

## SERVICE AND CONFIDENTIALITY CONTRACT

This Contract is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (**Effective Date**) at New Delhi BY and BETWEEN the Biotechnology Industry Research Assistance Council, a Government of India Enterprise having its office at 1st Floor, MTNL Building, 9, CGO Complex, Lodhi Road New Delhi-110003 hereinafter referred to as “BIRAC” (which expression shall wherever the context so admits include its successors and assignees) of the **First Part**

AND

\_\_\_\_\_, having its registered office at \_\_\_\_\_, hereinafter referred to as the “Contractor” (which expression shall wherever the context so admits include its employees, administrators and permitted assignees) of the **Second Part**

WHEREAS all the parts are hereinafter referred to as “Parties”;

WHEREAS BIRAC desires to engage the Contractor for providing Contractual Human Resource Services and the Contractor hereby agrees to provide the same governed by below mentioned terms and conditions.

All Annexure to this Contract shall be integral part of this Contract.

NOW THEREFORE, the parties hereby agree to be bound by the provisions set out in this Contract.

### 1. INTERPRETATION

- i. Confidential Information: “Confidential Information” means all information (whether in oral, written or electronic form) relating to the BIRAC’s corporate affairs, activities, schemes, programs, minutes of the meeting(s) or other agnate materials including any notes or summaries derived from those materials of the Disclosing Party and confidential information received by the Disclosing Party from third parties, but excludes any information that: (1) was lawfully in the possession of the Recipient before receiving it from the Disclosing Party; (2) is provided in good faith to the Recipient by a third party without breaching any rights of the Disclosing Party or any other party; (3) is or becomes generally available to, or accessible by, the public through no fault of the Recipient; (4) is independently developed by the Recipient without use of the disclosed Confidential Information or (5) is required by public authority, by law or decree.
- ii. Words importing the singular numbers shall include the plural number and vice versa.
- iii. Headings and subheadings are for convenience only and shall not be deemed to be a part of this Contract.

### 2. EFFECT OF CONTRACT

- i. The Contract shall be effective for an initial period of THREE (3) years from the date of execution of the present Contract unless terminated early. The duration of the Contract is initially for three (3) years from date of Letter of award extendable thereafter for two more years on mutually agreed terms and conditions.

- ii. This Contract does not constitute and will not be deemed to constitute and exclusive commitment/ arrangement between BIRAC and the Contractor.
- iii. BIRAC will not retain any control for direct supervision of the contracted services and execution of this Contract does not create any liability, explicit or implicit, on BIRAC in respect of the manpower engaged.
- iv. This Contract may be executed in two or more counterparts, each of which shall constitute an original and all of which shall be deemed a single Contract.
- v. The rights and remedies herein provided are cumulative with, and not exclusive of, any rights or remedies provided by law.

### 3. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall;

- i. Ensure to comply with legal provisions related to this Contract. The contractor shall obtain all requisite license and approval at his cost from the appropriate authority for executing this contract work and submit copy of such license and approval to BIRAC.
- ii. Work force deployed by the contractor will exclusively be on contractor's payroll.
- iii. Exclusively responsible for the proper behaviour of the work force provided by the contractor. The contractor will also be bound to prohibit and prevent the work force from taking part in any direct or indirect association with a person or persons engaged in any antisocial activities, demonstrations, riots of agitation, which may in any way be detrimental or prejudicial to the occupants of land / properties in the neighbourhood. Therefore, the contractor have to keep the BIRAC and its employees etc., harmless and indemnified from any consequential claims, actions, suits, proceedings, losses or damages on any ground whatsoever.
- iv. The Contractor shall be responsible to pay on account of ESI, PF and any other statutory payment as applicable from time to time to the employees engaged by him for such services. The Contractor shall on demand by BIRAC submit documentary evidence to this effect.
- v. The contractor alone shall take disciplinary action against any worker/staff engaged by him.
- vi. The liability of BIRAC will be limited only to the payment of amount for providing the required services under the Contract. Contractor has to provide Online PF A/c No of each contractual employee for online viewing of PF Account and a salary bank account where salary must be credited.
- vii. Ensure that ESI Smart Cards and appointment letters to be issued to individual employee within one month of signing of the contract.
- viii. Submit Copy of Quarterly/Monthly report for PF, ESI or any other statutory authority compliances, regularly to BIRAC.
- ix. Submit Valid Labour- License within one month of signing of the contract. to BIRAC
- x. The Contractor shall be entitled to the Rate of Charge to be paid in percentage of Wage Bill (inclusive of allowances upon submission and approval of written statements and/or receipts in accordance with the procedures of BIRAC.
- xi. BIRAC shall release the payment on or before 4th day of the month, provided, the original invoice presented on or before the last day of the month prior to the month of release, with all required documents.
- xii. Contractor has to make payment to contractual worker by 6th day of every month.

- xiii. undertake to indemnify the BIRAC against all claims which may arise under the noted acts:
  - a) The Shops and Establishment Act.
  - b) The Workman's compensation Act.
  - c) The payment of Wages Act.
  - d) The Contract labour (Regulation and Abolition) Act. 1970 and the rules framed thereunder.
  - e) Family Pension Scheme.
  - f) Inter-state Migrant Workmen (Regulation of employment and condition of Service) Act, 1979.
  - g) Any other Statutory Act/Law/Regulation made applicable during the pendency of the contract.
- xiv. Submit any other documentary evidence as & when called by the BIRAC in connection with this Contract.

#### **4. SERVICE AND PAYMENT REQUIREMENTS**

- i. In case of misconduct etc., and report against any of the contractual staff, the Contractor shall immediately replace the erring worker by deploying another personnel on same terms & conditions. Such personnel will not be deployed in BIRAC again without written consent of the authorized officer or officer-in-charge.
- ii. In case of any lapse on the part of the contractor or on part of the work force deployed by contractor, the contractor will be held exclusively and directly responsible. The total working hours for each Contractual staff will be 9 hours a day. In case services are required for more than 9 hours proportionate over time shall be paid to them by the contractor and same shall be reimbursed by BIRAC.
- iii. The contractor will be held solely responsible for any kind of loss/damages done to fittings, fixtures and equipment etc. of BIRAC by any contractual worker so deployed, and contractor shall make good the loss/damage, either by replacement or by adequate compensation to BIRAC.
- iv. The contractor shall be responsible to sign all leave applications and certificates for the persons deployed and the Contractor shall maintain attendance register of the persons deployed.
- v. Delhi NCR- Office locations will be specified by BIRAC at the time of deployment.
- vi. The Contractor shall be entitled to the Rate of Charge to be paid in percentage of Wage Bill amounting to \_\_\_\_\_%, upon submission and approval of written statements and/or receipts in accordance with the procedures of BIRAC.
- vii. Any kind of taxes, levies including Service Tax imposed by the appropriate Govt., shall be payable by the contractor.
- viii. Income tax, if any, as per provisions of the income tax Act 1961 and as amended from time to time, shall be on Contractor's account and shall be deducted from Contractor's monthly bill.
- ix. The liability of BIRAC will be limited only to the payment of amount for providing the required services under the Contract.

#### **5. PERFORMANCE BANK GUARANTEE**

- i. The contractor shall furnish an irrevocable Performance Bank Guarantee (BG) drawn on any scheduled bank for 7.5% of annualized contract value as per the format provided in Annexure-III along with the acceptance of the Letter of award (LoA). The estimated annualized contract value for purpose of PBG is Rs.35,91,619/- (annualized contract value). The proceeds of the Performance Bank Guarantee shall be payable to BIRAC as compensation for Contractor's failure to perform and complete its obligations under the contract.
- ii. In the event the contractor fails to honour any of the commitments entered into under the contract and / or in respect of any amount due from the contractor to the BIRAC, the BIRAC shall have the right to invoke the Performance Bank Guarantee and claim the amount from the Bank.
- iii. The Performance Bank Guarantee shall be valid till the completion of 60 days after the initial duration of the contract with the provision for extension by an additional month in order to enable the BIRAC to make claims if any.

The Performance Bank Guarantee will be duly discharged by the BIRAC after successful completion of Contractor's obligations under the contract, including completion of any/ all obligations under the contract to the satisfaction of the BIRAC and/or person/agency appointed by it for the said purpose.

## 6. LIQUIDATED DAMAGES

Liquidated Damages in the events as mentioned below shall become applicable due to delay/default and not by way of penalty on the Contractor:

- i) In case contractor fails to make payment to contractual worker by 6th day of every month as provided above, deduction of 1% of service charge of that month shall be made.
- ii) In case contractor does not give replacement for persons or replace person whom BIRAC has asked, the deduction of upto 2% of service charge for the month can be made.
- iii) Liquidated Damages @ 2.5 % of Bill value is the agreed rate for non-compliance and non-submission of PF Challans or ESI Smart Card and related payments for statutory compliances.

## 7. WITHHOLDING OF PAYMENT

In order to protect BIRAC, it may withhold the whole or any part of the amount due to contractor on account of evidence subsequently discovered in respect of following:

- i. For non-completion of contracted work to BIRAC's satisfaction.
- ii. Contractor's indebtedness arising out of execution of the Contract.
- iii. All claims against Contractor for damages and injuries, and/or for non-payment of bills etc.

- iv. Any failure by the Contractor to fully reimburse BIRAC under of indemnification provisions of this Contract. If, during the process of the Contractor shall allow any indebtedness to accrue of which BIRAC may be primarily or contingently liable or ultimately responsible and contractor shall, within five days after demand is made by the BIRAC, fail to pay and discharge such indebtedness, then BIRAC may during the period for which indebtedness shall remain unpaid, withhold from the amounts due to Contractor's a sum equal to the amount such unpaid indebtedness. When all the above grounds for withholding payments shall be removed, payment shall thereafter be made for amounts so withheld.
- v. Garnishee order issued by a Court of Law in India.
- vi. Income-tax deductible at source according to law prevalent from time to time in the country.
- vii. Any obligation of Contractor which by any law prevalent from time to time to be discharged by the BIRAC in the event of Contractor's failure to adhere to such laws.

## **8. CONFIDENTIALITY**

The Parties, undertake to maintain strict confidentiality and refrain from disclosure thereof, of all or any part of the information and data exchanged/generated from the Process under this Contract for any purpose other than in accordance with this Contract. It shall be the responsibility of both the Parties to ensure maintenance of such confidentiality in respect of their behalf and on behalf of their employees, representatives and associates involved in related activities. The duty of secrecy under this Contract will commence on the Effective Date and will subsist till three years after completion/termination or till such time the confidential information falls into the public domain whichever is earlier.

## **9. EARLY TERMINATION OF THE TERM**

This Contract may be terminated without cause by either party upon not less than thirty (30) days prior written notice by either party to the other. BIRAC can terminate the Contract if the Contractor voluntarily ceases performing the Duties or "for cause", in case of any material breach of the terms agreed to. Any termination "For Cause" shall be made in good faith by the BIRAC. Upon termination, neither party shall have any further obligations under this Contract, except for the obligations to maintain confidentiality. The financial liability shall cease as of such termination date. Upon termination the Contractor shall return all Confidential Information, as hereinafter defined, and copies thereof.

## **10. WAIVER AND ASSIGNMENT**

Any waiver by the BIRAC of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof. The Contractor shall not have the right to assign the rights or obligations under this Contract without the prior written consent of BIRAC.

## **11. DISPUTE RESOLUTION & ARBITRATION**

In the event of any dispute or difference between the Parties hereto upon or in relation to or in connection with this Contract, such dispute or difference, shall be resolved amicably and in good faith by mutual consultation.

If such resolution is not possible, then the unresolved dispute or difference whatsoever arising between the Parties out of or relation to the construction, meaning, scope, operation or effect of this Contract or the validity the breach thereof or in respect of any defined legal relationship associated therewith or derived therefrom dispute shall be submitted for arbitration to International Center for Alternate Dispute Resolution (ICADR), an autonomous organization working under the aegis of the Ministry of Law & Justice, Department of Legal Affairs, Government of India. The Authority to appoint the arbitrator(s) shall be the ICADR. The Arbitration under this Clause and provision of administrative services by ICADR shall be in accordance with the ICADR Arbitration Rules, 1996. The award made in pursuance thereof shall be binding on the Parties. The venue of arbitration shall be New Delhi and the arbitration proceedings shall be conducted in English Language. The provision of this Clause shall not become inoperative notwithstanding the Contract expiring or ceasing to exist or being terminated.

**12. NOTICE**

Any notices, consents, objections, demands, requests or other communications required or permitted to be given pursuant to this Contract shall be in writing, and shall be sent by registered post, return receipt requested, to the addresses of the parties set forth in the heading to this Contract. Either party may designate, by notice, a change of address hereunder.

**13. SEVERABILITY**

If any of the provisions of this Contract are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Contract as a whole.

**14. GOVERNING LAW**

This Contract shall be construed in accordance with and governed for all purposes by the laws of India subject solely to Delhi jurisdiction.

**15. AMENDMENTS OR WAIVER**

No amendment or waiver of this Contract is binding unless agreed to in writing by the parties.

**16. NO OTHER RELATIONSHIP**

The Contractor agrees that all Services will be rendered as an independent contractor and that this Contract does not create an employer-employee relationship or business partnership between the parties.

WHEREFORE, the Parties hereto through its duly authorized representatives have signed this Contract on the day, month and year mentioned hereinbefore.

Signed

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On behalf of the Contractor

On behalf of the BIRAC

Date.....

.....Date

CONFIDENTIAL