

Vendor Management Services Agreement

THIS VENDOR MANAGEMENT SERVICES AGREEMENT (this "Agreement") is dated as of _____, by and between the Department of Administration on behalf of the State of Wisconsin located at 101 East Wilson Street, Madison, Wisconsin, 53702 ("State") and _____ ("VMS COMPANY").

WHEREAS, VMS COMPANY is in the business of providing Vendor Management Services (VMS) and staffing services to assist clients in the automation of their staffing management processes; and

WHEREAS, State desires VMS COMPANY to assist in the automation and management of its temporary Contractor needs by providing the services described herein and in RFP 27981-BE;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I. DEFINITIONS

"Acceptance" means the Authorized User's agreement to accept the proposed Contracted Personnel pursuant to the Contractor's response to the Authorized User's Request for Services.

"Agency or State Agency" means the Wisconsin Department of Administration (DOA) or any other agency of the State of Wisconsin or University of Wisconsin System campus, as defined by Wisconsin Statutes.

"Agreement" means the written agreement between the VMS Company and the State covering the services to be performed pursuant to this RFP.

"Appeal" means the second level of the appeal process under Adm 10.15 of the Wisconsin Administrative Code.

"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-D-30 of the State Procurement Manual. The terms "Authorized User" and "State" are used interchangeably in this RFP and Contract.

"Bill Rate(s)" means the hourly rate an Authorized User is charged for Contracted Personnel time worked.

"Confidential Information" means all tangible and intangible information and materials, including all Personally Identifiable Information, being disclosed in connection with this Agreement, in any form or medium (and without regard to whether the information is owned by the State or by a third party), that satisfy at least one of the following criteria: (i) Personally Identifiable Information; (ii) non-public information related to the State's employees, customers, technology

(including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived there from or based thereon; or (iii) information designated as confidential in writing by the State.

“Contracted Personnel” means individuals provided by the IT Services Contractor (Contractor) for an Engagement with an Authorized User.

“Contractor” means a firm that has a contract with the VMS Company to provide services to the State.

“Core Jobs” means the primary list of job titles and descriptions to be used at the State for selection of Contracted Personnel.

“Department” means the Department of Administration.

“Division” means an organizational sub-unit of a State Agency.

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

“Maximum Hourly Rate” means the highest possible Bill Rate (i.e., the rate not to be exceeded) that an Authorized User can be charged by a Contractor for providing Contracted Personnel to fill an Authorized User’s need for a specific title/level.

“MBE” means Minority Business Enterprise pursuant to §§15.107(2), 16.75(4), 16.75(5) and 560.036(2) of the Wisconsin Statutes.

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“Pay Rate” means the hourly rate the Contractor pays Contracted Personnel for time worked.

“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 state 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 characteristic.

“Protest” means the first level of the appeal process under sec. Adm 10.15 of the Wisconsin Administrative Code to the procuring agency whereby a Proposer or organization representing the appropriate state employee collective bargaining unit aggrieved in connection with this solicitation or the Notice of Intent to Award a Contract may protest those actions.

“Rate Card” means the document displaying the not-to-exceed ceiling Bill Rates established in the contract.

“Request for Services (RFS)” means the document including the job title, job duties, skill sets, qualifications, deliverables and overall specifications used to request and identify suitable candidates to fulfill an Authorized User’s service need. Request for Service is also used when referring to the entire end-to-end process conducted by the State through the VMS to procure and hire contingent IT Contracted Personnel.

“SBOP” means the State Bureau of Procurement, Wisconsin Department of Administration.

“Service Level Agreement” means a list of deliverables and the measurement of those deliverables between the VMS Company and the State. [See Appendix B Section 3: Service Level Agreement (SLA)]

“Services” means all products, services, recommendations, research and documentation provided by the Contractor necessary to satisfy the specifications and requirements contained in the State’s RFS.

“State” means the State of Wisconsin.

“VMS” means the Vendor Management Service.

“VendorNet” means the State’s purchasing information and vendor notification service available on the Internet at <http://vendornet.state.wi.us>.

ARTICLE II. TERM

2.1 Term: This Agreement shall be effective as of the Effective Date and shall remain in full force and effect for a period of two (2) year(s) thereafter (the “Term”), unless earlier terminated pursuant to this Article II. The Term may be extended for two (2) additional periods of two (2) years after its expiration upon mutual agreement in writing of the Parties.

ARTICLE III. TERMINATION

3.1 Termination for Cause: Either Party may terminate this Agreement for cause at any time after one hundred twenty (120) calendar days from the Effective Date upon at least thirty (30) calendar days prior written notice to the other Party in the event that the other has materially breached any of the terms or conditions of this Agreement and such breach has not been cured within such notice period. Notwithstanding termination of this Agreement, and subject to any reasonable directions from the other Party, both Parties shall take timely, reasonable, and necessary action to protect, preserve, and return property, including Confidential Information, including all data, materials and programs in the custody and control of a Party in which the other Party holds an interest. Upon termination, the State's liability shall be limited to the cost of the Services performed by the Contractors as of the date of termination.

3.2 Termination for Convenience: The State may terminate this Agreement for convenience at any time after one (1) year from the Effective Date at its sole discretion by delivering a written notice to VMS COMPANY ninety (90) calendar days prior to the termination for convenience. Notwithstanding termination of this Agreement for convenience, and subject to any reasonable directions from the other Party, both Parties shall take timely, reasonable, and necessary action to protect, preserve, and return property, including Confidential Information, including all data,

materials and programs in the custody and control of a Party in which the other Party holds an interest. Upon termination, the State's liability shall be limited to the cost of the services performed by the Contractors as of the date of termination

3.3 Termination of Engagement For Cause: A State or Local Agency has the sole discretion to terminate an Engagement for cause upon written notice to VMS COMPANY. The State or Local Agency shall make reasonable efforts to provide VMS COMPANY advance notice of any such termination of an Engagement for cause so that VMS COMPANY may give the Contractor an opportunity to cure, but the State or Local Agency shall not be required to do so if such is not in the State or Local Agency's best interest. Upon such termination, the State or Local Agency shall submit to VMS COMPANY, with a copy to the State Contract Manager, an explanation of the cause of such termination. If a significant number of such terminations occur, the Contractor may be removed from the VMS System at the sole discretion of the State.

3.4 Engagement Termination for Convenience: A State or Local Agency may terminate an Engagement for convenience upon written notice to VMS COMPANY. The State or Local Agency shall make reasonable efforts to provide VMS COMPANY five (5) business days advance notice of any such termination of an Engagement for convenience so that VMS COMPANY may give the Contractor notice, but the State or Local Agency shall not be required to do so if such is not in such State or Local Agency's best interest.

3.5 Other Termination. Either party may terminate this Agreement immediately upon written notice in the event that the other party is adjudged insolvent or bankrupt, or if any proceedings are instituted by either party (or against it, if not dismissed within ninety (90) days of filing) seeking relief, reorganization, or other arrangement under any laws relating to insolvency, or upon the assignment for the benefit of creditors, or upon the appointment of a receiver, liquidator or trustee of its property or assets, or upon the liquidation, dissolution or winding up of its business.

3.6 Contract Cancellation. The State reserves the right to cancel this Contract in whole or in part without penalty if the VMS Company:

- Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity;
- Allows any final judgment not to be satisfied or a lien not to be disputed after a legally-imposed, 30-day notice;
- Makes an assignment for the benefit of creditors;
- Fails to follow the sales and use tax certification requirements of § 77.66 of the Wisconsin Statutes;
- Is debarred by the State of Wisconsin or the federal government, or is otherwise excluded from federal contracts;
- Fails to maintain the confidentiality of the State's information that is considered to be Confidential Information, proprietary, or containing Personally Identifiable Information, or
- If at any time the VMS Company's performance threatens the health or safety of a State employee, citizen, or customer.

3.7 Termination for Misappropriation/Non appropriation: The State reserves the right to terminate this Agreement without penalty, due to VMS COMPANY' misappropriation of funds, or

in the event that the Legislature fails to appropriate the funds necessary to complete this Agreement. If possible, the State shall provide reasonable advance notification in the event that funds are not appropriated, and the State shall not authorize work to be performed by VMS COMPANY if funds have not been appropriated. Termination due to non-appropriation shall be considered a Termination for Convenience in accordance with Section 3.2.

3.8 Assignment Upon Termination: Upon termination of this Agreement for any reason, VMS COMPANY shall assign to the State or the State's designee, the Contractors' Participation Agreements as directed by the State. VMS COMPANY shall cooperate with the State in the transition of the VMS Program, including all of the data that resides in the VMS System applicable to this Agreement, to another third party or to an internal State resource and, if requested by the State, shall provide it with on-site transition services for up to one (1) year on a month to month basis. If VMS COMPANY is no longer receiving its Fee hereunder, such transition services shall be provided at current market rates.

3.9 Release of Obligations: Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.

ARTICLE IV. VENDOR MANAGEMENT SERVICES

4.1 VMS COMPANY shall provide the Vendor Management Services described in Attachment A pursuant to each Requisition Acceptance. VMS COMPANY, in coordination with State, shall develop an implementation plan for Vendor Management Services to be provided, including a schedule of implementation of the VMS for State and Local Agencies, and shall submit the same to State within thirty (30) days of the Effective Date of this Agreement.

4.2 VMS COMPANY shall work with the State to develop the State's Business Rules for the implementation and maintenance of the VMS Program (the "Business Rules"). These Business Rules shall further define VMS COMPANY' role in managing the Contractors (which may or may not be consistent across all job categories and/or across the geographic area of the VMS Program) and in interacting with State Agencies (including corporate, management, or operational users). These Business Rules shall be as agreed to by the Parties in writing and shall be attached to and become part of this Agreement. VMS COMPANY shall agree to any Business Rules reasonably proposed by State. Any proposed changes to these Business Rules shall be discussed in good faith by the Parties and agreed changes shall be as set forth in writing signed by the Parties as an amendment to this Agreement.

4.3 VMS COMPANY shall develop a package of documentation and explanatory materials with the help of the State for distribution to the Contractors so as to facilitate the efficient and effective rollout of the VMS Program with the Contractors upon deployment. VMS COMPANY shall distribute to the Contractors a VMS Program implementation package that shall include (a) a letter of introduction to the VMS Program; (b) an End User Confidentiality and Nondisclosure Agreement for the use of software to be accessed by Contractors (if applicable); (c) a VMS COMPANY VMS Program Contractor package, including a Contractor Participation Agreement and questionnaire; and (d) any other documentation provided by State regarding State's required terms and conditions, safety and human resources policies and procedures, or any other State policies and procedures as directed by State.

An Engagement for the State may require additional specific procedures, rules, and security provisions that shall be agreed to by the Contractor before Requisition Acceptance.

VMS COMPANY shall negotiate the terms of the VMS COMPANY Contractor Participation Agreement with the Contractors in accordance with the Business Rules and VMS COMPANY' own VMS Program Contractor procedures. All Contractor Participation Agreements shall be identical for all Contractors and agreed to by the State in advance.

The Contractor Participation Agreement shall be signed by both the Contractor and VMS COMPANY prior to a Contractor being allowed to participate in the VMS Program.

4.4 VMS COMPANY shall develop an information package describing the VMS Program for distribution to State and Local Agencies, and provide appropriate training, including instructions on approval procedures.

Effective upon the deployment of the VMS Program to a State or Local Agency, State Requisitions for Contractor Contracted Personnel from that respective State or Local Agency shall be placed in the VMS System in accordance with the Business Rules. Notwithstanding the foregoing, the State reserves the right to determine that its services needs are best procured through its own Request for Bids or Request for Proposals process, rather than through the VMS System.

The State or Local Agency shall be responsible for establishing Engagement start and end dates. Engagements estimated to be for a duration of more than three (3) years or that will entail payment of more than one million dollars (\$1,000,000) to a single Contractor in one (1) year may not be processed through the VMS System or handled through the VMS Program without the prior written consent of the State's Contract Manager. VMS COMPANY shall monitor all State and Local Agency Requisitions for such Engagements and costs, and shall promptly inform any such Agency and the State's Contract Manager that the VMS System cannot process such a Requisition. In some cases, the State or Local Agency project's end date will extend past the agreed Engagement end date. The Contracted Personnel may continue to provide services to that State or Local Agency for that project until it is completed or terminated, provided that the three (3) year Engagement limitation is not exceeded. Approval to continue with any specific Engagement for more than three (3) years, or to make payment of one million dollars (\$1,000,000) or more in one (1) year for such Engagement may only be granted by the State Contract Manager in writing.

4.5 VMS COMPANY shall use commercially reasonable efforts to locate and obtain from Contractors, Contracted Personnel that meet the State's written specifications in a Requisition, consistent with the Business Rules. Contracted Personnel shall bring an appropriate set of skills to any Engagement, but each State or Local Agency shall have ultimate responsibility for managing the completion of the project involved. Security and background checks of Contracted Personnel may be required, based on the State or Local Agency involved and the sensitivity of the project. The VMS Company may be requested to initiate the security check and the Contractor shall be required to address all security concerns. VMS COMPANY shall further resolve any issues between the State and the Contractors concerning Contracted Personnel, including issues relating to bill rate adjustments, time reporting discrepancies, terminations and/or extensions of assignments, and any other dispute regarding performance.

The State or Local Agency engaging services of a Contractor hereunder shall evaluate the Contracted Personnel's performance following the completion of a project. Evaluations shall be made available to other State and Local Agencies via a central repository of evaluations ("Evaluation Repository"). Evaluations shall constitute "public records" under Wisconsin law and shall be available for inspection and copying. Before being placed in the Evaluation Repository, all evaluations shall be reviewed by the specific evaluator's supervisor and the Contractor. Such evaluation(s) may be reviewed by the State and be used for evaluating future Contracted Personnel Contracted Personnel Offers. VMS Company shall require Agencies to submit Contracted Personnel evaluations for each Engagement. Failure to meet this request /or submittal of evaluations that appear untruthful shall be reported to the Contract Manager.

Prior to committing or reassigning currently engaged Contracted Personnel, the Contractor must contact the State or Local Agency involved and allow it to either extend its Engagement or release the Contracted Personnel at the end of the Engagement.

4.6 During an Engagement, if additional staff training is requested by a State or Local Agency, the Contractor and the State or Local Agency shall agree to one of the following options:

- 1) Training costs to be borne by the State or Local Agency and NO hourly rate to be charged while the Contracted Personnel is in training; or
- 2) Training cost to be borne by the Contractor and the State or Local Agency to be charged an hourly rate.

4.7 Notwithstanding anything to the contrary herein, the State acknowledges and agrees that in connection with performing Vendor Management Services hereunder VMS COMPANY shall use software products licensed from one or more third parties selected solely by VMS COMPANY and may use the services of Contracted Personnel of such licensors in connection with the Vendor Management Services, including, but not limited to, the maintenance, implementation and operation of such software products; provided, however, that all such Contracted Personnel shall be subject to the same standards for engagement of any employee of VMS COMPANY. Further, the hosting of the website over which certain Vendor Management Services hereunder shall be provided may be maintained by VMS COMPANY or by a third party selected solely by VMS COMPANY. In addition, VMS COMPANY shall use a third party selected solely by VMS COMPANY to provide back-up/recovery services and co-location services in the event that the website used by VMS COMPANY to provide Vendor Management Services should experience technical or other difficulties.

VMS COMPANY shall utilize a vendor management software tool (the "Software") in connection with the acquisition, tracking, reporting and invoicing of the services of the Contractors for the State hereunder. The Software may be proprietary to VMS COMPANY or may be a third party product, as may be agreed by VMS COMPANY and the State. VMS COMPANY shall provide the State (including Local Agencies) and the Contractors with access to the Software for the purposes of posting and responding to Requisitions and timekeeping for the Contracted Personnel. In such case, VMS COMPANY shall provide the State and the Contractors with passwords and access instructions for the Software, provided that the State and the Contractors having access to the Software shall have signed a hard copy of the VMS COMPANY's or the third party provider's End User Confidentiality and Nondisclosure Agreement, as applicable.

4.8 VMS COMPANY shall work with the State to develop performance metrics for measuring the on-going performance of the Contractors and to report to the State on the results thereof on a quarterly basis or as requested. VMS COMPANY shall work with the State to develop performance metrics for its own performance under this Agreement, including its continued assistance to the State in increasing its administrative efficiencies and costs savings resulting from the VMS Program, and shall report to the State on the results thereof on a quarterly basis or as requested. See Attachment D for proposed Service Level Agreement components.

4.9 VMS COMPANY shall identify and assist the State in identifying “best practices” for the Contractors, and shall provide same to the Contractors from time to time at the direction of the State.

4.10 VMS COMPANY shall communicate with the State on a regular basis regarding the status of the rollout of the VMS Program to the Contractors. VMS COMPANY shall further communicate with the State regarding the failure of any Contractor to appropriately complete the implementation package and the failure of any Contractor to comply with the terms and conditions of their Contractor Participation Agreements or the Business Rules. VMS COMPANY shall follow the escalation/termination process established in the Business Rules to reprimand or terminate such Contractor from the VMS Program. If eliminated from the VMS Program, such Contractor shall cease to receive any further Requisitions, and shall not be allowed to be a subcontractor or a consortium member with a Contractor enrolled in the VMS Program.

A State or Local Agency’s approval of a Contracted Personnel’s time records shall constitute the State or Local Agency’s agreement to pay for such approved time at the applicable hourly rate. Notwithstanding the foregoing, a State or Local Agency’s approval of a Contracted Personnel’s time records shall not constitute acceptance of the work performed, and shall not operate as a waiver of the State or Local Agency’s rights under the respective Contractor’s Contractor Participation Agreement, including, but not limited to the warranty provision.

4.11 VMS COMPANY shall provide to the State such standard reports regarding the Contractors and/or the VMS Program as the Parties may from time to time agree in writing. Ad-hoc reports shall be considered if standard reports do not provide reasonably required information to State. Standard reports shall be defined in the Business Rules. Examples of mandatory reports are shown in Attachment E Ad hoc reports shall be determined on an as needed basis between the State’s Contract Manager and VMS COMPANY

4.12 VMS COMPANY shall provide help-desk support relating to VMS COMPANY’ Vendor Management Services. The first level help-desk support Contracted Personnel shall be located in Madison, WI.

4.13 VMS COMPANY shall advise and work with the State’s Contract Manager as the need arises to revise the rate card(s) and change or add to existing Contracted Personnel job descriptions. At least annually, the VMS COMPANY shall review all rates cards and job descriptions and advise the State’s Contract Manager accordingly.

4.14 Training. During the Agreement Term, VMS COMPANY shall provide training at multiple levels for each of the State and Local Agencies as agreed to by the Parties. Training shall cover the use of the Software, if applicable, as well as processes and

procedures of the VMS Program. VMS COMPANY may set minimum attendance requirements for any web seminars or classroom training sessions and State shall make all reasonable efforts to ensure that the minimum number of State or Local Agencies employees attend. Training provided by VMS COMPANY during the Term may be provided by a combination of the following: (a) scheduled web seminars (on line training); (b) alternative training, including stand-up classroom training; (c) full user documentation including on line user guides; (d) help screens in the Software; and (f) new release update training. The type of training to be conducted by VMS COMPANY shall be determined by agreement of the Parties as needs arise during the Term.

4.15 The Vendor Management Services shall be provided by a team of VMS COMPANY Personnel as set forth in a project charter (the "Project Charter") that shall be delivered to the State by VMS COMPANY. The responsibilities, Services to be performed, and the location of each of the VMS COMPANY teams shall be included in the Project Charter. The number of VMS Company Personnel provided in each team shall be itemized in the Project Charter. VMS COMPANY reserves the right at all times during the Term to adjust the numbers and skill sets of the team members as reasonably required by the size and nature of the VMS Program at the time.

The State shall approve the Contractor Participation Agreement and, throughout the Term of this Agreement, shall approve any amendments to the form of Contractor Participation Agreement or any Contractor's Contractor Participation Agreement which reasonably relate to or affect the legal or business issues of the State, provided, however, that such approval rights shall not imply any right to require VMS COMPANY to accept any terms that impose additional administrative burdens, costs or expenses in fulfilling its obligations hereunder or to reduce the revenues that it would otherwise receive by the terms of this Agreement.

Any provision required by the State to be included in a Contractor Participation Agreement shall be for the benefit of the State and VMS COMPANY shall expressly make the State a third-party beneficiary of any such provisions. The Contractor Participation Agreement shall contain all provisions expressly required in this Agreement, as well as a description of all processes critical to acquiring and maintaining Contracted Personnel under this Agreement, including without limitation, provisions regarding placement rates, renewals, adjustments of Contracted Personnel rates and non-binding mediation by State of disputes with VMS COMPANY or any Contractor. No Contractor Participation Agreement shall deviate from the form approved by State without the prior written consent of State. The State requires identical Contractor Participation Agreements; therefore deviations shall not be approved unless determined by the State to be in the State's best interests.

4.16 Contracted Personnel Substitution The State's Contract Manager may request immediate removal of any VMS COMPANY Personnel located in Madison, Wisconsin and assigned to provide Vendor Management Services under this Agreement, for any reason, including but not limited to performance problems related to this Agreement. The Contract Manager may request that the individual be removed immediately, and VMS COMPANY shall have ten (10) working days in which to provide a replacement acceptable to the State.

A State or Local Agency may request immediate removal of any Contracted Personnel, for any lawful reason, without terminating the Engagement and may request that the individual be replaced within ten (10) working days. If the removed individual is not replaced with Contracted Personnel approved by the State or Local Agency and having equal or better

qualifications, the State or Local Agency may terminate the remainder of the Engagement by written notice.

Should any Contracted Personnel prematurely leave an Engagement for any reason, VMS COMPANY shall use its best commercially reasonable efforts to provide a written notice ten (10) working days in advance to the engaging State or Local Agency. Substitution of Contracted Personnel is subject to approval by the engaging State or Local Agency. Substitution Contracted Personnel shall be provided at no cost to the State for the first three (3) weeks (for training purposes) of any Engagement of six (6) months or greater length.

4.17 VMS COMPANY warrants that it shall comply with all federal, state and local laws, rules or regulations, including but not limited to, those regarding compensation, hours of work, conditions of employment and equal opportunities for employment.

ARTICLE V. REQUISITIONS

5.1 During the Term of this Agreement, VMS COMPANY may receive Requisitions for Contracted Personnel from a State or Local Agency and respond thereto with a Contracted Personnel offer. VMS COMPANY shall use commercially reasonable efforts to locate and obtain from Contractors such Contracted Personnel according to the written specifications in a Requisition. Each instance whereby VMS Company is unable to locate qualified Contracted Personnel to meet the Agency's needs, VMS Company shall provide documentation to the Contract Manager identifying the type of Contracted Personnel and the reasons that the Requisition could not be fulfilled (e.g, State's job descriptions do not include this type of experience or qualification, vendor's will not adhere to the rate card rate, Agency request too restrictive, etc.).

5.2 Each Contracted Personnel Offer shall contain detailed information on the Contractor Contracted Personnel, including, but not limited to, a completed skills profile, resume and an hourly rate quote. The hourly rate shall include the Contracted Personnel's hourly wages, including benefits. If a Requisition requires special equipment and/or Services for the assignment, the Contracted Personnel Offer shall confirm that such special equipment and/or Services can be provided and a quote for same.

5.3 For any and all Contracted Personnel provided to a State or Local Agency hereunder, said State or Local Agency shall enter into the VMS System an Agency Acceptance. An Agency Acceptance shall be deemed to incorporate by reference the terms and conditions of this Agreement. An Agency Acceptance shall set forth the names, hourly rates and labor classifications of any Contracted Personnel offered there under, and a general description and anticipated duration of the Engagement. In addition, a Purchase Order from the Agency may be required.

5.4 A State or Local Agency shall issue a new Requisition for each new project, and may not transfer any current Contracted Personnel provided by a Contractor to another project. A State or Local Agency shall not be allowed to add Contracted Personnel from a Contractor currently providing Contracted Personnel to said Agency under a Requisition unless the original Requisition required more than one individual to fulfill its Services needs.

5.5 VMS COMPANY shall notify all Contractors of every Requisition submitted by State and Local Agencies, except when the estimated total cost of services does not exceed \$25,000 or except as directed in writing by the State's Contract Manager.

5.6 VMS COMPANY may respond to Requisitions with Contracted Personnel Offers from an Contractor that is affiliated with VMS COMPANY, provided, however, that any such Contracted Personnel Offer shall be treated, processed or administered by VMS COMPANY in strict accordance with the Business Rules (including, but not limited to, any Business Rules specifically pertaining to the participation in the VMS Program by a VMS COMPANY affiliate), and further provided that VMS COMPANY shall not intentionally give either an affiliated Contractor or any other Contractor any advantage in the VMS Program in violation of the Business Rules except at the express direction of the Contract Manager or the respective Local Agency.

A material breach by VMS COMPANY of its obligations under this Section 5.6 shall entitle the State, in its sole discretion, to immediately upon written notice terminate this Agreement for cause pursuant to Section 3.1.

ARTICLE VI. PRIMARY CONTACTS

6.1 VMS COMPANY and the State respectively appoint the individuals designated on Attachment C, attached hereto and made a part hereof, to act as their primary contacts (the "Primary Contacts"). Each Primary Contact shall have overall responsibility for his or her party's communications regarding performance of both Parties under this Agreement and shall have approval authority for all operational matters. Each Party shall notify the other Party upon changing its Primary Contact.

Subject to and in accordance with the terms of this Agreement, the Primary Contacts shall meet at least quarterly to review each Party's performance, coordinate the provision of services hereunder, and to discuss the State's future requirements.

6.2 All communications between a State or Local Agency and an Contractor regarding any contractual matter under this Agreement, or related to a Requisition or an Engagement, shall be made through VMS COMPANY through an established process. VMS COMPANY shall ensure that this communication process is made known to both all State and Local Agencies and Contractors.

ARTICLE VII. STATE RESPONSIBILITIES & VMS COMPANY ASSUMPTIONS

7.1 The State shall commit the necessary technical and management resources to fully support the Vendor Management Services under this Agreement and the effective implementation and management of the VMS Program as agreed by the Parties in writing.

7.2 The State shall provide access to all required internal and confidential information as necessary for VMS COMPANY's successful performance of the Vendor Management Services hereunder.

7.3 The State shall ensure that the State or Local Agency' websites that are to be part of the VMS Program shall be web-enabled prior to the deployment of the VMS Program on the respective State or Local Agency' websites.

7.4 The State shall initiate communications to the Contractors prior to implementation of the VMS Program to introduce VMS COMPANY and the VMS Program.

7.5 The State acknowledges that VMS COMPANY cannot guarantee the performance of systems, hardware, communications networks, the Internet, software products, or Contracted Personnel who are not VMS COMPANY employees, or who are not subcontractors of VMS COMPANY providing Vendor Management Services hereunder

7.6 The State shall participate in regularly-scheduled meetings with VMS COMPANY to provide feedback and support to facilitate VMS COMPANY's successful completion of the Vendor Management Services hereunder. State shall identify and make available key internal support resources to facilitate such meetings as necessary and to provide information and feedback.

7.7 Neither the State nor any State Agency shall be responsible for the obligations or liabilities of any Local Agency hereunder, nor shall the State or any State Agency be responsible for any act or omission of any Local Agency under this Agreement. Any Local Agency that utilizes this Agreement shall be responsible for its own acts or omissions hereunder.

ARTICLE VIII. INVOICING, PAYMENT AND COMPENSATION

8.1 VMS COMPANY shall electronically submit to each State or Local Agency on a periodic basis as set forth in the Business Rules a detailed, consolidated and itemized invoice for the Services of Contracted Personnel for the immediately preceding Billing Period. The State or Local Agency shall pay VMS COMPANY the amount invoiced within thirty (30) days after receipt of the electronic invoice, provided that the time worked and services performed have been approved by the State or Local Agency, and subject to the good faith dispute provisions of s. 16.658 of the Wisconsin Statutes.

Within seven (7) days of receipt of the State's payment of an invoice, VMS COMPANY shall pay the Contractors for the Contractor invoices reflected therein, less VMS COMPANY's Fee. Payments to Contractors shall be by check unless otherwise agreed to by the Parties. VMS COMPANY shall invoice a State or Local Agency for the services of a Contractor only after the implementation of the VMS Program at such Agency and after such Agency's Contracted Personnel have been trained to use the VMS System.

ARTICLE IX. INDEPENDENT CONTRACTOR

9.1 VMS COMPANY, the State, Contractors, and Contracted Personnel are independent contractors with respect to the performance of all work to be performed hereunder and neither VMS COMPANY, Contractor, nor Contracted Personnel shall be deemed for any purpose to be an employee, agent, servant or representative of the State or any State or Local Agency. The VMS Company shall exercise control over the means and manner in which Services are provided and performed under this Contract, and in all respects, the relationship to the State

shall be that of an independent contractor, not an employee or agent. The VMS Company shall advise the State on Business Rules and procedures that will assist the State in preventing issues concerning co-employment and employee vs. independent contractor misclassification from occurring.

9.2 Neither VMS COMPANY, Contractors, nor Contracted Personnel shall participate in any of the State's IRS qualified benefit plans nor shall they be entitled to receive any benefits under any employee benefit plan or program of any kind maintained by State (unless such benefits had already been earned by these Contracted Personnel as former State employees or retired State employees).

9.3 This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Neither VMS COMPANY, Contractor, nor Contracted Personnel shall be deemed to be a partner, agent or legal representative of the State for any purpose other than the purpose of this Agreement as set forth in the previous paragraph, nor shall VMS COMPANY, Contractor, nor Contracted Personnel have any authority or power to act for, or to undertake any obligation or responsibility on behalf of the State or any State or Local Agency other than as expressly herein provided.

ARTICLE X. TAXES

10.1 VMS COMPANY recognizes that the State is exempt from payment of all federal tax and Wisconsin state and local taxes, including Wisconsin sales or use taxes, on its purchases except in regard to Wisconsin excise taxes. State may be subject to other states' taxes on its purchases in that state depending on the laws of that particular state.

10.2 VMS COMPANY shall forthwith pay all taxes lawfully imposed upon it with respect to this Agreement or any product delivered in accordance herewith. The State makes no representation whatsoever as to the liability or exemption from liability of the VMS COMPANY to any tax imposed by any governmental entity. Upon request the State shall provide VMS COMPANY with a certificate of any tax exemptions applicable to this Agreement. The State's tax exempt number shall be placed on all State Purchase Orders issued pursuant to this Agreement.

10.3 VMS COMPANY covenants to include in each Contractor Participation Agreement substantially the following provision:

“Contractor shall forthwith pay all taxes lawfully imposed upon it with respect to this agreement or any product delivered to State or State or Local Agency in accordance herewith. Neither VMS COMPANY nor the State make any claim whatsoever as to the liability or exemption from liability of the Contractor to any tax imposed by any governmental entity, and shall not reimburse the Contractor or pay any tax that is listed on any invoice.”

ARTICLE XI. EXISTING IT SERVICES CONTRACTS: TRANSFER AND ASSIGNMENT, STATUS DURING ROLLOUT PERIOD

11.1 Existing IT Services Contracts: The State hereby declares, and VMS COMPANY acknowledges, that the State through Comsys has approximately sixty (60) services contracts (the "State IT Services Contracts") with various contractors extant on the Effective Date of this Agreement ("Pre-existing Contractors").

Upon the Effective Date, VMS COMPANY shall provide the Pre-existing Contractors with a Contractor Participation Agreement that will enroll the Pre-existing Contractors into the VMS Program as Contractors. Effective upon the full implementation of the VMS Program at a specific State or Local Agency, the Contractors' current Engagements for the specific State or Local Agency shall be transitioned from the Contractors' respective Comsys or State Services Contracts to the Contractors' respective Contractor Participation Agreements. VMS COMPANY shall not invoice a State or Local Agency for the services of a Contractor until the VMS Program has been fully implemented at such Agency.

11.2 Status of IT Services Contracts During VMS Program Rollout. The Parties acknowledge and agree that while State (but not Local) Agencies are transitioning into the VMS Program, the services being provided to such State Agencies by the Pre-existing Contractors shall continue to be governed by the terms and conditions of the applicable Comsys or State IT Services Contracts until full implementation of the VMS Program at such State Agency and until such Pre-existing Contractors have enrolled in the VMS Program as Contractors and have signed Contractor Participation Agreements.

ARTICLE XII. OWNERSHIP OF WORK PRODUCT, COPYRIGHTS, PATENTS, TRADEMARKS AND OTHER MATTERS

12.1 Title to all plans and specifications and technical data, including, but not limited to, drawings, flow diagrams, layout details and specifications, computer programs and the contents thereof furnished to VMS COMPANY by the State hereunder shall remain the property of the State. VMS COMPANY shall execute any assignments, applications or other instruments as may be necessary to carry out the foregoing.

12.2 Notwithstanding the foregoing paragraph, all copyrightable works that Contractors, or Contracted Personnel create and have created at the request and direction of the State pursuant to a Contractor Participation Agreement to this Agreement (including, but not limited to, documents, computer programs, software, literary works, pictorial works, graphic works, sculptural works, audiovisual works, sound recordings, and architectural works) shall be and are "works made for hire" under federal copyright law. VMS COMPANY shall direct in all Contractor Participation Agreements that Contractors and Contracted Personnel shall assign to the State any rights they have or may obtain in all copyrightable works that they create or has created at the request or direction of the State, that IT Service Contractors not use any Contracted Personnel to create such works for the State who does not agree beforehand, in writing, (i) that the works are to be "works made for hire" under federal copyright law or (ii) to assign to the State all rights the person may have or obtain in the works, and to otherwise agree to all the terms of this Article XI. VMS COMPANY shall require that IT Service Contractors provide VMS COMPANY and the State with copies of all such "work for hire" and any related assignment agreements before any Contracted Personnel participates in the creation of any copyrightable work for the State.

ARTICLE XIII. LIMITED WARRANTY

13.1 VMS COMPANY warrants that it shall provide the Vendor Management Services hereunder utilizing care and skill in accordance with customary industry standards. In the event that VMS COMPANY materially breaches this warranty, the State shall promptly notify VMS COMPANY in writing and shall allow VMS COMPANY the opportunity to re-perform at VMS COMPANY's sole cost that aspect of its Vendor Management Services that failed to meet the standard of care set forth herein. The State shall make any claim for breach of this warranty by written notice to VMS COMPANY within sixty (60) days of performance of such deficient Vendor Management Services or within thirty (30) days of the time the State became aware or reasonably should have become aware that such Vendor Management Services were deficient, whichever is later provided that any such written notice shall be provided within one (1) year of the date of performance of such deficient Vendor Management Services.

EXCEPT FOR THE EXPRESS WARRANTY SET FORTH HEREIN, VMS COMPANY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES ON ITS SERVICES PROVIDED HEREUNDER. VMS COMPANY MAKES NO WARRANTIES OF ANY KIND RELATED TO SERVICES OR PRODUCTS PROVIDED BY THIRD PARTIES, INCLUDING THE CONTRACTORS OR PRE-EXISTING CONTRACTORS.

13.2 Further Warranties and Assurances VMS COMPANY shall require that a Contractor (including any subcontractor or consortium member thereof), with respect to itself and any Contracted Personnel providing Services hereunder, expressly warrant, in the Contractor Participation Agreement, that the services to be performed by Contractor for any State or Local Agency shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Services are provided.

Any other provision of this Agreement notwithstanding, the State understands that VMS COMPANY shall have no liability to the State for any action or inaction of any Contractor or for any officers, directors, employees or agents of any Contractor (including Contracted Personnel), whether such action or inaction may constitute a breach of contract or tort related to the Contractor Participation Agreement, the IT Services Contract, or otherwise; provided that the foregoing shall not act to relieve VMS COMPANY from liability for any damages incurred due to any action or inaction of VMS COMPANY that may constitute a breach of this Agreement related to the VMS System or the Vendor Management Services or any tort related to the VMS System or the Vendor Management Services for which VMS COMPANY would be otherwise responsible.

ARTICLE XIV. INSURANCE

14.1 VMS COMPANY, from the time of commencement Services hereunder, shall obtain and maintain at its sole cost and expense the following types and amounts of insurance:

- Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the VMS Company's and sub Contractors employees engaged in the work performed under this Agreement;

- Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Agreement, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and
- Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Agreement, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

The State reserves the right to require higher or lower insurance limits where warranted.

14.2 VMS COMPANY shall provide the State with a certificate of insurance stating that such policies are in effect and that they shall not be cancelled or materially changed without providing the State with thirty (30) days prior written notice.

14.3 VMS COMPANY shall include in all of its contracts with its subcontractors and in the Contractor Participation Agreements with Contractors providing Contracted Personnel hereunder insurance requirements similar or greater than as set forth herein to cover services provided by such Contracted Personnel or Contracted Personnel. VMS COMPANY shall require all Contractors to provide VMS COMPANY with certificates of insurance stating that such policies are in effect and shall not be cancelled or materially changed without providing VMS COMPANY and State with thirty (30) days prior written notice. VMS COMPANY shall provide State with copies of such certificates of insurance upon request.

ARTICLE XV. INDEMNIFICATION

15.1 Infringement Indemnification. VMS COMPANY shall indemnify, defend, and hold harmless State and its directors, officers, employees and agents (the "State Indemnified Parties") against any and all losses, liabilities, judgments, awards and costs (including reasonable legal fees and expenses) in any claim, action, suit or proceeding (individually and collectively, "Claim") arising out of an allegation that the Vendor Management Services provided by VMS COMPANY (including the VMS System) infringes any third party's copyright, trade secrets, patent, trademark or any other intellectual property right. VMS COMPANY shall have no obligation under this provision for any Claim if VMS COMPANY has offered such modified or replacement technology, and the Claim or liability results from State's failure to use the modified or replacement technology. Further, VMS COMPANY shall have no obligation under this provision for any Claims that result from: (i) use of deliverables in a combination with materials, services or products not supplied by VMS COMPANY, if such deliverables would not have infringed the copyright or trade secret of the party bringing the Claim absent such combination; or (ii) modifications to the deliverables by any party other than VMS COMPANY, if such deliverables would not have infringed the copyright or trade secret of the party bringing the Claim absent such modifications.

15.2 Bodily Injury and Property Damage. VMS COMPANY shall indemnify, defend and hold harmless the State Indemnified Parties from and against any and all Claims relating to bodily injury or death or damage to tangible personal property to the extent arising directly out of any negligent or wrongful act or omission of VMS COMPANY, its employees, VMS COMPANY's or agents in the course of performing VMS COMPANY's obligations hereunder. VMS COMPANY shall ensure that all Contractors provide this indemnification to the State under the Contractor Participation Agreements.

15.3 VMS COMPANY shall only be obligated to provide indemnification under this Article XIV if the State: (a) notifies VMS COMPANY promptly in writing of the Claim; (b) permits VMS COMPANY sole control to defend, compromise or settle the Claim (provided VMS COMPANY may not settle any Claim without the consent of the State Indemnified Parties where the settlement involves a remedy other than the payment of money); and (c) provides all available information, assistance and authority at VMS COMPANY's reasonable expense to enable VMS COMPANY to defend the Claim. The State Indemnified Parties may participate in the defense or settlement of any Claim at its own expense. Under no circumstances shall VMS COMPANY be required to indemnify State Indemnified Parties hereunder for Claims arising out of actions or inactions of a Contractor or its Contracted Personnel.

15.4 The foregoing Section 14.1 is VMS COMPANY's and State's sole and exclusive remedy with respect to claims of infringement of intellectual property rights of any kind.

ARTICLE XVI. LIMITATIONS OF LIABILITY

16.1 Damages. Except with respect to sections 15.1 AND 15.2 of this Agreement, VMS COMPANY shall be liable for damages suffered by the State due to acts of commission or omission of the VMS COMPANY.

16.2. Basis of Agreement. The parties acknowledge and agree that the disclaimers of warranties in Article XIII, the indemnities in Article XV, and the limitations of liability in this Article XVI represent the agreed and bargained for understanding of the parties, and that VMS COMPANY's rates and structure of compensation for the Services reflect such allocations of risk.

ARTICLE XVII. DISPUTE RESOLUTION

17.1 The Parties shall meet and confer in good faith on all matters of common interest or all controversies, claims, or disputes ("Disputes") that materially affect the performance of either Party under this Agreement. As soon as a Dispute is recognized by either Party, it shall communicate the substance of the Dispute to each Party's Primary Contact. Once a Dispute has been raised, the Primary Contacts shall make all reasonable efforts to reach a resolution within two (2) weeks after the Dispute has been identified and communicated. If the Dispute cannot be resolved between the Parties' respective Primary Contacts, then the Parties shall submit such matters to their respective executive management, who shall make all reasonable efforts to reach a resolution within thirty (30) days after the Dispute has been referred to them.

ARTICLE XVIII. NOTICE

18.1 All written notices under this Agreement shall be posted by overnight delivery with verification of delivery by nationally recognized overnight courier or personally delivered to the other Party at the address set forth below, or any other addresses as either Party may designate by written notice to the other. Any such notice shall be deemed delivered when deposited in the United States mail with postage prepaid or when personally delivered.

VMS COMPANY:

STATE:

Bill Epp, Contract Manager
State of Wisconsin Department of Administration
Bureau of Procurement
101 E Wilson Street, 6th Floor
Madison, WI 53703

ARTICLE XIX. VMS COMPANY FEE

19.1 The VMS fee of X.XX% shall remain fixed over the life of this Agreement including renewal and extension periods.

19.2 The VMS Company shall deduct its' X% fee from payments made by the State for work performed by Contracted Personnel (i.e., Bill Rate or lump sum payment based on contract deliverables). Payments made by the State for travel expenses are excluded. All stated system and Service requirements in the RFP; all capabilities, processes, responsibilities and work performed in fulfillment of the RFP and resultant contract through the life of the Agreement including renewal and extension periods shall be included in the VMS Fee charged to Contractors by the VMS Company as described in Section 8.0 of RFP 27981-BE.

ARTICLE XX. MINORITY BUSINESS ENTERPRISE

20.1 Minority Business Enterprise Participation: The State is committed to the promotion of minority business enterprise participation in its purchasing program by MBE's certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development. Accordingly, the VMS COMPANY shall work toward creating opportunities for certified MBEs to participate as Contractors to State Agencies.

20.2 Minority Business Report: VMS COMPANY shall file a quarterly report of supplies and services purchased from Certified MBE sub-contractors in the performance of this Agreement. A list of certified minority businesses, and the services and commodities they provide is available from the Department of Administration, Office of Minority Business Programs, 608-267-7806. [The list is published on the Internet on the DOA web site: <http://www.doa.state.wi.us/section.asp?linkid=1>. Scroll down to Minority Business Program, and then view Report-Certified Vendors. The form for submitting this information linked here.] The report shall be submitted even if there is no activity.

20.3 VMS COMPANY shall require each Contractor to submit the report for its firm to VMS COMPANY on a quarterly basis. VMS COMPANY shall consolidate the report onto the required report form, identifying each Contractor and their certified MBE participation. The dollar amount identified for each MBE in the report shall be for the previous quarter and shall not be a cumulative amount. Failure of any Contractor to submit the report in a timely basis may be grounds for their removal from the VMS Program and/or termination of the Engagement or Contractor Participation Agreement.

ARTICLE 21. VMS COMPANY OPERATING SYSTEM

21.1 The State requires that the VMS Company provide an operating system ("System") that is accessible by end users through the Internet. The System shall reside on a secure server. Internet Explorer, Netscape and Firefox Internet browsers shall be the only required software with no plug-in or applet requirement placed on the State end user's computer.

21.2 The VMS Company shall convert all of the existing historical data in the current VMS systems to its own VMS System.

21.3 Secure Encryption: Any data transmitted over a LAN or WAN must use 128 bit encryption.

21.4 Accessibility: The System shall comply with Section 508 of the Rehabilitation Act, 29 USC 794 (d). (See www.section508.gov).

21.5 Browser compatibility: The VMS System shall operate in conjunction with the State's web browser(s) throughout the Agreement Term.

Article XXII. PRIVACY AND CONFIDENTIAL INFORMATION

22.1 Duty of Non-Disclosure and Security Precautions: VMS Company shall not use Confidential Information of State for any purpose other than the limited purposes set forth in the Agreement. VMS Company shall hold the State's Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement. VMS Company shall be responsible for the breach of this Agreement by any of its Representatives.

VMS Company shall institute and/or maintain such procedures as are reasonably required to maintain the confidentiality of the Confidential Information, and shall apply the same level of care as it employs to protect its own confidential information of like nature. If VMS Company becomes aware of any actual or threatened breach of this Agreement (including without limitation any threatened or actual unauthorized use or disclosure of any Confidential Information), or in the event of any loss of, or inability to account for, Confidential Information previously received, VMS Company shall notify the State and shall reasonably cooperate with the State's efforts to seek appropriate injunctive relief or otherwise to prevent or curtail such threatened or actual breach, or to recover its Confidential Information, as provided in this Section herein.

VMS Company shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by VMS Company on any reproduction, modification, or translation of such Confidential Information. If requested by the State, VMS Company shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the State, as directed.

22.2 Limitations on Obligations. The obligations of confidentiality assumed by VMS Company pursuant to this Agreement shall not apply to the extent VMS Company can demonstrate that such information:

- is part of the public domain without any breach of this Agreement by VMS Company;
- is or becomes generally known on a non-confidential basis, through no wrongful act of VMS Company; was known by VMS Company prior to disclosure hereunder without any obligation to keep it confidential;
- was disclosed to it by a third party which, to the best of VMS Company's knowledge, is not required to maintain its confidentiality;
- was independently developed by VMS Company; or
- is the subject of a written agreement whereby the State consents to the disclosure of such Confidential Information by VMS Company on a non-confidential basis.

22.3 Legal Disclosure. If VMS Company or any of its Representatives shall be under a legal obligation in any administrative or judicial circumstance to disclose any Confidential Information, VMS Company shall give the State prompt notice thereof (unless it has a legal obligation to the contrary) so that the State may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, VMS Company and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.

Notwithstanding anything to the contrary contained herein, VMS Company may disclose the State's Confidential Information at the request of any regulatory or supervisory authority having jurisdiction over it, provided that VMS Company requests confidential treatment of such information to the extent permitted by law.

22.4 Unauthorized Use or Disclosure. The VMS Company shall inform the State's Contract Manager of any use or disclosure of Confidential Information not authorized by this Agreement within the same business day the VMS Company becomes aware of such use or disclosure. The VMS Company shall take immediate steps to mitigate any harmful effects of the unauthorized use or disclosure and shall take all remedial and corrective measures according to a plan and timetable that is directed by the State in its reasonable discretion, after discussion with the VMS Company. In addition, the VMS Company shall take all actions required under this Section and any section(s) of the contract that provide for specific handling of such information] for the unauthorized use or disclosure of any Confidential Information.

If the VMS Company's use or disclosure is of Confidential Information that identifies, or reasonably could identify, individuals, VMS Company shall take the following measures, at its own cost, if directed to do so by the State as part of a Corrective Action Plan:

1. offer credit monitoring and identity theft insurance to affected individuals from a company, and under terms, acceptable to the State for one year from the date the individual enrolls in credit monitoring;
2. provide a customer service or hotline to receive telephone calls and provide assistance and information to affected individuals during hours that meet the needs of the affected individuals, as established by the State; and
3. adequately staff customer service telephone lines to assure an actual wait time of less than five (5) minutes for callers.

22.5 Liquidated Damages; Equitable Relief; Indemnification. The VMS Company acknowledges and agrees that the unauthorized use or disclosure of Confidential Information may cause immediate and irreparable harm to the individuals whose information is disclosed and hereby consents to the State, on behalf of those individuals, obtaining injunctive relief against the unauthorized use or disclosure.

Notwithstanding anything to the contrary herein, the VMS Company shall compensate the State for its actual staff time and other costs associated with its responses to the unauthorized use or disclosure.

The VMS Company agrees that an unauthorized use or disclosure of Confidential Information may result in damage to the State's reputation and ability to serve the public interest in its administration of programs affected by this Agreement. Such amounts of damages which will be sustained are not calculable with any degree of certainty and thus shall be the amounts set forth herein. Assessment under this provision is in addition to other remedies under this Agreement and as provided in law or equity. The State shall assess damages as appropriate and notify the VMS Company in writing of the assessment. The VMS Company shall automatically deduct the damage assessments from the next appropriate monthly invoice, itemizing the assessment deductions on the invoice.

Liquidated Damages shall be as follows:

1. \$1000 for each individual whose Confidential Information was used or disclosed;
2. \$2500 per day for each day that the VMS Company fails to substantially comply with the Corrective Action Plan under this Section.

In the event of a threatened or actual breach of this Agreement involving an unauthorized use or a disclosure of Confidential Information, the State will suffer irreparable injury not compensable by money damages and for which the State will not have an adequate remedy available at law. Accordingly, the parties specifically agree that the State shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

In the event of a breach of this Section by VMS Company, VMS Company shall indemnify and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the VMS Company, and its sub Contractors, employees and agents, in violation of this Section, including but not limited to costs of monitoring the credit of all persons whose Confidential Information was disclosed, including

disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section. The VMS Company shall immediately notify the State of any such unauthorized disclosure of Confidential Information, and such notice shall include the persons affected, their identities, and the Confidential Information disclosed.

The State may conduct a compliance review of the VMS Company's security and confidentiality procedures under this contract.

ARTICLE XXIII. GENERAL TERMS

23.1 These terms and conditions apply to VMS COMPANY and, where applicable, to all Contractors. It is VMS COMPANY's responsibility to enforce these terms and conditions with Contractors on behalf of the State.

23.2 Governing Law. This Agreement shall be governed by the laws of Wisconsin without regard to its conflict of laws rules.

23.3 Nondiscrimination in Employment. The VMS Company shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in s. 51.01(5), Wis. Stats., or sexual orientation as defined in s. 111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the VMS Company shall take affirmative action to ensure equal employment opportunities.

23.4 Modification. This Agreement may only be amended in a writing signed by authorized representatives of both Parties.

23.5 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, except that either Party may assign this Agreement to any affiliated company or any successor in interest of itself or an affiliated company.

23.6 Promotional Advertising and News Releases. Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Contract shall not be made without prior written approval of the State.

23.7 Responsibility for Actions. The VMS Company shall be solely responsible for its actions and those of its agents, employees, or sub Contractors under this Contract, and shall not take any action, or make any omission, that may imply, or cause others reasonably to infer that the VMS Company is acting as the State's agent in any matter or in any way not expressly authorized by this Contract.

23.8 Cooperation with Other Contractors. In the event that the State has entered into or enters into agreements with other contractors for additional work related to the Vendor Management Services to be rendered by VMS COMPANY hereunder, VMS COMPANY shall reasonably cooperate with such other contractors. VMS COMPANY shall not commit any act

that will interfere with the performance of work or provision of Services by any other such contractor.

23.9 Time is of the Essence. Timely provision of the Goods or Services required under this Contract shall be of the essence of the Contract, including the provision of the Goods or Services within the time agreed or on a date specified herein.

23.10 Apparent Agency. The VMS Company shall not take any action, or make any omission, that may imply, or cause others reasonably to infer that the VMS Company is acting as the State's agent in any matter or in any way not expressly authorized by this Contract.

23.11 Breach Not Waiver. A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default other than the event or default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the VMS Company under this Contract shall not constitute a waiver of default, evidence of proper VMS Company performance, or Acceptance of any defective item or work furnished by the VMS Company.

23.12 Examination of Records. The State shall, during normal business hours and upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on the VMS Company's premises, any directly pertinent records in any form of the VMS Company involving transactions relating to this Contract. Such material shall be retained for three years by the VMS Company following final payment. This provision shall also apply in the event of termination pursuant to this Contract. Any charges for copies provided by the VMS Company of books, documents, papers, records, electronic discs, or other media shall not exceed the VMS Company's actual cost.

23.13 Site Rules and Regulations. VMS COMPANY shall require that all Contractors and Contracted Personnel, while on the State's premises or in the presence of State employees, comply with the State's work rules and regulations applicable to the work site. Neither Party shall require waivers or releases of any personal rights from representatives of the other in connection with visits to its respective premises. The Parties agree that no such releases or waivers shall be pleaded by them in any action or proceeding.

23.14 Travel. VMS COMPANY shall be responsible for travel to and from the main work location. Cost of any travel required and approved in writing by the State outside of the main work location shall be borne by the State or Local Agency and shall pay for approved expenses only at the rates currently in effect for State employees.

23.15 Records, Recordkeeping and Record Retention. Under §19.36 (3) of the Wisconsin Statutes, all records of the VMS Company that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The VMS Company shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State and local laws or ordinances. The VMS Company, following final payment, shall retain all records produced or collected under this Contract for three (3) years.

23.16 Inspection. The State may inspect, observe and examine the performance of the Services performed on the State's premises at any time. The State may inspect, observe and examine the performance of VMS Company's Services at reasonable times, without notice, at any other premises.

23.17 Foreign Corporation. If applicable, the VMS Company shall conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation (i.e. any corporation other than a Wisconsin corporation), and shall possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a said certificate.

23.18 No Employment of State Contracted Personnel. The VMS Company shall not engage the services of any person or persons now employed by the State of Wisconsin including any department, commission or agency thereof, to provide services relating to this Contract without the written consent of the employer of such person or persons and of the State.

IN WITNESS WHEREOF, these Parties have executed this Agreement as of the date first set forth above.

Department of Administration, on behalf of the State of Wisconsin:	VMS COMPANY
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

Attachment A

Proposed VMS COMPANY' Vendor Management Services

1. VMS COMPANY shall provide to State a web-based VMS System that provides the functions to:
 - a. Register Contractor
 - b. Post Requisitions
 - c. Receive Contracted Personnel Offers
 - d. Analyze Contracted Personnel Offers
 - e. Accept Contracted Personnel Offers
 - f. Provide management of acceptance procedures
 - g. Process and store timesheets of Contractor Contracted Personnel
 - h. Administer invoices and payments of Contractors
 - i. Provide evaluation and closure of Requisitions
 - j. Maintain checklists of on-boarding and off-boarding requirements.
 - k. Notify responsible individuals via system work lists and/or email of actions than need to be completed.

All activities shall be conducted on the Internet through a website(s) hosted by VMS COMPANY or a third party. The VMS System shall be secured and password-protected to permit access only to authorized functions, only by authorized State administrators, State managers, VMS COMPANY Contracted Personnel, and Contractor Contracted Personnel.

Develop an implementation plan and schedule for the VMS Program.

Develop a Contractor Participation Agreement.

Develop a Requisition Form.

Develop a procedure for review of Contracted Personnel Offers to meet the State's requirements for balancing price and quality.

Require Contractors to have timely background checks conducted on Contractor Contracted Personnel interviewed by State in accordance with the requirements of the applicable Service Agreements, utilizing any such service as State may reasonably request.

Develop a remedy for and participate in the resolution of Contractor disputes.

Notify successful Contractors of Contractor Contracted Personnel selection and establish a start date.

Develop an Acceptance form to be approved by State.

Process, track and maintain consultant timesheets (automatically done in VMS System).

Issue notice to Hiring Manager to review time sheets and assess performance as a requirement before invoice can be issued and payments made.

Develop the process and mechanism to allow Hiring managers to approve work that has been satisfactorily performed. This approval is required prior to invoice being generated or paid.

Invoice State for Contractor Contracted Personnel services.

Process payments by State.

Make payments to Contractors.

Maintain at VMS COMPANY's expense ongoing support for this Agreement, including, but not limited to: training State hiring managers in the use of the VMS System; and day to day interface with State Contracted Personnel and Contractors.

Encourage, collect, process and retain performance evaluations from the Hiring Managers or appropriate Contracted Personnel from each State and Local Agency for the Contracted Personnel and the Contractor on each Engagement no later than thirty (30) days This

requirement shall not be forced upon the Agencies, however, they should be encouraged and when the evaluations are submitted, they will be available as provided in SECTION 3.7

Develop performance standards, measurements and a process whereby both VMS Company and the Agencies can evaluate the performance of Contracted Personnel and the IT Services Supplier.

Develop a customer survey form; determine standards of measurement for assessing the performance of VMS Company.

Conduct an Agency customer survey, no less than annually requesting feedback on the performance of VMS Company.

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ATTACHMENT B

Proposed Business Rules

[To Be Determined during implementation and added to the Contract as stated in 3.2 as an Amendment]

These Business Rules shall be as agreed to by the Parties in writing and shall be attached to and become part of this Agreement as **Attachment B**. VMS COMPANY shall agree to any Business Rules reasonably proposed by State. Any proposed changes to these Business Rules shall be discussed in good faith by the Parties and agreed changes shall be as set forth in writing signed by the Parties as an amendment to this Agreement.

Current and Proposed VMS Operations Business Rules

- 1 Hiring Managers, Section Office, VMS Program and Staff can submit an order requisition.
- 2 Section Chief approves order requisitions.
- 3 State of Wisconsin has an X-day guarantee period for Contracted Personnel, if the Contracted Personnel doesn't work out in X days, Contractor owes the State of Wisconsin X days non-billable time. Agency and Contract Manager will determine the exact number of days on a case by case basis. This could be up to three weeks.
- 4 Hiring managers should see the Contractor name on submittals.
- 5 Per the State agency discretion, work order approvals may have additional approval levels beside the State Agency's Hiring Manager.
- 6 State agencies are responsible for drug checks.
- 7 An initial replacement RFS will be submitted to the original Contractor. The VMS Company can redistribute the order if the Contractor does not provide a suitable replacement per the hiring manager.
- 8 A project name or number is not required for all Contracted Personnel.
- 9 All active Contractors receive all order requisitions at the same time. No Contractor tiering or separate Contractor distribution list is allowed.
- 10 Hiring Managers will determine the number of candidates a Contractor may submit to a RFS Order Requisition.
- 11 An attached resume within VMS tool is required for all submitted candidates.
- 12 The candidate's bill rate cannot exceed the bill rate listed on the RFS Order Requisition.
- 13 The RFS Order Requisition creator cannot submit an Order Requisition to Contractors before Approval.
- 14 The RFS Order Requisition creator cannot allow Contractor to submit candidates before the RFS Order Requisition has been approved.
- 15 If certain groups (Security, HR Facilities, etc.) need to be notified that a Contracted Personnel has been hired, the agency must inform the VMS Company prior to submitting the RFS Order Requisition.
- 16 Contracted Personnel can work across agencies, departments, projects etc.
- 17 All time is paid at the straight time bill rate.
- 18 On-Call Rates are determined by the State agency within the \$2.50-\$3.50 range.
- 19 Standard job titles/descriptions will be used on RFS Order Requisitions.
- 20 Hiring Manager will determine interview process.
- 21 Hiring Manager has the choice to see all candidates submitted, after RFS is in halted status.
- 22 Contractors have at least 5 days to submit a candidate. Hiring Managers cannot review resumes as candidates are submitted.

- 23 Cost Benefit Analyses will be attached to all RFS Order Requisitions that have a value of \$25,000 and above.
- 24 Per State agencies direction, work order revisions (extensions) must go to Management for approval.
- 26 Even if the current bill rate is below maximum of bill rate range, the bill rate cannot be increased on a work order revision.
- 27 Extension option must be indicated on the RFS Order Requisition and the Cost Benefit Analysis.
- 28 The work week is defined as Sunday through Sunday.
- 29 Managers can choose between hourly and Time in Time Out (TITO) Time sheets.
- 30 Supervisors of Contracted Personnel or their proxy are the only approvers of Time Sheets.
- 31 Contracted Personnel need to attach electronic copies of receipts for expense sheets.
- 32 Timesheets cannot be approved if committed spend is exceeded.
- 33 Time is billed against a State issued purchase order.
- 34 MBE, Women Owned and Disabled Veteran owned Contractors spend will be tracked.
- 35 Once a timesheet has been approved, the timesheet can not be altered. A Credit/Debit Memo must be created to change the approved hours.
- 36 One (1) State issued purchase order per Contracted Personnel is required.
- 37 Purchase Orders and Work Order dates should only run through 06/30/XX or per agency specific rules. New purchase orders must be generated for each fiscal year or per agency specific rules.
- 38 Consolidated invoicing will be done bi-weekly.
- 39 When the Contracted Personnel assignment ends, hiring manager will complete an evaluation to close the Contracted Personnel's record.
- 40 The VMS Company must have the State of Wisconsin issued purchase order number and the work order must be completely approved at least 24-48 hours prior to the Contracted Personnel beginning his/her assignment with the State of Wisconsin. The approvals include: State of Wisconsin agency, VMS Company and the Contractor.
- 41 Before an RFS will be sent to the Contractors, the VMS Company will open the CBA and verify that the position totals and types shown in Part Two Contracting Costs on line 6 agrees with the position types and quantities shown on the RFS. If the RFS is for more positions than shown on the CBA it will be rejected and sent back to the hiring manager.
42. A copy of each RFS and the attached CBA in Excel format will be emailed by the VMS Company to selected offices within 5 days of the of the RFS being released to the Contractors. The Contract Manager will determine which email addresses should be sent these materials.
43. VMS Company will pay contractors within 5 days of receiving payment from the State.

ATTACHMENT C

VMS COMPANY and STATE CONTACTS

Bill Epp
State of Wisconsin Contract Manager
Department of Administration
State Bureau of Procurement
6th Floor, 101 E. Wilson Street
Madison Wisconsin, 53703-3405

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Attachment D
Proposed Service Level Agreement

Service Level Area	Measurement Criteria	Service Level Goal
Job Requisition – Time to Distribute to Suppliers	The amount of time from client requisition approval to the posting of the job requisition to the Contractors.	Four (4) Business Hours
Job Requisition – Time to Fill	The number of days from client requisition approval to the acceptance (hire decision) of the candidate by client. A lesser number of days indicates better program performance.	Fourteen (14) Calendar Days
Job Requisition – Average Days to Respond	The number of days from client requisition approval to when the first candidate is submitted (shortlisted) to the client. A lesser number of days indicates better program performance.	Three (3) Business Days
Job Requisition – Interview to Hire Ratio	A ratio describing the number of candidates interviewed for a position relative to the number of candidates selected for hire. A ratio of 1:1 indicates that every candidate interviewed by the client was selected for hire. A ratio of 3:1, for example, indicates that for every 3 candidates interviewed, only 1 was selected for hire. Therefore, a ratio closer to 1:1 indicates a higher quality of candidates being interviewed and selected for hire.	3:1
On-boarding	On-boarding requirements are met in accordance with the Mandatory Requirements at Sections 4.6 and 4.12.	95%
Off-boarding	Off-boarding requirements are met in accordance with 6.6.7 and any established program guidelines.	95%
Turnover – Negative Attrition	A percentage defining the number of contractor terminations as a result of a negative termination reason, documented in the VMS tool, relative to the number of all candidates terminated. For example, 10% Negative Attrition indicates 10% of all contractor terminations are for negative reasons. Therefore, the higher the percentage, the greater number of negative terminations.	10%
Timesheet & Invoicing	Timesheets maintained within the VMS Tool will be processed accurately in the invoicing process.	100%
Supplier Payment	Contractor payment requirements are met in accordance with the established program guidelines identified in 6.7.7 and 6.7.9.	100%
Reporting	Reporting requirements are met in accordance with the Mandatory Reporting Requirements shown in Appendix C.	99%
Customer Support	Program staff will be accessible on all business days from 7:00am – 7:00pm EST. All calls and emails will be responded to within one (1) business day.	As needed 7:00am –7:00pm (EST)
VMS Tool Availability	System uptime for the VMS tool will be maintained on a monthly basis. Defined as the system's availability to all	99.9%

	assigned users (via a web based browser using Microsoft Explorer version 5.0 or higher) excluding pre-scheduled maintenance. Will be measured based on downtime minutes.	
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Attachment E

Mandatory Reporting Elements and Timeframes

Agency Invoice information: This report is run bi-weekly every invoice cycle. The invoice cycle is standard for all agencies. Information in the Current Data Fields shown below is standard information however because of individual agency accounting requirement, some additional information may be required.

Current Data Fields:

- Contractor name
- Name of Contracted Personnel
- Invoice ID number
- Timesheet start date
- Timesheet end date
- Agency purchase order number
- Invoice line item number
- Billable hours for
 - Regular time
 - Overtime
- On call status
- Bill rate for:
 - Regular time
 - Overtime (same as regular rate)
- On call status (amount agreed to by Agency for each RFS, usually \$3.50/hr or less)
- Amount billed for:
 - Regular time
 - Overtime
- On call status
- Invoice total by line
- Name of Hiring manager

Some Agencies require the additional accounting code information listed below to be shown on their invoices:

- Line item code
- Fund Code
- Agency Code
- Organization Code
- Sub Organization Code
- Appropriation Code
- Appropriation Unit
- Activity Code
- Object Code
- Sub Object Code
- Reporting Code
- Project Code
- Fiscal Year

Spend By Contractor: This report totals spend for each Contractor for the period requested and subtotals for Contractors that are Certified Minority Businesses, Women Owned and Disabled Veterans Owner businesses. This report is run each month with year to date totals for the Fiscal Year (FY) which is July 1 through June 30 each year.

Current Data Fields:

Contractor Name

Contractor Status i.e. regular, Certified Minority Businesses, Women Owned and Disabled Veterans Owner businesses.

Consolidated invoice total for the period.

Projected Fiscal Year (FY) Spend: This report combines the amount spent to date in the current FY and the amount remaining to be spent in the FY. This report should be available each month.

Current Data Fields:

State Agency Name

State Agency Division

Contracted Personnel Name

Bill Rate

Amount spent to date in the current FY

Amount available to be spent in remainder of FY

Name of Contractor

State Average Bill Rate Report: This report lists each individual Contracted Personnel in each Job Title for each Contractor and calculates the average Bill Rate for each Job Title. This report is used by State Agencies to negotiate the amount they will accept before hiring a Contracted Personnel. Report must be available each month and as requested at any time.

Current Data Fields:

State Agency

State Agency Division

State Agency Bureau

Name of Hiring Manager

Job Title

Name of Contracted Personnel

Name of Contractor

Bill Rate

Average Bill Rate for each Job Title by State Agency, the Division, the Bureau and the Hiring Manager.

Contractor Reporting: This is a report that is run monthly, quarterly and annually on a Fiscal Year Basis. It is used by the Contract Manager to supply information for upper management.

Current Data Fields:

Name of Contractor

Invoice Line Item

Invoice date

Purchase order number

Contracted Personnel Engagement end dates: This report is used by State Agencies to monitor engagement end dates of the Contracted Personnel so they can review the need to issue a new RFS if services are still needed beyond the Engagement end date. This report is usually generated in the February to April time period but the timing is determined by each individual State Agency based on their planning requirements.

Current Data Fields:

Name of Agency

Name of Agency division

Name of Agency bureau

Name of hiring manager

Name of Contracted Personnel

Name of Contractor

Engagement end date

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