Contracted Personnel Agreement

Definitions:

Words and terms shall be given their ordinary and usual meanings. Unless negotiated otherwise by the parties, where capitalized, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

“Authorized User” means any State agency, University of Wisconsin campus, or other public body authorized to use statewide contracts, as established in §16.70 (1b), (2), (4) and (8), §16.73 and §66.0301 of the Wisconsin Statutes and PRO-502 of the State Procurement Manual. The terms “Authorized User” and “State” and “State of Wisconsin” are used interchangeably.

“Bill Rate” is the hourly rate an Authorized User is charged for time worked by Contracted Personnel.

“Confidential Information” means all tangible and intangible information and materials being disclosed in connection with the Contract, in any form or medium without regard to whether the information is owned by the Authorized User or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) non-public information related to the Authorized User’s employees, customers, technology (including databases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iii) information expressly designated as confidential in writing by the Authorized User. Confidential information includes all information that is restricted or prohibited from disclosure by state or federal law.

“Contracted Personnel” means a Subcontractor’s (Supplier Company’s) employees or other personnel (including officers, agents, and subcontractors) provided by the Subcontractor specifically to render Services under an Engagement. For the purposes of this Agreement, the terms “Temporary Worker” and “Contracted Personnel” can be used interchangeably.

“Corrective Action Plan” means a plan communicated by the State to the Subcontractor through Knowledge Services for the Subcontractor to follow in the event of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Agreement, or in the event that any Confidential Information is lost or cannot be accounted for by the Subcontractor and/or Contracted Personnel.

"Employer" means the Supplier Company holding a contract with the VMS Company to provide services to the State/Authorized User. For the purposes of this Agreement, the terms “Employer” and “Subcontractor” and “Supplier Company” can be used interchangeably.

“Engagement” means the provision of Services to an Authorized User upon the assignment of Contracted Personnel for work specified in a Request For Services.

“On-Call” means when Contracted Personnel agree to be available for work outside of their normal working hours and Authorized User agrees to pay Contracted Personnel an hourly fee (a separate rate from the negotiated hourly bill rate) for being “On Call” (or for waiting to be called to work). Contracted Personnel must be able to report to work within one hour of Authorized User’s request. Once Contracted Personnel begin working during the “On Call” time period, they are paid the negotiated hourly bill rate for time worked (and the “On Call” hourly fee is not paid during time worked). Some Authorized Users may require Contracted Personnel to be “On Call”.

“Personally Identifiable Information” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the individual’s driver’s license number or Authorized User identification number; (c) the number of the individual’s financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account; (d) the individual’s DNA profile; and (e) the individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

"Proprietary Information" means all information that has been created, discovered, developed or otherwise become known to the State of Wisconsin/Authorized User or any of its related entities, (including, without limitation, information created discovered, developed or made known to Contracted Personnel or by Contracted Personnel during his/her association with State of Wisconsin). Thus, such Proprietary Information includes, but is not limited to, contracts, customers, employee and referral source lists and addresses, information about employees and employee relations, training manuals and procedures, recruitment methods and practices, other information about customers and referral sources, pricing, costs and expenses, budgets, business proposals, financial information, product development information, computer programs, hardware and software, and any other information relating to the State of Wisconsin/Authorized User and its operations, products, business and financial affairs.

“Request for Services (RFS)” is the mechanism used to request and identify suitable candidates to fulfill an Authorized User’s service needs based upon the following factors: job title; job duties; skill set; qualifications; deliverables; and overall specifications.

"Subcontractor" means the Supplier Company holding a contract with the VMS Company to provide services to the State/Authorized User. For the purposes of this Agreement, the terms “Employer” and “Subcontractor” and “Supplier Company” can be used interchangeably.

“Substitution Contracted Personnel” means if Contracted Personnel leave their Assignment/Engagement prematurely on their own initiative or the Subcontractor’s initiative, then the replacement Contracted Personnel who replaces the previous Contracted Personnel by the same Subcontractor is considered “Substitution Contracted Personnel”.

“VMS Company” means the Vendor Managed Services Company (also known as Knowledge Services). For the purposes of this Agreement, the terms “VMS Company” and “MSP Company” can be used interchangeably.

This Temporary Worker (Contracted Personnel) Agreement (the “Agreement”) is made this_____day of_____, 202____ by and among

_____, an individual (“Contracted Personnel”) and_____, Contracted Personnel’s employer (“Employer”).

WHEREAS, Employer has contracted with Knowledge Services (“VMS Company”), for Employer to provide certain services, including work performed on a temporary basis by Contracted Personnel, to VMS Company’s Client (Authorized User) (defined below); and

WHEREAS, VMS Company has contracted with the State of Wisconsin (“Authorized User”), for the VMS Company to provide certain services related to Authorized User’s temporary workforce under a program managed by the VMS Company (the “VMS Program”); and

WHEREAS, Contracted Personnel may be assigned by Employer to work for Authorized User on a

temporary basis. NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Contracted Personnel.

1.1. Contracted Personnel may, in VMS Company’s sole discretion, be engaged to provide services to Authorized User through the VMS Program as an employee of Employer and not as an employee of Authorized User.

Contracted Personnel shall perform all services or work under the VMS Program to the satisfaction of Authorized User.

1.2. Contracted Personnel submitted and assigned to an Engagement must be the individual performing the work. Time may only be entered by Contracted Personnel, or by Supplier or VMS Company on behalf of the Contracted Personnel that has been assigned to an Engagement.

1.3. Contracted Personnel acknowledges and agrees that they cannot enter into a new subcontracting relationship for any Engagement performed by Contracted Personnel during an active Engagement (including to any other independent contractor). Any exceptions to this rule require prior approval from VMS Company on a per project/assignment basis.

1.4. Contracted Personnel acknowledges and agrees that no employment relationship between Contracted Personnel and Authorized User or between Contracted Personnel and the VMS Company is created by this Agreement, the agreement between the VMS Company and Authorized User, or by Employer's agreement with the VMS Company. Contracted Personnel acknowledges and agrees that he or she is not a third-party beneficiary of the agreement between the VMS Company and Authorized User and hereby waives any such rights, which may arise under such agreement between the VMS Company and Authorized User.

1.5. Contracted Personnel acknowledges and agrees that Employer shall be solely responsible for all payments to Contracted Personnel including payment of compensation, premium payments for overtime, bonuses, and other incentive payments, if any, and payments for vacation, holiday, sick days, or other personal days, if any. Contracted Personnel acknowledges and agrees that Contracted Personnel is not eligible to participate in or receive any benefits under the terms of either the VMS Company's or Authorized User's pension plans, savings plans, health plans, vision plans, disability plans, life insurance plans, stock option plans, or any other employee benefit plan sponsored by the VMS Company or by Authorized User. Contracted Personnel acknowledges and agrees that they shall not escalate payment demands to the Authorized User. Payment inquiries should be directed to Contracted Personnel's Employer and may be escalated to the VMS Company.

1.6. Contracted Personnel acknowledges and agrees that the cash payments and benefits which Contracted Personnel receives from Employer shall represent the sole compensation to which Contracted Personnel is entitled, and that Employer will be solely responsible for all matters relating to compliance with all employer tax obligations arising from the performance ofservices in connection with this Agreement. These tax obligations include the obligation to withhold employee taxes under local, state, and federal income tax laws, unemployment compensation insurance tax laws, state disability insurance tax laws, social security and Medicare tax laws, and all other payroll tax or similar laws, and in no event shall either the VMS Company or Authorized User be liable for any such obligations.

1.7. Contracted Personnel acknowledges and agrees that Authorized User and the VMS Company shall have no liability of any kind to the Contracted Personnel related to payment for the time worked, if any, for Authorized User pursuant to this Agreement, the agreement between Employer and the VMS Company, or the agreement between Authorized User and the VMS Company. Contracted Personnel hereby waives any claim he or she may have against Authorized User or the VMS Company related to such payment.

The Contracted Personnel hereby authorizes the Employer to provide the VMS Company and the Authorized User access to the Contracted Personnel's drug screen results, credit report, criminal background check, motor vehicle driving report, and all other information in the Contracted Personnel's personnel file. The Contracted Personnel also hereby authorizes the Employer to promptly release copies of all documents containing such information to the Authorized User or the VMS Company upon their request.

1.8. Contracted Personnel acknowledges and agrees that some Engagements may require that a Wisconsin resident performs such work, and in such case, Contracted Personnel agrees that they will remain a Wisconsin resident throughout the duration of the Engagement.

2. <u>Authorized User Work Policies and Rules</u>.

2.1 Contracted Personnel acknowledges and agrees that during the performance of Contracted Personnel's job duties for Authorized User, Contracted Personnel will not violate any of Authorized User's work rules and policies, including those specified in any code of conduct of Authorized User or other Authorized User workplace manual. Contracted Personnel shall at all times comply with all rules, policies, and procedures of the VMS Company and/or Authorized User as provided to Contracted Personnel by Employer, the VMS Company and/or Authorized User. Contracted Personnel agrees that Contracted Personnel shall not harm Authorized User's equipment, property, or inventory (other than ordinary wear and tear) and shall not interfere with Authorized User's business operations. Contracted Personnel agrees and acknowledges that Contracted Personnel is required to comply with all laws, rules, and regulations of federal, state, and local governments. Contracted Personnel is also encouraged, and expected, to bring to the attention of Authorized User management any information that raises the possibility that any Contracted Personnel is not fulfilling these ethical and legal responsibilities.

2.2 Contracted Personnel agrees that he or she enters onto Authorized User's premises at his or her own risk and, to the fullest extent possible under applicable laws, waives any claims he or she may have now or in the future against Authorized User or the VMS Company for personal injury or property damage arising out of or connected in any way with Contracted Personnel's presence on Authorized User's premises or his or her assignment to Authorized User.

2.3 Contracted Personnel Acknowledges and agrees that all work must be performed in the United States. No offshore or remote work is permitted outside of the United States.

2.4 Contracted Personnel may not share their log-in credentials or otherwise provide any other individual or entity with access to Authorized Users systems, network or data, or VMS Companies Management System.

2.5 Contracted Personnel with access to the State's IT resources will comply with the State's Acceptable Technology Use, Access and Security Policy (AUP).

2.6 Protection of personal privacy and data shall be an integral part of the business activities of the Contracted Personnel to ensure there is no inappropriate or unauthorized use of State Data. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State Data and comply with the following conditions:

a) The Contracted Personnel shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of State Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contracted Personnel applies to its own Personal Data and Non-Public Data of similar kind.

b) At no time shall any data or processes — that either belong to or are intended for the use of the State or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.

c) The Contracted Personnel shall not use any information collected relating to the services issued from this Contract for any purpose other than fulfilling his or her assigned duties.

3. Confidentiality and Non-Disclosure.

3.1 For purposes of this Section 3, in addition to the definition of "Confidential Information" in the Definition section above, "Confidential Information" shall also include all business or technical information, including proprietary information about costs, Authorized User's pricing, profits, markets, sales, lists of Authorized User's employees, potential Authorized Users, potential employees, methods of doing business, plans for future development, information regarding matters of a technical nature, such as scientific, trade and engineering secrets, all "know-how", formulas, designs, secret processes, machines, inventions, computer programs (including documentation of such programs) and research projects, information obtained by examination of any product, design, production equipment or drawings thereof and any other information of a similar nature that is marked "Confidential" or that the Contracted Personnel knows or has reason to know is the confidential or proprietary information of Authorized User or the VMS Company, as the case may be.

3.2 Notwithstanding the forgoing, Confidential Information shall not include any information that is hereafter lawfully disclosed to the Contracted Personnel under conditions which do not restrict further disclosure or by a third-party which did not acquire the Confidential Information under an obligation of confidentiality to Authorized User or the VMS Company, as the case may be; properly came into the Contracted Personnel's possession from a third party which is not under any obligation to maintain the confidentiality of such Confidential Information; or has become part of the public domain through no act or fault of the part of the Contracted Personnel.

3.3 Confidentiality. Contracted Personnel agrees that he or she will during or after Engagement/Assignment with Authorized User maintain in strict confidence all Confidential Information, Proprietary Information and Personally Identifiable Information of Authorized User or the VMS Company, as the case may be; use or reproduce the Confidential Information solely as necessary for purposes of providing services as an independent contractor to Authorized User; not remove any copyright notices, trademark notices, or other proprietary legends or indications of confidentiality set forth on or contained in any of the Confidential Information; immediately notify the VMS Company in writing, who will in turn notify Authorized User, of any known unauthorized use or disclosure of the Confidential Information, providing a detailed description of the circumstances of the disclosure and the parties involved.

3.4 Injunctive Relief. Contracted Personnel acknowledges that it is likely to be difficult to value the damages sustained by the VMS Company or Authorized User, as the case may be, due to any breach of Section 3 herein and that such damages are likely to be substantial or irreparable and the damaged party's remedy at law would be inadequate. Therefore, in the event of a breach of Section 3 herein, in addition to any other relief, the VMS Company or Authorized User, as the case may be, shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages.

3.5 Work Product. Contracted Personnel acknowledges and agrees that during an Engagement of Contracted Personnel's work for Authorized User, Contracted Personnel may create inventions, discoveries, improvements, computer or other apparatus programs, and related documentation and other works of authorship ("Work Product"), whether or not patentable, copyrightable, or subject to other forms of legal protection. Contracted Personnel agrees to assign to Authorized User all of Contracted Personnel's right, title, and interest (including rights in copyright) in and to all Work Product Contracted Personnel makes, creates, or develops, either solely or jointly with others, during Contracted Personnel's Assignment/Engagement to Authorized User. Contracted Personnel agrees that the above assignment is binding upon Contracted Personnel's estate, administrators, or other legal representatives or assigns.

3.6 Excluded Inventions. Contracted Personnel shall not be required to assign to Authorized User any idea, invention, discovery, innovation or improvement which Contracted Personnel developed entirely on his or her own time and without the use of any of Authorized User's equipment, supplies, facility or Confidential

Information (as defined above), and which (i) does not relate to Authorized User's business or to Authorized User's actual or anticipated research or development, and (ii) does not result from any work performed by Contracted Personnel specifically for Authorized User (the "Excluded Inventions"). In any dispute with respect to these exclusions, the burden of proof shall be on Contracted Personnel to show that the exclusion applies.

3.7 Work Made for Hire. Any and all Work Product prepared by Contracted Personnel for Authorized User that is eligible for copyright protection shall be a work made for hire on behalf of Authorized User as that term is used under the United States Copyright Act and ownership of all copyrights in such work shall vest in Authorized User. If for any reason, any such work shall not be deemed a work made for hire or ownership of such copyrights would not vest in Authorized User, then Contracted Personnel shall transfer all right, title, and interest in such work, including all copyrights therein to Authorized User. Contracted Personnel agrees to deliver such documents or other Authorized User property to the Authorized User upon termination of Contracted Personnel's Engagement or at any other time at the Authorized User's request. In those jurisdictions that deem any work performed on a "Work Made for Hire" basis as giving rise to an employee/employer relationship, the parties specifically agree that this provision shall not apply in such jurisdiction and that Contracted Personnel shall continue to be deemed an independent contractor of Authorized User.

3.8 Term. This Agreement shall be effective as of the date first written above and shall remain in effect notwithstanding Contracted Personnel's termination of employment with Employer or termination of Contracted Personnel's Assignment/Engagement to Authorized User.

3.9 Severability. In the event that any provision of this Agreement is held to be invalid or unenforceable, then such invalid or enforceable provisions shall be severed, and the remaining provisions shall remain in full force and effect to the fullest extent permitted by law.

3.10 Waiver. This Agreement may be amended, or its requirements waived, only by a writing signed by the party against whom enforcement of the waiver or amendment is sought.

3.11 Governing Law; Jurisdiction. This agreement shall be governed by the law of the State of Wisconsin. Any litigation under this Agreement shall be filed and pursued in a court of proper venue in the State of Wisconsin. All parties expressly consent to the jurisdiction of such courts.

3.12 Assignment. Neither party's rights or obligations under this Agreement can be assigned without the express prior written consent of (i) the other party hereto, and (ii) the VMS Company. Any attempted or purported assignment of this Agreement without such consent shall be void.

3.13 No Inducements. Contracted Personnel warrants and represents that he or she has neither provided nor offered to provide any gifts, payments, or other inducements to any officer, employee, or agent of the VMS Company or Authorized User for any purpose. Contracted Personnel shall not provide or offer any gifts, payments, or other inducements to any officer, employee, or agent of the VMS Company or Authorized User for any purpose.

3.14 Contracted Personnel agrees that during the period of Contracted Personnel's Engagement with the Authorized User, Contracted Personnel will not, without the Authorized User's express written consent, engage in any consulting, employment or business which is otherwise in conflict with his/her Contracted Personnel relationship with the State/Authorized User.

3.15 Contracted Personnel has listed below all inventions or other improvements which have been made or conceived by Contracted Personnel, either prior to or during Contracted Personnel's

Assignment/Engagement with the Authorized User, which Contracted Personnel believes do not fall within the provisions of this agreement:

3.16 In addition, in the event Contracted Personnel contends that any invention or improvement made or conceived by Contracted Personnel in the future is not covered by the provisions of this Agreement, Contracted Personnel understands that Contracted Personnel is required to promptly inform the Authorized User in writing of such invention or improvement for the purpose of permitting the Authorized User to determine whether such item is covered by the terms of this Agreement.

3.17 Entire Agreement. This Agreement constitutes the entire Agreement and understanding between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior and contemporaneous negotiations, discussions and understanding of the parties with respect to the subject matter hereof.

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

Supplier Company/Employer	**Temporary Worker/Contracted Personnel**
By:	**By:**
Name:	**Name:**
Title:	
Date:	**Date:**