**AGENCY SERVICES AGREEMENT**

**Effective Date: 02/06/2018**

| **Party:** | **BARTECH** | **SUPPLIER** |
| --- | --- | --- |
| Name: | The Bartech Group, Inc. | Quanta Systems inc |
| Address: | 27777 Franklin Rd., Suite 600  Southfield, MI 48034 | 5696 Peachtree Parkway Norcross GA 30092 |
| Incorporation: | Michigan | Georgia |

1. The supplier named above (“Supplier”) and Kimberly-Clark Global Sales, LLC (“Customer”) are parties to an agreement (the “K-C Agreement”) pursuant to which the Supplier provides certain staffing services as defined therein.

2. The Bartech Group, Inc. (“Bartech”) and Customer are parties to a Master Services Agreement (“MSP Agreement”), pursuant to which Bartech has agreed to act as its vendor manager and payment and billing agent for its staffing service providers, including Supplier.

**NOW, THEREFORE**, Supplier and Bartech hereby agree as follows:

DEFINITIONS

| **TERM** | **DEFINITION** |
| --- | --- |
| Assignment | The project to which the Contingent Worker is assigned. |
| Compliance Date | The go-live date for when Supplier commences active participation in the MSP Program. |
| Contingent Worker | An individual employed by the Supplier and providing services to the Customer through the MSP Program. |
| MSP Program | The contract workforce management program which has outsourced responsibility for managing processes relating to staff augmentation, labor procurement and management to be administered by Bartech for the benefit of Customer. |
| Party(ies) | In the singular, either Supplier or Bartech as context may so dictate, or in the plural, both Supplier and Bartech. |
| Personnel | A Party’s directors, officers, employees, non-employee workers, agents, auditors, consultants, contractors and subcontractors (but excludes the other Party and all third parties claiming through the other Party). |
| Requisition | Services requested by the Customer in the VMS. |
| Services | The services that are to be furnished by Supplier to Customer under this Agency Services Agreement. |
| VMS | The web-based application utilized by the Parties for managing and monitoring the various aspects of the MSP Program. For purposes of this Agency Services Agreement the VMS shall be provided by IQNavigator, Inc. |
| Work Order | The work order initiated and accepted in the VMS by Supplier that serves as the written confirmation of the project the Contingent Worker is assigned to, the assignment of the Contingent Worker to that project, the anticipated length of the Assignment, and the confirmation of the rate to be paid by Bartech to Supplier. |

## Section 1: Term and Termination

**1.1 Term**. The term of this Agency Services Agreement (“ASA” or "Agreement”) shall commence as of the Effective Date and shall continue in effect until superseded or otherwise terminated in accordance with the terms of this Agreement or the agreement of the Parties.

**1.2 Termination.** Either Party may terminate this ASA if the other Party breaches a material obligation and fails to cure the breach within thirty (30) days following the date the other Party has received notice of the breach and demand for cure. Bartech may terminate this ASA without cause, at any time in its sole discretion, by serving Supplier with a notice of termination. Supplier may terminate this Agreement without cause by providing Bartech with 30 days written notice. Termination of this ASA for breach shall be without prejudice of any damages the terminating Party may claim.

**1.3 Termination for Insolvency.** A Party will be deemed in material breach of this ASA if such Party becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation or insolvency, or for the appointment of a receiver, conservator, or similar officer, is unable to pay its debts as they become due, makes an assignment to or for the benefit of its creditors, or ceases to conduct business for any reason on an ongoing basis leaving no successor in interest.

**1.4 Termination upon Cancellation of MSP Program**. In the event that Customer terminates, cancels or suspends the MSP Program, then this ASA will terminate commensurate with the termination of the MSP Program upon notice to Supplier.

**1.5 Orderly Transfer**. Upon the expiration or termination of this ASA for any reason whatsoever (including a breach by either Party), Supplier will provide such information, cooperation and assistance to Bartech and Customer, as Bartech or Customer may reasonably request, to assure an orderly return or transfer to Bartech or Customer or their designee of all proprietary data (and related records and files) and materials of Bartech or Customer, and all Work Product (in its then current condition) for which payment has been or is made.

**1.6 Transition Option.** In the event a) Bartech terminates this ASA for cause due to Supplier's breach of the terms of this ASA, or b) Supplier terminates this ASA at its convenience, at Customer’s request and Bartech’s option, any or all Contingent Workers then on an Assignment may have the option of being transitioned to the payroll of any other supplier chosen by Bartech for purposes of continuing their performance of services for Customer and Supplier agrees not to interfere with any transition so undertaken, including but not limited to waiving any non-compete agreements Supplier may have with its Contingent Workers.

**1.7 Termination of Contingent Worker Assignments**. Bartech may, at the direction of Customer, terminate any Assignment at any time, with or without cause, without responsibility. In such case, Supplier shall be paid for the services rendered under the Assignment until the termination becomes effective.

## Section 2: Performance of Services and Supplier Responsibilities

**2.1** Supplier shall provide those Services described in the Assignment and those identified as Supplier responsibilities in the Responsibility Matrix on Schedule A.

**2.2** Supplier shall perform the Services in compliance with the service level agreement and performance metrics set forth in Schedule B.

**2.3** Supplier agrees to provide a single point of contact for each Customer region and to provide an experienced, dedicated, national account manager. Supplier shall also identify a secondary point of contact. Supplier's account manager shall, among other things, participate in a review sessions on an as needed basis with Bartech as well as issuing quarterly supplier reviews in the form of a supplier scorecard. Supplier's account managers must respond to a Bartech request for information within twenty-four (24) hours. Supplier shall identify its primary and secondary points of contact below. Include name, title, address, phone number and fax number.

| Primary Point of Contact | Secondary Point of Contact |
| --- | --- |
|  |  |

**2.4** Prior to utilizing the VMS, Supplier shall, if so required and if not previously completed, execute the VMS owner’s end user or similar agreement to gain access to the VMS. Supplier shall, at its cost, engage in and provide to its Contingent Workers training on the VMS so as to ensure accurate and effective utilization of the VMS.

**Section 3: Requisition Process**

**3.1** Upon receiving Requisitions from Customer, Bartech will contact Supplier through the VMS to request Contingent Workers to perform the services described in a Work Order.

**3.2 Confirmation; Assignment.** Included within the VMS is a Work Order which, when completed, serves as the written confirmation of the Assignment of the Contingent Worker, the confirmation of the rate to be paid by Customer to Bartech for the Contingent Worker’s services through the Supplier and the detail of reimbursable expenses or taxes payable thereunder and other applicable terms and conditions. Modifications to any Work Order including classification changes may occur at any time upon notice to Supplier before they have been accepted by Supplier and shall be documented on-line by the amendment application. No services may begin prior to finalization of an Assignment.

**3.3 Contingent Worker Information.** Prior to the commencement of the performance of any services by a Contingent Worker of Supplier, Supplier will provide Bartech with all information requested with respect to each such Contingent Worker that is specified in the Work Order.

**3.4 Changes to Services.** Bartech reserves the right to amend the terms of the Assignment, including the price, based upon the requirements provided by Customer. Such changes will not affect any Services already completed by Supplier.

**3.5 Use of VMS.** Supplier shall exclusively utilize the VMS for all responses to Requisitions, all Contingent Worker time entries, all submittals of approved expenses for reimbursement and all debit/credit memos for adjustments or corrections to same.

**3.6 Contact with Customer.** All Customer requests for Services and related matters will be exclusively directed to and handled by Bartech unless otherwise requested by Customer. Supplier will receive all requirements directly from Bartech and Supplier will, in turn, submit all required information to Bartech for consideration by Customer. Supplier may generally engage in direct communication with the Customer concerning Contingent Worker performance and the nature, scope and timing of a Work Order, but shall not directly request new Services, Work Orders or Requisitions from Customer’s hiring managers or other authorized personnel.

**3.7 Volume of Services.** Supplier shall have no obligation to deliver, and Bartech shall have no obligation to pay for, any preset volume of services. Supplier is not guaranteed any specified volume of Services or Work Orders.

**3.8 Work Order Cancellation.** Bartech may cancel, without charge or other financial obligation, any Work Order at any time prior to commencement of the services by the Contingent Workers.

**3.9 On-Boarding/Off-Boarding.** Before a Contingent Worker is placed on Assignment with Customer, Supplier must verify completion and compliance for all required on-boarding/off-boarding requirements and documents by completing and submitting an On-Boarding/Off-Boarding Checklist via the VMS.

a) Background and Drug Screening: Before a Contingent Worker is placed on Assignment with Customer, Supplier will ensure the completion of background and drug screening of the Contingent Worker in accordance with the requirements set forth in the K-C Agreement, and verify the completion via the VMS.

## Section 4: Rates, Fees, Billing and Payment for Services

**4.1 Rates**. Rates charged by Supplier for its Services shall be set in the VMS. Overtime rates for all non-exempt positions shall be set forth in each Work Order. All overtime must be preapproved by Customer prior to any Contingent Worker invoicing overtime. In the event overtime is not approved and Contingent Worker invoices such overtime, Customer shall have the right to reject overtime hours. Nevertheless, Supplier shall at all times be required to pay Contingent Workers all overtime pursuant to relevant federal or state laws.

**4.2 Fees**. As of the Compliance Date, existing Customer bill rates will continue to apply, but shall be subject to a Managed Service Provider Fee (“MSP Fee”) of 2.20%, which is a percentage of the total amount of approved time, less pre-approved expenses submitted in the VMS, billed by Supplier. Modifications to billing amounts and rates shall be made in the VMS and are subject to Customer approval. The MSP Fee will be deducted from Bartech’s payments to Supplier, but in no manner affect the Contingent Worker's rate of pay.

**4.3 Billing Procedure**. Supplier will cause each of its Contingent Workers to comply with the VMS procedures to submit time on a weekly basis for all work completed, no later than five days after the end of each week, and to secure the approval of the Customer representative for all hours worked. Bartech will only pay the Supplier for those hours approved in the VMS. Supplier hardcopy timesheets will not be accepted for payment. All reporting, billing and invoicing shall be directed to Bartech only and Supplier will not otherwise report, bill or invoice Customer for its services. Any time that is not submitted within forty-five (45) days after the date the work was actually completed shall be deemed untimely and waived by Supplier.

**4.4 Expenses.** Supplier shall only be reimbursed for approved, documented expenses that comply with Customer’s expense policy that are disclosed to the Supplier, which must be submitted in the VMS as they are incurred, at cost and without mark-up. Any expenses that are not submitted within forty-five (45) days after incurred shall be deemed untimely and waived by Supplier.

**4.5 Timing of Payment**. Bartech will submit a consolidated weekly invoice to Customer for the services provided. Under the MSP Agreement, through an agreement with Citi Supplier Finance (“Citi”), Bartech will receive payment of the undisputed amounts within fifteen (15) calendar days of the consolidated weekly invoice, less a Citi transaction fee (the “Citi Fee”) calculated as follows:

Citi Fee = Invoice Amount \* (LIBOR Rate % \* KC credit %) \*((120-15)/360)

Bartech will remit payment to Supplier, less the MSP Fee and the Supplier’s allocated portion of the Citi Fee, within seven (7) calendar days after it receives payment of the applicable invoice.

**4.6 Manner of Payment**. Payments made under this ASA shall be made by Automated Clearing House (ACH) payments in immediately available funds to such bank account as Supplier may designate provided, however, if payment by ACH is not possible, payment shall be made by bank wire transfer or other mutually agreed upon payment method. Payment will only be made for time or other miscellaneous items properly reflected and approved by Customer in the VMS.

**4.7 Payment to Contingent Workers**. Payment by Bartech to the Supplier will constitute full and complete payment for the Services. Supplier will be solely responsible for all compensation due to its Contingent Workers.

**4.8 Payment Disputes.** In the event Bartech disputes, in good faith, any portion of the invoice submitted by Supplier, Bartech will pay undisputed portion in accordance with this Section 4 and give Supplier notice and an explanation of the dispute.

a) If requested, Supplier will promptly provide reasonably detailed additional information on fees and expenses sufficient to answer any Bartech or Customer concerns or questions pertaining to the payment obligation(s). Such additional information shall be supplied within ten (10) business days of being requested. Payment on questioned items may be delayed until receipt of such information and resolution of any concerns or questions; it shall not be considered a default of any Party’s payment obligations under this ASA or under any amendment to this ASA, unless specifically stated therein.

b) Within sixty (60) days of receipt of payment from Bartech, Supplier must bring to Bartech’s attention any errors or omissions relating to payment. Payment issues not raised within such sixty (60) day limit are deemed waived.

c) In the event that Supplier is overpaid in error, Bartech will be entitled to deduct any overpayments from Supplier's next scheduled payment.

**4.9 Conditions of Payment.** Bartech shall never be obligated to pay Supplier under any circumstances, unless and until payment is received from Customer by Bartech, covering the services for which Supplier has submitted an invoice. This is a condition precedent to any obligation of Bartech, and shall not be construed as a time of payment clause. This provision governs all other portions of this ASA, and any conflicting language shall be modified or deemed to be consistent with this Section 4. Supplier agrees that once payment is made to Bartech, Supplier shall look only to Bartech for payment of amounts due to it and releases Customer from any further liability for such payments.

a) It is agreed that Supplier relies on the credit of Customer, not Bartech, for payment for its Services. Notwithstanding any contrary payment terms provided for in this Agreement, Supplier agrees that in the event of Customer’s delay, failure, refusal or inability to pay Bartech for the Supplier’s Services, Bartech shall have no obligation to pay for such Services. It is further agreed that if payment under such circumstances is made by Bartech to Supplier, Bartech shall be entitled to recover the full amount of such payment from Supplier or to deduct such amount by offset from any payments then or thereafter due to Supplier.

b) Bankruptcy. Supplier agrees that in the event that any payment received by Bartech from Customer on account of Services provided by Supplier is determined to be a preference payment under the bankruptcy laws of the United States and is required by a court of competent jurisdiction to be repaid by Bartech to Customer, to the extent that such preference payment included sums which have been paid to Supplier in respect of Supplier's invoices, Supplier shall, within five (5) business days of receipt of notice from Bartech of such event, repay and return to Bartech the amount of such preference payment, and Supplier shall indemnify and hold Bartech harmless from any and all such preference claims. Supplier assumes all risk of non-payment by Customer, including but not limited to any credit risk associated with Customer.

**Section 5: Taxes**

**5.1**  With regard to the Supplier's Personnel who deliver the Services to Customer pursuant to this ASA, Supplier will be solely liable for and shall not be allowed to bill to Customer or Bartech for any Federal, state, or local taxes, including but not limited to, Federal Insurance Contributions Act (“FICA”), Federal Unemployment Tax Act (“FUTA”) and State Unemployment Insurance (“SUI”), and (with the exception of Section 5.2) federal, state or local taxes based on or measured by Supplier's property, capital, income or receipts. Neither Customer nor Bartech will have any obligation to withhold Federal, state, or local income tax, or employee’s portion of FICA or other payroll taxes, from any Personnel assigned by Supplier to provide Services under this ASA; nor will Bartech or Customer have any liability for any FICA, FUTA, or SUI contributions or other payroll taxes on behalf of any Personnel assigned by Supplier. Supplier agrees to defend, indemnify and hold harmless Bartech and Customer from and against any liability for premiums, contributions, or taxes payable under any workers’ compensation, unemployment compensation, disability benefits, old age benefits, employee benefits payments, or tax withholdings with respect to any Contingent Workers.

**5.2** In the event any federal, state and local sales, use, excise, value added or other like tax payments are due under law on the amounts billed by Bartech to the Customer on behalf of the Supplier, Bartech shall include such taxes in its invoices to Customer, and Customer shall pay Bartech the amount of such taxes invoiced. Bartech will remit payment of any tax listed in this section on behalf of Supplier directly to any federal, state or local agency. Supplier agrees to cooperate with Bartech in calculating and payment of such taxes and in responding to any related federal, state and local audits. Nothing in this paragraph shall be deemed to refer to payroll, unemployment, or income taxes described elsewhere in this ASA.

**5.3** Supplier will timely file all its applicable tax returns, including but not limited to, income tax returns, sales and use tax returns, payroll and employment tax returns, and information returns required by law, in a manner consistent with its status as an independent provider of Services and as employer of the Contingent Workers. Supplier will make all required payments and deposits of taxes as required by law in a timely manner.

**Section 6: Compliance with Applicable Law and Policies**

**6.1 Compliance with Law.** Each Party shall comply with all federal, state and local statutes, ordinances, rules, laws and regulations, domestic or foreign, relating to its activities and obligations under this Agreement, including, as applicable, all laws regarding discrimination, harassment, retaliation, privacy, data security, time off and wages and hours. Supplier has and shall maintain throughout the term of this Agreement: (i) all professional and business licenses, certifications and similar requirements as required by law and (ii) all accrediting requirements to perform the Services under this Agreement.

**6.2 Nondiscrimination.** Supplier shall not discriminate against any employee or applicant for employment with respect to the terms and conditions of his or her employment on the basis of age, sex, race, color, creed, sexual orientation, gender identity, national origin, ancestry, handicap, disability, or any other category protected by law or in retaliation for bringing a formal or informal complaint or supporting a complaint regarding any of the above discrimination or regarding harassment.Supplier agree to undertake outreach and positive recruitment activities that are reasonably designed to effectively attract minorities, women, veterans and individuals with disabilities in accordance with federal, state and local statutes, ordinances, rules, laws and regulations. Suppliers shall agree to contact appropriate recruitment sources to indicate general opportunities available and to request referrals to such sources.

**Section 7: Representations and Warranties**

**7.1 Authority.** Each Party represents and warrants that it has all rights and authority required to enter into this ASA.

**7.2 Non-Violation.** Supplier represents and warrants that the rendering of Services by Supplier's Contingent Workers to Customer pursuant to this ASA does not violate any provision in any agreement between and among Supplier, its Contingent Workers and/or any third party, and do not and shall not infringe or otherwise violate any trademark, patent, copyright, trade secret or other rights of any third party.

**Section 8: Right to Audit**

**8.1 Rights.** Bartech, Customer or their outside auditors may, from time to time and upon reasonable notice to Supplier, audit, examine, and make copies of or extracts from Supplier's business records to verify that Supplier's invoices were true and correct and to verify Supplier is in compliance with the terms of this ASA. Supplier shall disclose pay rates for its W-2 employees if requested.

**8.2 Record Retention.** Supplier shall maintain its business records relating to this Agreement for a period of ten (10) years after the expiration of this Agreement and Bartech’s final payment, and Bartech, Customer or their outside auditors may audit such business records during such ten (10) year period of time as it deems necessary.

## Section 9: Confidentiality

**9.1** Information and data, relating to Customer and its clients, customers, employees, representatives, and agents, including financial, statistical, personnel, technical data, marketing information, manufacturing data and processes, product information, and other information regarded as confidential or proprietary by Customer, that is contained in the VMS accessed by Supplier or is otherwise disclosed to Supplier or its personnel in connection with this ASA (“Customer Information”), is the property of Customer and Supplier will use such Customer Information solely for purposes of providing Services to Customer under this ASA. Upon Customer’s and/or Bartech’s request at any time, and upon the expiration or earlier termination of this ASA for any reason, Supplier shall immediately deliver to Bartech or Customer, at Supplier's expense, any or all of the Customer Information, in the form requested by Bartech or Customer. Supplier shall not possess any interest, title, lien or right to any such Customer Information.

**9.2** Each Party agrees that during the course of this ASA, information that is non-public or proprietary (“Confidential Information”) may be disclosed by such Party (“Disclosing Party) to the other Party (“Receiving Party”). Confidential Information shall including, but not limited to, trade secrets, methodologies, supplier lists, data, including cost and price data, software, computer and telecommunications systems, records, technical processes and formulas, product designs, sales, unpublished financial information, product and business plans, usage rates, projections, marketing data and memoranda, papers, letters, e-mail, notes, plans, documentation, records, and all copies thereof relating to past, existing, or planned business or technology of Bartech or Customer and their respective affiliates, clients and customers, and all Customer Information. All Work Products, software in source code or object code, deliverables, processes, specifications, or data developed by any Supplier Personnel in connection with this ASA shall be Confidential Information, as shall the existence of and the terms and conditions of this ASA.

**9.3** Confidential Information shall not include information that Receiving Party can demonstrate:

a) is publicly disclosed by Disclosing Party either prior to or subsequent to the receipt by Receiving Party of such information;

b) was known to Receiving Party as of the time of its disclosure free from any obligation to keep such information confidential as demonstrated by written records of Receiving Party or the applicable Personnel maintained in the ordinary course of business or actual prior use;

c) is independently developed by Receiving Party or the applicable Personnel without access to the Confidential Information;

d) is rightfully obtained from a third party lawfully in possession of the Confidential Information and not under and not imposing a confidentiality obligation to the Disclosing Party; or

e) is required by law to be disclosed by such Party; provided Receiving and/or the applicable Personnel, where reasonably practicable and to the extent legally permissible, provides Disclosing Party with prior written notice of such required disclosure.

**9.4** Each Party shall, and shall cause its employees to, hold all of Customer’s and the other Party’s Confidential Information in trust and confidence. Except as may be authorized by Disclosing Party in writing, Receiving Party shall not, and shall cause its personnel not to disclose to any person, firm, or enterprise. Except Customer, or use for its own benefit, any such Confidential Information. Receiving Party shall, and shall cause its personnel to, limit access and disclosure of such Confidential Information to Receiving Party’s Personnel on a “need to know” basis only. All personnel shall comply with the confidentiality obligations set forth in this ASA and Receiving Party shall be fully responsible for their Personnel’s compliance with the confidentiality obligations set forth in this Agreement and any breach of such obligations.

**9.5** Receiving Party acknowledges that unauthorized disclosure of Customer’s or Disclosing Party’s Confidential Information may cause irreparable injury to Disclosing Party or Customer, which injury shall be inadequately compensable in damages. Accordingly, Receiving Party agrees that Disclosing Party or Customer may seek and obtain injunctive relief against the breach or threatened breach of Receiving Party’s confidentiality obligations under this ASA, in addition to any other legal remedies which may be available.

## Section 10: Non-Solicitation

**10.1** To the extent allowable by law, both Parties agree not to offer employment to, hire, or engage the services of, directly or indirectly, the Personnel of the other Party, whom either Party comes into direct contact with or becomes aware as a result of this Agreement, during the term of this Agreement and any extension thereof, and for a period of six (6) months thereafter, without the other Party’s written consent.

**10.2** Supplier, on behalf of itself and any of its subsidiary or affiliated companies, agrees not to solicit or attempt to solicit, either directly or indirectly, the business or trade of Customer, in connection with the services Bartech performs for Customer pursuant to the MSP Agreement, for its benefit or the benefit of any third party, during the term of this Agreement and for a period of six (6) months thereafter.

**10.3** For the purposes of this Section, the advertisement of employment opportunities by a Party in any public forum (including magazines, trade journals, publicly accessible internet sites, classified advertisements, or job fairs open to the public) or the use of a third party recruiting service shall not be considered “solicitation”, and the hiring of an individual as a result of his or her response to such a general employment advertisement, through a third party recruiting service or in response to his or her unsolicited employment inquiry shall not constitute a breach of this ASA.

**Section 11: Relation of Parties**

**11.1 Independent Contractor.** Supplier is an independent contractor and, as such, will assume responsibility for its own Personnel and will make all reports and deductions for social security and withholding taxes and for contributions for unemployment compensation funds, as required by applicable law. Nothing contained herein may be construed to make Supplier an agent, partner or joint venturer of Bartech or Customer.

**11.2 Ineligibility for Benefits.** Supplier's Personnel assigned to Customer under this Agreement will remain Personnel of Supplier and will not by reason of their assignment to Customer become employees of Bartech or Customer. Such Personnel will not be entitled to participate in any of Bartech’s or Customer's employee benefit plans, including pension, 401(k), profit sharing, retirement, deferred compensation, welfare, medical, health, group, insurance, disability, bonus, vacation pay, severance pay and other similar plans, programs and agreements, whether reduced to writing or not.

## Section 12: Insurance

**12.1** Supplier shall maintain insurance coverage as required in the K-C Agreement and shall include Bartech as an additional insured on its General Liability insurance. Supplier shall furnish Bartech with a copy of its certificate of insurance upon request.

**12.2** Supplier shall give Bartech and Customer a minimum of thirty (30) days’ prior written notice of cancellation, termination, non-renewal or material modification of the insurance coverage required under the K-C Agreement.

**12.3** Supplier hereby waives and agrees not to commence any legal action against, or pursue any claim against, Bartech as a result of any injury or death of any Supplier employee, or loss of or damage to the property of Supplier, however it shall occur or be caused during such time as any such Supplier employee is performing services or is on or around Customer’s premises.

**12.4** Supplier hereby grants Bartech a full waiver of subrogation with respect to each insurance coverage provided by Supplier. Bartech’s insurance shall not be deemed to cover or be excess to the insurance of any Supplier.

## Section 13: Indemnification and Limitation of Liability

**13.1** Bartech shall be entitled to full indemnification and defense by Supplier in the same manner as a K-C indemnitee under the K-C Agreement. Bartech shall be a third party beneficiary of all such rights granted to it under this Section.

**13.2** Except for a Party’s confidentiality obligations, in no event shall either Party be liable for any incidental, consequential, exemplary, special or punitive damages or expenses or lost profits, regardless of how characterized and even if the Party has been advised of the possibility of such damages, under or in connection with this Agreement or SOS, regardless of the form of action.

## Section 14: Dispute Resolution

In the event of a dispute between the Parties arising out of or related to this ASA, then upon the written request of either Party, each party will designate a representative to resolve such dispute. The designated representatives will discuss the problem and negotiate in good faith in an effort to resolve the dispute without any formal proceeding. The specific format for such discussions will be left to the discretion of the designated representatives. If the designated representatives are unable to resolve the dispute, then the Parties may pursue their rights and remedies as available under this Agreement or applicable law.

## Section 15: Publicity

## Neither Party will disclose the nature or terms of this Agreement without the prior written consent of the other Party. Neither Party will use the other Party’s proprietary indicia, trademarks, service marks, trade names, logos, symbols or brand names, or otherwise refer to or identify the other Party in advertising, publicity releases, or promotional or marketing publications or correspondence to third parties without, in each case, securing the prior written consent of the other Party.

## Section 16: Assignment and Subcontracting

**16.1** Bartech may assign this ASA or any of its rights or interests hereunder, or delegate any of its obligations hereunder, to (i) an affiliate, (ii) Bartech’s successor pursuant to a merger, reorganization, consolidation or sale, or (iii) an entity that acquires all or substantially all of that portion of Bartech’s assets or business for which the Services were being provided. Except as otherwise provided above, neither Party may assign this ASA nor any of its rights or interests hereunder, no delegate any obligation to be performed hereunder, without the prior written consent of the other Party. Any attempted assignment or delegation in contravention of this Section shall be null and void, and of no force and effect. This ASA shall be binding upon, and shall inure to the benefit of, the legal successors and permitted assigns of the Parties.

**16.2** Supplier may not subcontract any of the Services to be performed under this ASA without the prior written consent of Bartech or, where required, the Customer.

**16.3** Supplier shall ensure that any agreements between Supplier and its subcontractors shall contain all material terms and conditions of this ASA (“Subcontractor Agreement(s)"), and Customer or Bartech shall have the right to audit such Subcontractor Agreements. Supplier further represents and warrants that any Contingent Worker provided by a subcontractor shall be an employee of such subcontractor and not an independent Contingent Worker nor an employee of any other company. Any subcontracting by Supplier shall not relieve Supplier of full responsibility for all of the services under this ASA and/or any Work Order, including the subcontracted portion. Any failure of a subcontractor to perform shall be considered for all purposes to be a failure of Supplier to perform, and Supplier shall remain fully liable for any defects in Services performed by subcontractors, any breaches by subcontractors, and any and all damages or injuries caused by subcontractors.

## Section 17: General

**17.1 Governing Law**. This ASA and all of its amendments no matter their place of negotiation, execution or performance, shall be governed by and construed according to the laws of the State of Wisconsin, without regard to conflict of law principles. UN Conventions on contracts for the international sale of goods and international private law are not applicable.

**17.2 Entire Agreement**. This document, together with its schedules and attachments, is the entire agreement and understanding between the parties and supersedes all prior understandings and agreements, whether oral or written, and will be binding upon their heirs, successors and assigns.

**17.3 Force Majeure**. Neither Party shall be responsible for any delay or failure in performance of any part of this ASA to the extent that such delay is caused by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the Delayed Party (“Condition”). If any such Condition occurs, the Party delayed or unable to perform (“Delayed Party”), upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis during the continuance of such Condition (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period); provided however, that the Party so affected shall use its best reasonable efforts to avoid or remove such Condition, and both Parties shall proceed immediately with the performance of their obligation under this ASA whenever such causes are removed or cease. Labor difficulties, including without limitation, strikes, slowdowns, work stoppage, picketing or boycotts, shall not constitute a Condition that excuses Bartech or Supplier from performance of its obligations under this ASA. In the event of such labor difficulties, Bartech or Supplier shall use all lawful means to perform Services agreed to. If the Condition continues for more than sixty (60) days, then the Party affected may terminate this ASA.

**17.4 Incorporation by Reference**. Every exhibit, schedule and other appendix attached to this ASA and referred to herein is hereby incorporated in this ASA by reference.

**17.5 Amendments**. Any amendments to this ASA must be set forth in writing and signed by the applicable Parties.

**17.6 Waivers**. The failure of any Party, at any time, to require performance by any other Party of any provision of this ASA shall not affect, in any way, the full right to require such performance at any time thereafter. Nor shall the waiver by any Party of a breach of any provision of this ASA be taken or held to be a waiver of the provision itself.

**17.7 Headings**. Captions and headings are inserted for convenience. They are not to be considered in the event that any provision of this ASA needs to be construed.

**17.8 Unenforceable Provision**. If one or more of the provisions of this ASA is found to be invalid, illegal or unenforceable for any reason, the other provisions will remain effective and enforceable.

**17.9 Survival.** The following shall survive the termination or expiration of this ASA: Sections 4, 5, 6, 8, 9, 10, 11, 12, 13 and any other provision that is necessary to interpret the respective rights and obligations of the Parties.

**17.10 Third Party Beneficiary**. The Parties mutually agree that Customer is a third party beneficiary of all rights granted to Bartech under this ASA, but Customer shall have none of the obligations imposed on Bartech under this ASA.

**17.11 Notice.** Any notice required or permitted to be given under this ASA shall be delivered by first class mail or facsimile transmission addressed to:

|  |  |
| --- | --- |
| **If to Supplier:** | **If to Bartech:** |
| **Jayawant Dhumal**  **5696 peachtree parkway**  **Norcross GA 30092** | David Barfield  Chief Executive Officer  The Bartech Group, Inc.  27777 Franklin Rd., Suite 600  Southfield, MI 48034 |
| **Copy to:** | **Copy to:** |
| **5696 peachtree parkway**  **Norcross GA 30092** | The Bartech Group, Inc.  Attn: General Counsel  27777 Franklin Rd., Suite 600  Southfield, MI 48034 |

[*Signatures appear on the following page*]

## SIGNATURES

The Parties agree to the above ASA hereto, as witnessed by their respective signatures below.

|  |  |  |
| --- | --- | --- |
| **Supplier: Quanta Systems Inc** |  | **The Bartech Group, Inc.** |
|  |  |  |
| Signature |  | Signature |
|  |  |  |
| Name |  | Name |
| **Jayawant Dhumal** |  |  |
| Title |  | Title |
| **Supervisor** |  |  |
| Date |  | Date |

**Schedule A: RESPONSIBILITY MATRIX**

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| **ACTIVITIES** | **Customer** | **Bartech** | **Supplier** |
| **CONTINGENT WORKER (“CW”) MANAGEMENT** |  |  |  |
| **REQUISITION LIFECYCLE MANAGEMENT** |  |  |  |
| Provide managers with up front decision support on appropriate classification of worker |  | x |  |
| Complete, approve and submit CW Requisition | x | x |  |
| Quality assurance of Requisition (acknowledge receipt of Requisition; validate approvals, review Requisition for completeness and accuracy along with compliance with customer directives [i.e., tenure policy, compliance with organization and financial data elements - proper skill categorization, etc.]) |  | x |  |
| Distribute requisitions to suppliers |  | x |  |
| Recruit, screen and evaluate candidates compared to job requirements including skills, availability, exempt/non-exempt expectations |  |  | x |
| Submit pre-screened, qualified candidates |  |  | x |
| Receive and evaluate submitted candidates compared to requisition requirements and make shortlisting determination based on time in, rate, availability and quality - rejecting any candidates who do not meet qualifications. |  | x |  |
| If returning CW, verify compliant with CW policy | x | x |  |
| Approver review, accept/reject or request interview | x |  |  |
| Schedule interviews | x | x |  |
| Conduct interview and provide feedback | x |  |  |
| Select candidate and request start date | x |  |  |
| Confirm candidate availability and negotiate/validate rate and start date |  | x | x |
| Facilitate drug tests and background screenings |  |  | x |
| Hire selected candidate that passes screenings |  |  | x |
| Create Work Order | x | x |  |
| Accept Work Order |  |  | x |
| Send invitation to worker to join VMS |  | x |  |
| Accept invitation to join VMS |  |  | x |
| Ensure requisition lifecycle management compliance with outlined tasks |  | x |  |
| **ON-BOARDING PROCESS** |  |  |  |
| General Customer on-boarding (i.e. badging, email, equipment, etc.) | x | x | x |
| Complete site specific on-boarding |  | x | x |
| Conduct orientation (training of processes, procedures, customer policies) | x |  | x |
| Conduct safety training | x |  | x |
| Verify background and drug screening compliance |  | x |  |
| Verify on-boarding compliance with outlined tasks |  | x |  |
| **ASSIGNMENT MANAGEMENT** |  |  |  |
| CW begins Assignment |  |  | x |
| Manager touches base to ensure program satisfaction |  | x |  |
| Calls and meetings with Contingent Workers to ensure satisfaction |  |  | x |
| Incident/accident investigation | x | x | x |
| Issue management (i.e., performance, policy violations, safety violations) |  | x | x |
| Budget management, comparing budgeted to actual spend | x | x |  |
| Monitor overtime spend | x | x |  |
| Rate increase management |  | x |  |
| Ensure assignment management process compliance with outlined tasks |  | x |  |
| **WORKER REPLACEMENT PROCESS** |  |  |  |
| Determine if CW should be replaced and obtain appropriate end reason | x | x | x |
| Notify Bartech Program Management Office of last day of job Assignment | x |  | x |
| Remove worker from Assignment |  |  | x |
| Rebroadcast Requisition (if applicable) |  | x |  |
| Ensure worker replacement process compliance with outlined tasks |  | x |  |
| **WORKER ASSIGNMENT EXTENSION PROCESS** |  |  |  |
| Identify CW nearing Assignment end date |  | x |  |
| Validate within CW policy limits (if applicable) | x | x |  |
| Obtain exception authorization if outside limitations | x | x |  |
| Notify manager of CW status and determine intent to extend |  | x |  |
| Perform Work Order extension | x | x | x |
| Ensure worker Assignment extension process compliance with outlined tasks |  | x |  |
| **WORKER ASSIGNMENT END PROCESS** |  |  |  |
| Identify and notify managers of workers nearing assignment end date |  | x |  |
| Determine Assignment end reason | x |  |  |
| Notify Supplier of Assignment end |  | x |  |
| Close Assignment in VMS | x | x |  |
| Complete off-boarding procedures (i.e. collecting badges, equipment, escorting off property, etc.) | x | x | x |
| Conduct end of Assignment quality review and eligibility to return, if applicable | x | x |  |
| Ensure VMS is updated with closed Assignment |  | x |  |
| Facilitate contract to hire transitions | x | x | x |
| Ensure worker Assignment end process compliance with outlined tasks |  | x |  |
| **FINANCIAL PROCESSING** |  |  |  |
| **TIMESHEET PROCESS** |  |  |  |
| Ensure timesheet entry |  |  | x |
| Monitor and communicate need for time entry and/or approval | x | x |  |
| Approve or reject timesheets | x |  |  |
| Ensure timesheet process compliance with outlined tasks |  | x |  |
| **EXPENSE REPORT PROCESS** |  |  |  |
| Ensure expense entry |  |  | x |
| Authorize or reject expense reports | x |  |  |
| Collect and audit physical receipts and expenses forms (varies by client policy) |  |  | x |
| Ensure expense report process compliance with outlined tasks |  | x |  |
| **INVOICE PROCESS** |  |  |  |
| Consolidates invoice |  | x |  |
| QA of consolidated invoice report |  | x |  |
| Submit invoice |  | x |  |
| Remit payment to Bartech | x |  |  |
| Remit payment to Suppliers |  | x |  |
| Pay workers |  |  | x |
| Facilitate invoicing questions/disputes | x | x |  |
| Ensure invoicing process compliance with outlined tasks | x | x |  |
| **TIMECARD ADJUSTMENT PROCESS** |  |  |  |
| Create timecard adjustments (invoice adjustment) | x | x | x |
| Approve timecard adjustments (invoice adjustment) | x | x |  |
| Ensure timecard adjustments process compliance with outlined tasks |  | x |  |
| **MISCELLANEOUS INVOICE PROCESS** |  |  |  |
| Create miscellaneous invoice for non-travel pass through expenses (i.e., rebilled background checks) |  |  | x |
| Approve miscellaneous invoice | x |  |  |
| Ensure miscellaneous invoice process compliance with outlined tasks |  | x |  |
| **PROGRAM MANAGEMENT** |  |  |  |
| **VMS MANAGEMENT AND OPTIMIZATION** |  |  |  |
| First level help desk support: |  | x |  |
| Provide VMS support to Suppliers/ managers through resolution (i.e., login issues, cost center changes, association updates [business units, cost centers, locations]) |  | x |  |
| Managing user accounts - new setups, deactivations, password resets |  |  |  |
| Facilitate second level help desk support: |  | x |  |
| Manage all VMS interactions regarding production level issues |  | x |  |
| VMS administration |  | x |  |
| Manage system data (i.e., uploading time, resolve integration errors) |  | x |  |
| Adding additional cost centers via uploads |  | x |  |
| Process system configuration changes (that the MSP can perform) or work with VMS provider to develop and implement approved changes |  | x |  |
| Maintenance of VMS document library |  | x |  |
| Management of job title template library and rate cards |  | x |  |
| VMS releases –In conjunction with VMS review changes, draft general test scripts, complete general regression testing, and draft final summary for acceptance approval |  | x |  |
| Advocate and implement system enhancements on behalf of client |  | x |  |
| Facilitate operation status call between MSP, Customer, and VMS if required. |  | x |  |
| System support for Contingent Workers |  | x | x |
| **RATE MANAGEMENT** |  |  |  |
| Cost savings strategy development and implementation |  | x |  |
| Annual rate benchmarking by labor category and geography |  | x |  |
| Ad hoc - market rate benchmarking and trend analysis (bill rate or mark-up) |  | x |  |
| Rate card modifications | x | x |  |
| Managing the rate exception process | x | x |  |
| Negotiated savings (tenure, market shifts, etc. |  | x |  |
| Category specific rate variance monitoring |  | x |  |
| **TRAINING & COMMUNICATIONS** |  |  |  |
| Program and VMS training for Customer |  | x |  |
| Program and VMS training for suppliers |  | x |  |
| Program and VMS training for Contingent Workers |  |  | x |
| Program documentation maintenance - process flows, user guides, quick reference guides, supplier guides, time entry quick reference guides, on-boarding checklists |  | x |  |
| **REPORTING** |  |  |  |
| Create and maintain operations log |  | x |  |
| Monthly reporting for program office activities |  | x |  |
| Program compliance reporting |  | x |  |
| Customized executive reports |  | x |  |
| Quarterly business reviews (QBR) |  | x |  |
| Diverse MSP spend reporting |  | x |  |
| Weekly reports: compliance (rate variance), missing timesheet, orders, extensions |  | x |  |
| Provide ad hoc and customized reports and analytics |  | x |  |
| **SUPPLY BASE MANAGEMENT** |  |  |  |
| Web-based MSP portal (if utilized) |  | x |  |
| Identify, recruit & qualify suppliers | x | x |  |
| Negotiate and execute contracts with Suppliers - if applicable |  | x |  |
| Contract term modifications - if applicable |  | x |  |
| Conduct supplier program on-boarding (after contract) |  | x |  |
| Supply base optimization recommendations |  | x |  |
| Communicate program policy, and ongoing changes with suppliers |  | x |  |
| Create and deliver supplier scorecards |  | x |  |
| Corrective action/probation management |  | x |  |
| Termination of contract management - if applicable |  | x |  |
| Manage dispute resolution process |  | x |  |
| Order fulfillment coaching |  | x |  |
| MSP settlement (EFT, reporting) |  | x |  |
| Supplier forums | x | x |  |
| Formal diverse supply base program | x | x |  |
| Mentorship program (including diverse suppliers) |  | x |  |
| Auditing for contract compliance (i.e. screening, rates, insurance) |  | x |  |
| **CONTINUOUS PROCESS IMPROVEMENT** |  |  |  |
| Internal marketing of program/program expansion | x | x |  |
| Continuous best practices benchmarking |  | x |  |
| Process and technology optimization |  | x |  |
| Turnover/retention assessments and recommendations |  | x |  |
| Program policy and procedure development, review, evaluation, audit and update | x | x |  |
| Manage the program change request process |  | x |  |
| Initiate satisfaction survey processes for program quality assurance | x | x |  |
| Conduct steering committee meetings to initiate strategic planning for next year incorporating continuous best practices | x | x |  |
| Independent Contractor (1099) compliance program: qualification, screening, contracting, auditing (if applicable) | x | x | x |
| Emergency response planning | x | x |  |
| SOX compliance (approvals, funding limits, control of environment) | x | x |  |

**Schedule B: Supplier Metric Table**

|  |  |
| --- | --- |
| **Performance Metric** | **Definition** |
| Response Ratio | Percentage of broadcasts to a Supplier resulting in submittal |
| Candidate Quality I | Percentage of candidates who meet the requirements of the Requisition |
| Candidate Quality II | Percentage of candidates chosen for an interview |
| Hit Rate | Percentage of resumes submitted that result in a placement |
| False Start Ratio | Percentage of engagements that a Contingent Worker was confirmed/scheduled to start an Assignment but backed out before the actual start date |
| Contingent Worker performance | Hiring manager’s average evaluation of a Contingent Worker’s overall performance |
| Assignment Completion | Percentage of Assignments that ended with a positive reason |
| Rate Card Compliance | Percentage of Supplier’s compliance with the not-to-exceed rate |
| Quarterly Headcount | Number of Contingent Workers Supplier has on Assignment |
| Stewardship | Measures quality of service incidents, MSP Program compliance |
| Service Maintenance | Measures Supplier’s ability to follow the contractual obligations and proper procedures |