Hospital Authority agrees to send to Kindred formal documentation of demonstrated competencies in those areas to be kept on file in the staffing office, prior to an employee being scheduled to work.
- h. Governing Law; Severability.** This Agreement shall construed under, and governed in accordance with, the laws of the state of Tennessee. The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.
- i. Nondiscrimination.** Neither party shall discriminate on the basis of race, color, sex, age, religion, national origin, sexual orientation, pregnancy, marital status, veteran status or handicap in providing services under this Agreement or in the selection of employees or independent contractors.
- j. Headings.** The headings of this Agreement are inserted for convenience only and are not to be considered in the interpretation of this Agreement.
- k. Assignability.** Neither party may assign its rights or obligations hereunder without the prior written approval of the other.
- l. No Waiver.** No waiver of a breach of any provision of this Agreement will be construed to be a waiver of any other breach of this Agreement, whether of a similar or dissimilar nature.
- m. Survival.** Any provisions of this Agreement creating obligations extending beyond the term of this Agreement will survive the expiration or termination of this Agreement, regardless of the reason for such termination.
- n. Entire Agreement; Amendment.** This Agreement constitutes the entire

agreement of the parties hereto and supersedes all prior or contemporaneous agreements, undertakings and understandings of the parties in connection with the subject matter hereof. This Agreement may be modified or amended only in writing duly signed by both parties.


- o. **Confidentiality.** In order to facilitate the performance of this Agreement, each party may deem it necessary to disclose to the other certain proprietary and/or confidential information. Such information may include, without limitation, patient information, personnel information, financial information, market information, pricing information and service delivery information. Each party agrees to keep such information confidential to the extent permitted by law.

Notwithstanding the foregoing, the following shall not be considered confidential information:

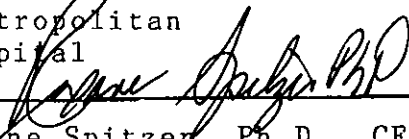
Information that is required to be disclosed by the Hospital Authority to comply with applicable laws or governmental regulations, including any information that the Hospital Authority is required to make available to the public under the Tennessee Public Records Act (Tenn. Code Ann. §§ 10-7-503 to 10-7-505), provided that the Hospital Authority provides prior notice, whenever possible, of such disclosure to Kindred and takes reasonable and lawful actions, to the extent permitted by law, to avoid and/or minimize the extent of such disclosure.


- p. **HIPPA Compliance.** Each party warrants that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Agreement. All parties will cooperate with the respective privacy officials and other compliance officers as required by HIPAA and its regulations and will sign any documents that are reasonably necessary to maintain compliance with HIPAA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

  
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 May Bennett, COO  
 Nashville Metropolitan  
 Bordeaux Hospital

By: Kindred Healthcare Operating, Inc., its  
General Partner

By:   
 \_\_\_\_\_  
 Roxane Spitzer, Ph.D., CEO  
 Title: Hospital Authority and  
 Authorized Purchasing Agent  
 ("Hospital Authority")

By:   
 \_\_\_\_\_  
 Title: U.P. Business Development  
 ("Kindred")

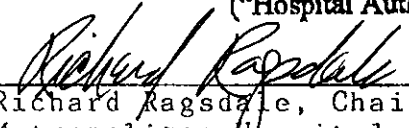
  
 \_\_\_\_\_  
 Richard Ragsdale, Chair  
 Metropolitan Hospital Authority  
 Board of Trustees

Exhibit A:

The rates that shall be paid by Kindred for services rendered pursuant to this contract will be calculated as follows:

Actual salary for the nursing personnel (including shift differential, holiday differential, overtime premium, charge premium and any other wage adjustments related to time worked on the hospital unit) for the number of hours worked on the hospital unit plus compensation for benefits at 28% of salary plus compensation of the management fee of 30%.

(Actual salary for hours worked on hospital unit) (multiplied by 1.28 for benefits) (multiplied by 1.30 for management fee) = Total reimbursement to be paid by Kindred