

CUSTOMER SERVICES AGREEMENT

This Agreement is between Malverne School District ("Customer") and Northwell FlexStaff, Inc. ("FlexStaff") regarding the provision of its assigned employees ("Assigned Employees") and related staffing services by FlexStaff to Customer.

1. **FlexStaff Guarantee.** FlexStaff guarantees that the Assigned Employees it places with Customer will satisfactorily perform the services ordered by Customer. If not, FlexStaff will, upon reasonable notice from Customer, cancel charges for unsatisfactory services and furnish a replacement as soon as possible.
2. **Placement of Assigned Employees.** Customer will place orders with FlexStaff describing the type of work requested, specific duties to be performed, skills required, and any other lawful requirements. FlexStaff will place Assigned Employees to perform services that Customer requests under Customer's operational supervision at the location(s) and at the rates in attached Exhibit A.
3. **Employment Relationship with Assigned Employees.** As the provider of staffing services, FlexStaff will be the employer of Assigned Employees, and will be responsible for the staffing services listed below. As the recipient of such staffing services, Customer will be responsible for controlling the environment in which Assigned Employees perform their work, the details of their work, and their work product, and for the business-related responsibilities below. Customer acknowledges that it is the responsibility of FlexStaff to attend to any disciplinary or performance management concerns affecting its Assigned Employees and Customer shall assume all liability in the event Customer takes actions that are FlexStaff's responsibilities as defined in this Section 3.

A. FlexStaff's Responsibilities. FlexStaff will:

1. Recruit, select, and hire Assigned Employees.
2. Place Assigned Employees according to Customer's requirements.
3. Pay FlexStaff Assigned Employees the wages and provide the benefits that FlexStaff offers to them as its employees.
4. Pay or withhold payroll taxes (e.g., FICA) and insurance premiums (e.g., Medicare) and fulfill its obligations for unemployment compensation (e.g., FUTA, SUTA).
5. Provide workers' compensation benefits and coverage for Assigned Employees.
6. Maintain Assigned Employees' personnel and payroll records related to their employment by FlexStaff;
7. Comply with laws, rules, or regulations applicable to providers of staffing services.
8. Comply with the Patient Protection and Affordable Care Act ("Affordable Care Act") and its regulations, as applicable, and have established internal procedures for reviewing and maintaining compliance with the Affordable Care Act.
9. Require Assigned Employees to agree in writing to protect the confidentiality of Customer's proprietary information.
10. Require Assigned Employees to execute agreements that Customer requests with regard to intellectual property developed by them in the performance of their work for the Customer.
11. Require Assigned Employees to acknowledge in writing that they have no right to participate in Customer's employee benefit plans.
12. Require Assigned Employees to comply with all rules and policies of Customer (e.g., those relating to premises access and security).
13. Make legally required employment law disclosures to Assigned Employees; and
14. Provide Assigned Employees in accordance with applicable law.

B. Customer's Responsibilities. Customer will:

1. Provide Assigned Employees with a safe and suitable workplace that complies with all applicable safety and health standards, statutes, and ordinances (including all site-specific training related to the chemical, physical, and biological hazards in the workplace), and provide all required information and safety equipment applicable to Assigned Employee's placement and prompt notice of:
 - a) any injury suffered by an Assigned Employee (and adhere to OSHA recordkeeping requirements).
 - b) when an Assigned Employee's assignment requires termination; and,
 - c) if Customer wishes to hire an Assigned Employee.
2. Use Assigned Employees only in assignments that match the job descriptions for which FlexStaff places them.
3. Provide adequate internal controls, supervision, and instructions for Assigned Employees, and be responsible for their conduct when they are required to handle cash, confidential or credit card information, trade secrets, valuables, or similar property.
4. Be responsible for the use of any vehicle and its contents, powered mobile equipment, or Customer-issued property used by Assigned Employees in connection with an order, except for workers' compensation claims of Assigned Employees.
5. Provide a D0254 (Contract Security Classification Specification form) to FlexStaff for any orders in which a security

clearance is required for Assigned Employees to perform job duties and a new D0254 in the event any job duties change, or our Assigned Employee is required to work on a different project.

6. Upon request, provide FlexStaff with information in its possession relating to any Assigned Employee, including, but not limited to, Customer timekeeping systems or other records.
7. Be responsible for the conduct of its own officers, employees, and agents; and
8. Comply with duties imposed on the recipient of staffing services by law, rule, or regulation, including:
 - a) providing Assigned Employees with suitable seating where required by law.
 - b) providing FlexStaff with adequate information regarding work by any Assigned Employee that is subject to the Service Contract Act; and,
 - c) using a timekeeping system that (i) complies with applicable federal and state legal requirements and (ii) accurately records in and out times and unpaid breaks of the Assigned Employees.

4. Insurance Including Workers' Compensation Coverage. FlexStaff will maintain during the term of this Agreement the following types and limits of insurance via carrier-issued insurance and/or self-insurance:

- A. Workers' compensation on the Assigned Employees, in amounts no less than required by law.
- B. Employer's liability insurance with a limit of One Million Dollars \$1,000,000.
- C. Commercial General Liability, including bodily injury, contractual liability, and property damage, in the amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate.
- D. Excess/Umbrella Liability insurance in the amount of Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate, including Customer as an additional insured, to the extent of Flex Staff's indemnification obligations hereunder.

5. Billing.

- A. **Invoices.** FlexStaff will invoice Customer each week for all "Hours Worked" (as defined by the Fair Labor Standards Act of 1938 and applicable state law) by Assigned Employees at agreed-upon hourly bill rates. **Exhibit A** lists the rates FlexStaff will invoice Customer (and any reimbursable expenses). If the Customer's rates are not set out in **Exhibit A**, FlexStaff and Customer will agree on rates at the time of an order, which FlexStaff will record electronically in its systems. FlexStaff will add to Customer's invoices as a separate line item: i) any sales or use taxes that apply; and ii) all costs and administrative fees associated with required background and drug screening. The services billed may be provided by third-party staffing providers (collectively, "Staffing Providers"). FlexStaff is acting solely as a collection agent on behalf of the Staffing Providers in such cases and bears no liability, except as that of collection agent to the Staffing Providers or their customers. Under the reimbursement arrangement between FlexStaff and Customer, Customer will reimburse FlexStaff for expenses of Assigned Employees, including meals and entertainment subject to the fifty percent (50%) deduction limitation of Internal Revenue Code Section 274(n), and Customer is subject to the limitation of Code Section 274(n).
 - B. **Adjustments.** Upon thirty (30) days' prior written notice, Customer agrees that pricing will be adjusted by FlexStaff annually and, additionally, to reflect increases in wage and related tax, benefit, and other costs as the result of any legislative change, agency guidance or determination, order or action, by or under any applicable governmental authority, insurance or benefit program (including but not limited to, increases in costs for FlexStaff to comply with the provisions of recent laws or related guidance). Adjustments will be applied as of the effective date of the increased tax, benefit, or cost. FlexStaff will also adjust pricing for changes in sales, use, or gross receipts taxes. Such increases will be applied retroactively, if necessary. In addition, Customer agrees to be responsible for any adjustments to wages or benefits required relating to work performed subject to the Service Contract Act.
 - C. **Overtime.** Assigned Employees are presumed to be "nonexempt" employees - FlexStaff will pay overtime premiums (and bill Customer accordingly) in accordance with federal and state law and for additional overtime premiums requested by Customer. FlexStaff will charge Customer overtime rates for all overtime hours Customer requires or permits the Assigned Employees to work. Unless listed in **Exhibit A**, overtime rates will be calculated by applying to FlexStaff's bill rate the same overtime multiple as FlexStaff is required to apply to the Assigned Employee's pay rate. FlexStaff only will classify Assigned Employees as "exempt" from overtime pay under the Fair Labor Standards Act of 1938 if: (1) the Customer requests that FlexStaff do so; (2) the Customer signs FlexStaff's Customer Exempt Request and Agreement; and (3) FlexStaff determines that the exemption is valid under applicable law and regulations, subject to the Customer providing FlexStaff with complete and accurate information concerning the position.
 - D. **Record Of Time Worked.** Customer agrees to review and approve (by signature or electronically) a record of time worked by Assigned Employees. If a customer representative is unavailable, FlexStaff's representative responsible for the Customer placement (or other FlexStaff representative authorized by Customer) may approve the record on Customer's behalf.
- 6. Payment Terms.** Payment for services is due upon Customer's receipt of FlexStaff's invoice (FlexStaff acknowledges that Customer's processing of the invoice may take up to five (5) days).
- 7. Conversion and Transition of Assigned Employees.** Customer acknowledges that FlexStaff incurs substantial expenses for recruiting, testing, training, and retaining its Assigned Employees and Customer agrees to obtain the services of each Assigned Employee only through an order with FlexStaff. If Customer wishes to obtain the services of an Assigned Employee by hiring them (a "conversion"), or by placement, arrangement, or contract from another source (a "transition"), Customer will compensate FlexStaff at the conversion rates in **Exhibit A**.

8. **Issue Resolution and Indemnification.** FlexStaff and Customer expect to resolve any other issues that arise with respect to performance of this Agreement through business discussion and conciliation. In the unlikely event that resolution efforts are unsuccessful, each party agrees to indemnify the other party (and its officers, directors, and employees) for claims, losses, penalties, and damages (and reasonable legal fees) to the extent they arise from the indemnifying party's violation of law, or material breach of this Agreement, including obligations listed in **Section 3**.
9. **Indemnification.** Except to the extent arising out of or in connection with the negligence of Customer or any of its employees, FlexStaff shall indemnify, defend and hold harmless Customer from and against any and all claims, costs, liabilities, damages, expenses and judgments (including reasonable attorney's fees) (individually and collectively "Liabilities"), arising out of or in connection with (i) any breach of any warranty, representation, covenant, or obligation contained in this Agreement, (ii) claim which relates, in whole or in part, to FlexStaff's employees alleged status as employees of Customer; or (iii) any negligent action or omission or willful misconduct by FlexStaff, including against or with respect to an Assigned Employee.

Customer shall indemnify, defend and hold harmless FlexStaff and its parents, subsidiaries, and affiliates, and its and their officers, directors, shareholders, agents, and employees, from and against any and all Liabilities, arising out of or in connection with (i) any breach of any warranty, representation, covenant, or obligation of Customer contained in this Agreement, or (ii) any negligent action or omission or willful misconduct by Customer, including against or with respect to an Assigned Employee.

10. LIMITATION OF LIABILITY.

- A. **No Consequential or Indirect Damages.** EXCEPT TO THE EXTENT OF EACH PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES. THIS INCLUDES ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER PARTY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.
- B. **Maximum Liability.** FLEXSTAFF'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO PROVEN DIRECT DAMAGES UP TO A MAXIMUM OF \$10,000 PER OCCURRENCE.
- C. **Third Party Claims.** IN ADDITION TO THE LIMITATION OF LIABILITY IN SECTION 10(A), FLEXSTAFF'S AGGREGATE LIABILITY TO THE CUSTOMER FOR THIRD PARTY CLAIMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO THE EXTENT OF FLEXSTAFF'S INDEMNIFICATION OBLIGATIONS IN SECTION 9.
11. **Term.** This Agreement will continue in force unless one party gives the other party at least thirty (30) days' written notice of termination. FlexStaff may terminate this Agreement immediately for non-payment. Termination of this Agreement will end the staffing relationship, but this Agreement will continue to govern the parties' rights and obligations with respect to the business done before termination, including but not limited to conversion or transition of Assigned Employees.
12. **Notices.** Notices or communications required by this Agreement must be in writing and mailed (including electronic transmission) or, faxed to the person indicated in the signature block below.
13. **Independent Contractor.** Nothing in this Agreement makes FlexStaff an agent, partner, or a joint venture of Customer.
14. **Governing Law.** The laws of the State of New York will govern this Agreement, without regard to its conflicts of laws and rules.
15. **Force Majeure.** Neither party will be responsible for failure or delay under this Agreement because of force majeure events or other causes beyond its control.
16. **Severability; Waiver.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.
17. **Entire Agreement.** This Agreement (including any attachments) contains all the terms between Customer and FlexStaff regarding staffing services for the jobs and locations specified; it replaces all agreements and representations on the subject. Modifications to this Agreement must be in writing signed and dated by both parties. Forms that may be used by the parties in their staffing relationship such as purchase orders, timecards, and invoice recitals will not supersede, supplement, modify, or control this Agreement.

Malverne School District
301 Wicks Ln
Malverne, NY 11565

Board President

Signature

Date Signed

Northwell FlexStaff, Inc.
1111 Marcus Avenue, MZ-214
Lake Success, NY 11042
Attn: Carolyn Doyle

Signature

Date Signed