



## ETI0003 APPENDIX 11 CONTRACTED PERSONNEL CONFIDENTIALITY AGREEMENT

### *Directions to Supplier Company:*

Per 4.16 of RFP ETI0003 incorporated by reference into Supplier Company's contract with ETF, Supplier Company is to:

1. Have Contracted Personnel review and sign this Appendix 11.
2. Supplier Company's legal representative is to sign this Appendix 11.
3. Finally, Supplier Company is to return the final countersigned Appendix 11 to ETF before the Contracted Personnel's start date.

### **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 this contract. The terms "Authorized User" and "State" and "State of Wisconsin" and "Department of Employee Trust Funds (ETF)" are used interchangeably. Any Authorized User who piggybacks on this contract and employs this form shall be granted the same rights and responsibilities in their respective engagement(s) as ETF is accorded with its engagements.

"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 ETF or a third party owns the information, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) non- public information related to ETF'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 ETF. Confidential information includes all information that is restricted or prohibited from disclosure by state or federal law.

"Contracted Personnel" means a Supplier Company's employees or other personnel (including officers, agents, and subcontractors) provided by the Supplier Company specifically to render Services under an Engagement. For the purposes of this Agreement, the terms "Worker" and "Contracted Personnel" are interchangeable.

"Engagement" means the provision of Services to ETF upon the assignment of Contracted Personnel

for work specified in a Position Request.

“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 ETF 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.

“Position Request” means the document ETF sends to contractors to solicit quotes and ask for resumes and other materials about candidates to fill a particular ETF need based upon the job title and qualifications, among other data points.

"Proprietary Information" means all information that has been created, discovered, developed or otherwise become known to ETF or any of its related entities, (including, without limitation, information created, discovered, developed or made known to Contracted Personnel during association with ETF). 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 Wisconsin Department of Employee Trust Funds and its operations, products, business and financial affairs.

“Supplier Company” means the company holding a contract to provide services to ETF.

This Worker (Contracted Personnel) Agreement (the “Agreement”) is made this <date> by and among <worker’s name>, an individual (“Contracted Personnel”), and <company name>, Contracted Personnel’s Supplier Company.

WHEREAS, Supplier Company has contracted with ETF for Supplier Company to provide certain services, including work performed on a temporary basis by Contracted Personnel; and,

WHEREAS, Contracted Personnel may be assigned by the Supplier Company to work for the Department of Employee Trust Funds on a temporary basis.

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

**1. Contracted Personnel**

1.1 Contracted Personnel may be engaged to provide services to ETF as an employee of the Supplier Company and not as an employee of ETF. Contracted Personnel shall perform all services or work to the satisfaction of ETF.

- 1.2 Contracted Personnel acknowledges and agrees that no employment relationship between Contracted Personnel and ETF is created by this Agreement.
- 1.3 Contracted Personnel acknowledges and agrees that he or she is not a third-party beneficiary of the agreement between the Supplier Company and ETF and hereby waives any such rights, which may arise under such agreement between the Supplier Company and ETF.
- 1.4 Contracted Personnel acknowledges and agrees that the Supplier Company 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.
- 1.5 Contracted Personnel acknowledges and agrees that Contracted Personnel is not eligible to participate in or receive any benefits under the terms of ETF and/or any 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 ETF or any Authorized User.
- 1.6 Contracted Personnel acknowledges and agrees that the cash payments and benefits which Contracted Personnel receives from Supplier Company shall represent the sole compensation to which Contracted Personnel is entitled, and that Supplier Company will be solely responsible for all matters relating to compliance with all employer tax obligations arising from the performance of services 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 ETF or any Authorized User be liable for any such obligations.
- 1.7 Contracted Personnel acknowledges and agrees that ETF shall have no liability of any kind to the Contracted Personnel related to payment for the time worked, if any, for ETF pursuant to this Agreement. Contracted Personnel hereby waives any claim he or she may have against ETF related to such payment.
- 1.8 The Contracted Personnel hereby authorizes the Supplier Company to provide ETF access to the Contracted Personnel's criminal background check and all other information in the Contracted Personnel's personnel file. The Contracted Personnel also hereby authorizes the Supplier Company to promptly release copies of all documents containing such information to ETF upon request.

## **2. ETF Work Policies and Rules**

- 2.1 The Department of Employee Trust Funds is committed to the highest standards of business ethics and requires that its Workers always conduct themselves with honesty

and integrity. Contracted Personnel acknowledges and agrees that during the performance of Contracted Personnel's job duties for ETF, Contracted Personnel will not violate any of ETF's work rules and policies, including those specified in any ETF workplace manual. Contracted Personnel shall always comply with all ETF rules, policies, and procedures as provided to Contracted Personnel by Supplier Company or ETF. This includes but is not limited to ETF's COVID 19 safety protocols, including masking and reporting vaccination status. **This includes but is not limited to ETF's Guidance on Generative Artificial Intelligence.**

- 2.2 Contracted Personnel agrees that Contracted Personnel shall not harm ETF's equipment, property, or inventory (other than ordinary wear and tear) and shall not interfere with ETF'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 are also encouraged, and expected, to bring to the attention of ETF management any information that raises the possibility that any Contracted Personnel or ETF employee is not fulfilling these ethical and legal responsibilities. After an Engagement ends or is terminated or upon ETF's request, ETF equipment must be returned to ETF in satisfactory condition and in a timely manner. ETF reserves the right to charge the Supplier Company shipping and/or replacement fees for equipment and supplies not returned timely.
- 2.3 ETF is a Covered Entity under the Health Insurance Portability and Accountability Act (HIPAA), and must comply with that law. Contracted Personnel providing services at ETF will participate in ETF's training regarding HIPAA and privacy laws specific to ETF and its records and comply with HIPAA and privacy laws specific to ETF while providing services at ETF.
- 2.4 Contracted Personnel agrees that he or she enters onto ETF'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 ETF, the State of Wisconsin, or any Authorized User for personal injury or property damage arising out of or connected in any way with Contracted Personnel's presence on ETF and State of Wisconsin premises or his or her assignment with ETF.

### **3. Confidentiality and Non-Disclosure**

- 3.1 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 ETF, 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.
- 3.2 Confidentiality. Contracted Personnel agrees that he or she will during or after Engagement with ETF maintain in strict confidence all ETF's Confidential Information, Proprietary Information and Personally Identifiable Information, as the case may be; use or reproduce the Confidential Information solely as necessary for purposes of providing services as an independent contractor to ETF; 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 their Supplier Company in writing, who will in turn notify ETF, 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.

- 3.3 Injunctive Relief. Contracted Personnel acknowledges that it is likely to be difficult to value the damages sustained by ETF 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, ETF shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages.
- 3.4 Work Product. Contracted Personnel acknowledges and agrees that during an Engagement of Contracted Personnel's work for ETF, 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 ETF 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 Engagement at ETF. Contracted Personnel agrees that the above assignment is binding upon Contracted Personnel's estate, administrators, or other legal representatives or assigns.
- 3.5 Excluded Inventions. Contracted Personnel shall not be required to assign to ETF 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 ETF's equipment, supplies, facility or Confidential Information (as defined above), and which (i) does not relate to ETF's business or to ETF's actual or anticipated research or development, and (ii) does not result from any work performed by Contracted Personnel specifically for ETF (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.
- 3.6 Work Made for Hire. Any and all Work Product prepared by Contracted Personnel for ETF that is eligible for copyright protection shall be a work made for hire on behalf of ETF as that term is used under the United States Copyright Act and ownership of all copyrights in such work shall vest in ETF. 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 ETF, then Contracted Personnel shall transfer all right, title, and interest in such work, including all copyrights therein to ETF. Contracted Personnel agrees to deliver such documents or other ETF property to ETF upon termination of Contracted Personnel's Engagement or at any other time at ETF'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 ETF.

- 3.7 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 Supplier Company or termination of Contracted Personnel's Assignment/Engagement to ETF.
- 3.8 Severability. If any provision of this Agreement is held to be invalid or unenforceable, then such provisions shall be severed, and the remaining provisions shall remain in full force and effect to the fullest extent permitted by law.
- 3.9 Waiver. This Agreement may be amended, or its requirements waived, only by a writing signed by the entity who loses rights upon enforcement of the waiver or amendment.
- 3.10 Governing Law; Jurisdiction. This agreement shall be governed by the laws 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.
- 3.11 Assignment. Neither party's rights or obligations under this Agreement can be assigned without the express prior written consent of (i) Supplier Company, (ii) Contracted Personnel, and (iii) ETF. Any attempted or purported assignment of this Agreement without such consent shall be void.
- 3.12 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 Supplier Company or ETF for any purpose. Contracted Personnel shall not provide or offer any gifts, payments, or other inducements to any officer, employee, or agent of ETF for any purpose.
- 3.13 Contracted Personnel agrees that during the period of Contracted Personnel's Engagement with ETF, Contracted Personnel will not, without ETF's express written consent, engage in any consulting, employment or business which is in conflict with his/her Contracted Personnel relationship with ETF and the State of Wisconsin.
- 3.14 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 ETF, which Contracted Personnel believes do not fall within the provisions of this agreement:

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3.15 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 ETF in writing of such invention or improvement for the purpose of permitting ETF to determine whether such item is covered by the terms of this Agreement.

3.16 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**

**Contracted Personnel**

**By:**

**By:**

**Name:**

**Name:**

**Title:**

**Date:**

**Date:**