**CONTRACTED FLEXI STAFFING AGREEMENT**

This Agreement is made on this \_\_\_\_\_day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_2020 at **<LOCATION>**, **Between**:

**M/s <CLIENT NAME>** (having PAN/ TAN No…………………..)aFirm/ Company) /Proprietary firm / Partnership firm/ LLP represented by its Managing Partner / Partner / Proprietor /Director Mr./Ms.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,having registered office at <Address> hereinafter referred as **“The Company”** of the **ONE PART.**

And

**CONTRACTOR.** (having PAN/ TAN No…………………..)having Registered Office at ……………………………………hereinafter referred as **“The Contractor”** of the **OTHER PART**.

**AND WHEREAS** “The Company” is hereby pleased to enter into a contract with “The Contractor” for the purpose of providing Contractual Staffing Services to “The Company” at its following worksites:

**AND WHEREAS** “The Company” is desirous of engaging the “The Contractor” for supply of contractual manpower vis-à-vis contractual staffing services and “The Contractor” has agreed to render the service of Contractual Flexi Staffing to “The Company” on the terms and conditions set out hereunder;

1. **SCOPE OF CONTRACT:**

“The Contractor” will provide contractual manpower (more specifically termed as “Associate”) on deputation to “The Company” in accordance with this Agreement and as may be desired by “The Company” as per the requirements and specifications intimated from time to time (GST Service Code- ……….). The detailed Scope of Service has been defined in the SLA which forms part as ANNEXURE A to this Agreement. The service of the Associate shall be on deputation for the period which “The Company” will specify and the deputation period can be extended and/ or curtailed by the mutual consent of “The Company” and “The Contractor”.

**02. STAFFING CHARGES:**

“The Company” agrees to pay “The Contractor” for the Service in accordance with the fees set forth in ANNEXURE B. “The Company” will also reimburse “The Contractor” all taxes arising from this Agreement that Central or State Government may impose from time to time.

**03. TAXES AND LEVIES:**

Any Taxes including but not limited to Good and Service Tax as per applicable rates, shall be billed in addition to the charges at the rates applicable at the time of billing.

The GST Regd. No. & Regd. Address of either party is annexed herewith for reference

**04. TDS DEDUCTION:**

1. For Bills/ Invoices “The Company” will deduct TDS under Section 194C of the Income Tax Act 1961 (Current Rate is 2% only): TDS certificates will be provided by “The Company” to “The Contractor” on a yearly basis. If TDS exemption is obtained, then it is to be deducted as per the exempted rate.
2. For Search & Placement Bills “The Company” will deduct TDS under Section 194J of the Income Tax Act 1961 (Current Rate is 10% only). TDS certificates will be provided by “The Company” to “The Contractor” on a yearly basis. If TDS exemption is obtained, then it is to be deducted as per the exempted rate.

**05. Attendance/ Invoice Cycle:**

Attendance by “The Company” – ….. of each month for the current month

Billing to “The Company” – ….. of each month for the current month \*

Approval & Payment by “The Company” – ….. of each month for the current month

Salary disbursement – ….. working day of each month for the previous month

**06. PAYMENT TERMS:**

“The Contractor” shall raise the Invoice on “The Company” as per the Attendance/ Invoice Cycle mutually agreed which may contain the following as per mentioned below:

1. The salary & Contribution payable to the Associates deputed by “The Contractor” for the previous month
2. The Charges payable by “The Company” to “The Contractor” will be as specified in ANNEXURE – B of this Agreement
3. The Reimbursement Charges payable by “The Company” to “The Contractor” will be as specified in ANNEXURE – B of this Agreement
4. The Applicable Taxes and Levies payable
5. And any and all other payments to be paid by “The Company” as agreed between both the parties including but not limited to Search & Placement Fees, Absorption Charges, Full & Final Settlements, etc.

**07. VALIDITY AND TERMINATION:**

This Agreement shall be effective from **< >** day of **<Month>** 2020 and will be valid till the termination of the same. During the term of this Agreement, either side can terminate it by a letter in writing providing an advance notice of Thirty (30) days, provided that the Notice of Termination shall be issued by the Person holding the Same Designation who signs the Agreement. If this Agreement is not terminated by any party, then it would be deemed to be continuing under existing terms and conditions.

**08. REPORTING:**

The Associates shall follow rules of the “The Company” and shall undertake to abide by any suggestions, instructions etc. given by any assigned/ authorized person(s) as regards services under this Agreement. “The Company” undertakes to deal with the Associates in a fair manner and entrust only such job responsibilities to the Associates as originally agreed upon and outlined which are in line with the labour practices as prescribed under the labour laws of India.

**09. CONTRACT LABOUR LICENSE & LABOUR WELFARE FUND:**

1. “The Contractor” will intimate “The Company” about contributions to be made towards Labour Welfare Fund. The amount will be billed in advance to “The Company” as and when required and on receipt of payment (which has to be at least 5 working days prior to the date of deposition); the same would be deposited with the respective Government Department.
2. “The Company” needs to issue a Form V to “The Contractor” for obtaining Contract Labour License. “The Contractor” will intimate “The Company” about the cost of License. The amount will be billed in advance to “The Company” as and when required and on receipt of payment the License would be obtained by “The Contractor”. “The Company” should take registration from the Labour Department (Central/State) for appointment of Contract Labour.

**10. Non-Adherence**

Contractor shall comply with the applicable enactments as per requirements. However, for any deviation/ non-compliance arising out of delayed communication by the Company or for any reason beyond the control of the Contractor, the Contractor shall not be held responsible for any punitive measures taken by any Statutory Body for such delay on the part of the Company.

**11. No Poaching**

Be it mentioned herein that the direct employees of the Contractor are bound by their respective service contracts with the Contractor and under no circumstances the direct employees of the Contractor shall be offered to fill any vacancy in the Company’s Payroll.

**12. CHANGES TO THE SERVICE:**

“The Company” and “The Contractor” reserves the right to change the terms, conditions, and fees for the Service at any time. Both the Parties to this Agreement will provide thirty (30) days prior notice of any material change, including fees. Notice may be provided in writing or electronically. If either party to this Agreement continues with this Agreement after the change becomes effective, both the parties will be bound by the change. The timing of an advance notice of change may be shortened when permitted or required by law.

The Company shall not confer or assign any monetary transaction/high security task, which may adversely damage the interest, goodwill or fund/asset of the company or contractor, without consent from contractor. Further, company shall not give or handover any of its items viz. Laptop, iPad, *i*Phone or any other valuables to the associates without getting consent from contractor.

**13. CONFIDENTIALITY**

1. “The Contractor” will not disclose information that may be classified as Confidential, that it may receive or obtain as a result of entering into this Agreement and/or while working as per this Agreement with “The Company”.
2. The Appointment letter and the terms contained therein are confidential information and shall be used by “The Contractor” only for the purpose of billing and accounting.

**14. DISPUTE RESOLUTION-**

All disputes or differences whatsoever arising between the parties out of or in relation to the said service, meaning and operation, payment or effect of these Documents, this agreement or breach thereof shall be settled amicably as per the law of the land. The venue of the arbitration shall be Kolkata.

**15. FORCE MAJEURE**

If either party cannot perform its obligation as under the Agreement due to any unforeseen, unavoidable, and insurmountable circumstances as mentioned under Force Majeure Events, Neither Party shall not be deemed to terminate the Agreement and Parties shall perform their respective obligations in their best possible way under the following circumstances and Receiving Party shall release full payment against the Invoices without any deduction & penalty to other party. Defaulting Party will not be considered failing to observe the obligations of this Agreement and will not bear the responsibility for the delay during the Force Majeure events.

The force majeure events include but not limited to the following events: -

* 1. acts of God, thunderstruck, earthquakes, floods, droughts, rainstorms, whole gales, mudslides, river, bank bursts, explosions, fire disasters, and any other natural disasters;
	2. military actions, acts of public enemies, terrorism, riots, civil commotions, and strikes (not including labor disputes)
	3. epidemic or pandemic
	4. war (whether the war is declared or not), emergency, server-breakdown caused by the transmission of a computer virus, hacker's attacks on the server
	5. typhoon, snowstorm and any other natural disasters and other unforeseen events beyond the control of the parties.

**16. COUNTERPARTS**

This Agreement may be executed in two (2) counterparts, each of which shall be deemed to be true and identical, and all of which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the Parties have set their hands to this document, signed, sealed and delivered through their duly Authorized Representatives.

|  |  |  |
| --- | --- | --- |
| **ACCEPTED AND AGREED TO:** |  | **ACCEPTED AND AGREED TO:** |
| For M/s  |  | For CONTRACTOR.  |
| Signature: |  | Signature: |
| Name:  |  | Name:  |

**ANNEXURE – A:**

**SCOPE OF SERVICES & OBLIGATIONS ::**

**“THE COMPANY” AND “THE CONTRACTOR”**

## A. SCOPE OF WORK OF “THE COMPANY”

1. “The Company” shall provide the completed and executed documents as “The Contractor” requires for providing the Service and any additional information requested by “The Contractor”.
2. “The Company” would allot job(s), required seating/working arrangement, equipment, stationery, training and work instructions to the deputed Associate.
3. “The Company” will provide clear specifications of the profile/ Job Description of the Associate to be recruited. “The Company” will intimate the location where the service of the Associate(s) would be needed. The details regarding the recruitment of Associate(s), the deputation location, designation, CTC and any other details required to recruit the Associate need to be provided in writing or electronically.
4. “The Company” will inform “The Contractor” of any act of misconduct by any Associate(s) immediately and discuss the action steps to be taken. “The Company” may request for withdrawal of such Associate(s) through its designated personnel. “The Company” will give in writing the details of such act with the name of the concerned Associate(s) to “The Contractor” for necessary action. On receipt of such a written request “The Contractor” will withdraw the Associate with immediate effect.
5. The Associate will avail of leaves as per rules decided by “The Company”. For any further cases of leave whatsoever, sanction / rejection would be as per the discretion of authorized personnel of “The Company”. If any leave is accumulated during the contract period, then it is encashable at the end of the year and “The Contractor” will pay the same on receipt of payment from “The Company”.
6. “The Company” will review the performance of deputed Associate every year and increment will be a minimum of 10% on an annual basis.
7. In case the performance of the Associate is not found satisfactory; then “The Company” will request in writing to “The Contractor” to remove the Associate from the working place with a notice of 30 (thirty) days.
8. “The Company” will decide the extent of the Insurance coverage to the Associate(s) and the premium amount of the insurance has to be borne by “The Company”

1. Salary will not be linked to the performance of the Associates deputed
2. Any out of pocket expenses incurred in the course of performing the activity by “The Contractor”, the same will be informed to “The Company” in advance; “The Company” will pay the same to “The Contractor” and on receipt of payment, The Contractor” will arrange to undertake the same.

## B. SCOPE OF WORK OF “THE CONTRACTOR”

1. **Recruitment of Associate:**

“The Contractor” will recruit qualified Associate to “The Company” as per the specifications provided by any assigned/ authorized person(s) of “The Company” after preliminary interview, and after authentication of the testimonials as will use its best endeavor to operate the Staffing Service.

1. **Replacement:**

If an Associate deputed by “The Contractor”, either resigns or is asked to withdraw by “The Company”; then “The Contractor” will provide replacement within 7-10 working days. “The Contractor” will provide a free replacement, if the candidate placed leaves “The Company” within 01 month of joining of his / her own free will.

1. **Appointment Letter/ Statutory Obligations:**

“The Contractor” will hand over the Appointment Letter / Agreement to the Associate within 48 hours of joining at “The Company” and will fulfill all the Statutory Formalities and obligations which a Principal Employer is supposed to comply with as per various Employee Welfare Acts notified by Central and State Government like PF, ESI/ Mediclaim, Personal Accident coverage for the Associates etc. within seven days of joining “The Company” The associates selected by “The Contractor” shall possess good moral Character, be physically fit and be minimum 18 years of age to be substantiated by a valid document

1. **Statutory Compliance:**

“The Contractor” will comply with the provisions of all Labour Laws, rules and regulations applicable to the employment of Associates. “The Contractor” will arrange to deposit PF, ESI, and PT of the deputed Associate on timely reimbursement from “The Company”. Once the bill is approved & paid by “The Company”, “The Contractor” will arrange to deposit the same and “The Company” will not be eligible to claim any refund of the same after approval.

1. **Identity Card:**

“The Contractor” will issue ID cards to the deputed associates. Any customized ID Card layout will be finalized in discussions with “The Company” and the cost for the same is to be borne by “The Company”.

1. **Bonus:**

“The Contractor” will calculate the amount of Bonus payable to each Associate as per the Bonus Act & prevailing notifications thereto. The Contractor will bill the same on a monthly basis to The Company. The Company shall make the payment in advance.

1. **Gratuity:**

“The Contractor” will calculate the amount of Gratuity payable to each Associate as per the Gratuity Act. The Contractor will bill the same on a monthly basis to The Company @ 4.81% of Basic Salary. The Company shall make the payment in advance.

1. **Insurance:**

On reimbursement by “The Company”, “The Contractor” will provide Accident Insurance and Mediclaim facility to the deputed Associates. “The Company” will decide the extent of such coverage. In case “The Company” fails to make payment towards Insurance facilities; the premium amount will be deducted from the salary of the Associates and policy inclusions will be made in order to extend full benefits to the Associates. The final premium for Insurance will be calculated depending upon the nature of risk involved so may be decided by the Company.

1. **Full and Final Settlement:**

For any Associate resigning or in the event of “The Company” removing the Associate from their workplace, “The Contractor” will process the Full & Final settlement like PF transfer / withdrawal, ESI transfer, leave calculations, payment processing, etc.

1. **Miscellaneous:**
2. The mode of payment of salaries to the Associate(s) would be either by A/c payee cheque or through transfer of salary amount to the salary accounts, which would be opened for the candidates with any bank through “The Contractor” initiatives. No cash or bearer cheque will be used for disbursement purposes.
3. Salary slip will be provided to all Associates through soft copy. The Associates can download the same by logging in to their individual homepage.“The Contractor” will provide User Id and Password for the same individually. Hard copy of Salary slip will not be provided

**ANNEXURE – B: CONSIDERATION & CHARGES**

|  |  |
| --- | --- |
| **Particulars** | **Rates** |
| **Staffing Charges** | …….% of monthly CTC per month per Associate plus Applicable Taxes and Levies as per Finance ACT. Monthly CTC will imply salary, statutes, etc. that will form part of the regular CTC.  |
| **Reimbursement Charge** | ……% on all reimbursements that is routed through “The Contractor” to the Associates plus Applicable Taxes and Levies as per Finance ACT. Reimbursements may include but will not be to bonus, gratuity, incentives, TA, DA, cell phone bill, tour expenses etc. |
| **Search & Placement Fee** | ….. % of Annual CTC of each Associate recruited. + Applicable Taxes and Levies as per Finance Act. “The Contractor” will raise bills to “The Company” on the date of joining of such Associates and the same will be paid by “The Company” along with the payment of monthly invoices on the immediate 3rd of next month. |
| **Administration & Processing Fee**  | Rs………/- per Associate + Applicable Taxes and Levies as per Finance Act for covering the administrative duties of joining formalities viz. issue of Appointment Letter, opening Zero Balance Bank Account and completing all Statutory formalities like PF, ESI etc. “The Contractor” will raise bills to “The Company” on the date of joining of such Associates and the same will be paid by “The Company” along with the payment of monthly invoices on the immediate 3rd of next month. |
| **Absorption/ Transfer Fee:**  | In case there is any transfer of Associates sourced by “The Contractor” from “The Contractor’s” payroll to “The Company” or any of its Sister concerns’ or any it’s other vendor’s payroll, then “The Company” will be paying **12.5 %** of the Annual CTC of the Associate plus Applicable Taxes and Levies during the period of initial 6 months from the Associates Date of Joining and after 6 month **8.33%** of the Annual CTC of the Associate plus Applicable Taxes and Levies thereon. “The Contractor” will raise bills to “The Company” within 03 (three) days after such a transfer or absorption happens and the same will be paid by “The Company” along with the payment of monthly invoices on the immediate 3rd of next month. However, if the associates are sourced by “The Company” and put on “The Contractor” payroll, then no transfer charges / fee will be applicable if they are absorbed. *The above transfer fee is also applicable to “The Company” if this agreement is terminated naturally or otherwise or if the Associate resigns earlier and is absorbed by “The Company” or any of its sister concern / vendor within 01 year*  |
| **Insurance Charges** | Accident Insurance (Death Benefit) Coverage of Rs……../- : Rs…../- per Associate per month; Mediclaim: Coverage of Rs. ……./- : Rs. ……/- per Associate per month + ….% Processing Fees on Premium Amount + Taxes and Levies as applicable |
| **Full & Final** | Rs. …….. + Applicable Taxes and Levies in case the same is processed separately and not along with monthly salary process |
| **Customized ID Card Charge** | Rs. …….. + …..% Processing Fees on cost + Taxes and Levies as applicable |
| **Compliance Charges**  | Labour Welfare Fund and obtaining Contract Labour License- At actuals  |
| **Bonus & Gratuity:** | As per Bonus & Gratuity Acts |
|  |  |

1. **NOTE:** Contractor may levy a 2% interest per month on any bill amount if payments for the same are not received within due date. The above pricing is subject to annual reviews and will be subject to an upward revision of 10% unless a different rate has been mutually agreed between both parties.

**ANNEXURE C – CTC & MONTHLY BILLING STRUCTURE**

|  |  |
| --- | --- |
| Basic [A] – 50% of Gross >= Minimum Wages [Whichever is higher] |  |
| Dearness Allowance [B] – 10% of Gross |  |
| HRA [C] – 30% of Gross |  |
| Deputation Allowance [D] – 10% of Gross |  |
| **Gross Salary [E]** | **= (A+B+C+D)** |
| **Add: PF @ 13.00% on Basic Salary [F]** |  |
|  **ESI @ 3.25% on Monthly Gross Salary [G]** |  |
|  **Bonus as per Bonus Act [H]** |  |
|  **Gratuity @4.81% on Basic Salary [I]** |  |
|  **Insurance Charges [J]** |  |
| **Monthly CTC [K]** | **= (E+F+G+H+I+J)** |
| **Add: Monthly Contracting Charge is x% [L]** | **= K\*(x%)** |
| Sub – Total (Gross Bill) [M] | = (K+L) |
| Add: Applicable Taxes and Levies as per Finance Act [N] | = M\*18% |
| **Monthly Bill to Client [O]** | = (M+N) |

* Basic will be 50% of gross salary or the applicable Minimum Wages for the Scheduled Category whichever is higher as per agreed terms between Client & CONTRACTOR
* HRA is 5% - 50% on monthly Basic
* If needed, the Deputation Allowance can be substituted with Uniform or Washing Allowance.
* Applicable Taxes and Levies is applicable on Gross Billing
* TDS on Monthly contracting Bills will be under Sec.194C (current rate: 2%). If exemption is obtained then TDS will be deducted as per the exempted rate

**ANNEXURE – D : GST NOS. & OFFICE ADDRESSES**

**The GST Regd. No. & Address of Contractor . (Contractor) is given below for your reference**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sl. No** | **State**  | **GST NO.** | **Reg. Address** |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
|  |  |
| 4 |  |  |  |
| 5 |  |  |  |
| 6 |  |  |  |
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| 11 |  |  |  |
| 12 |  |  |  |
| 13 |  |  |  |
| 14 |  |  |  |

|  |  |
| --- | --- |
| **Particulars**  | **CLIENT’S NAME (herein Company)** |
| **GST Regd. No.** |  |
| **Address** |  |
| Service Recipient shall be solely responsible for any liability which may arise out or in connection with GST  |

**ANNEXURE – E: CLIENT’S INFORMATION SHEET**

**(To be provided and filled by the Client)**

|  |  |
| --- | --- |
| Company Name |  |
| Regd. Address |  |
| Website  |  |
| PAN NUMBER |  |
| TAN NUMBER |  |
| BANK NAME & BRANCH |  |
| IFSC CODE |  |
| GST ID Number |  |
| **Contact details for Billing / Payments:**  |
| Name:  |  | Invoice E-mail Address: |  |
| Designation:  |  | CC Invoice E-mail Address: |  |
| [x]  Same as Registered Address | Address: |  |
|  | Mobile |  |
| Phone #: |  | Fax |  | Mobile |  |

**Point of Contact for Escalation (Attendance/Billing / Payment/other related issue):**

|  |  |
| --- | --- |
| Name of person |  |
| Phone#  |  |  |  |
| Email |  |

**ANNEXURE F**

**Payment Process System (From Invoice Generation till settlement of payment)**

As mutually discussed, and agreed between The Client and Contractor ., the following Payment Process System will be implemented as per details below: