

## CONSULTING AGREEMENT

THIS AGREEMENT (this "Agreement") is between North Central State College (hereinafter "College"), 2441 Kenwood Circle, Mansfield, Ohio 44906, and \_\_\_\_\_

First Name, Middle Initial, Last Name

(hereinafter "Consultant").

The parties agree as follows:

### I. NATURE OF CONTRACT

Consultant shall be employed as an independent contractor, to fulfill the terms of this Agreement and to act as a consultant to the College. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a personal nature that the College is the sole judge of the adequacy of such services.

The College enters into this Agreement in reliance upon Consultant's representations that he/she has the necessary expertise and experience to perform the obligations hereunder, and Consultant warrants that he/she does possess the necessary expertise and experience.

Consultant shall perform the services to be rendered under this Agreement and the College shall not hire, supervise, or pay any assistants to Consultant in performance of services under this Agreement. The College shall not be required to provide any training to Consultant to enable them to perform services required hereunder.

### II. SCOPE OF WORK

Consultant shall perform the services set forth in Exhibit 1, Scope of Work (the "Work").

### III. TIME OF PERFORMANCE

The services as stated in Exhibit 1, Scope of Work, shall be commenced on (mm/dd/yy) \_\_\_\_\_ and, unless earlier terminated in accordance with this Agreement, concluded on or before \_\_\_\_\_.

This Agreement shall remain in effect until the Work is completed to the satisfaction of the College and until Consultant is paid in accordance with Article IV, Compensation, or until terminated as provided in Article VI, Termination of Consultant's Services, whichever is sooner.

Notwithstanding the foregoing, this Agreement shall expire no later than \_\_\_\_\_.

It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of Ohio Revised Code ("R.C.") 3517.13, R.C. 127.16, or R.C. Chapter 102.

**IV. COMPENSATION**

The College shall pay Consultant for services rendered no more than \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents

(\$\_\_\_\_\_). The total amount due was computed according to the following cost schedule:

- i. A maximum of \_\_\_\_\_ (\_\_\_\_\_) hours at a rate of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_) per hour for a total of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_ ) to perform the Work.

Consultant shall not be reimbursed for travel, lodging or any other out-of-pocket expenses incurred in the performance of this Agreement without first obtaining advanced written approval from the College which approval must state the travel, lodging, and/or other out-of-pocket expenses to be incurred and establish the total monetary amount Consultant may be reimbursed for the stated travel, lodging, and/or out of pocket expenses. These expenses will be billed to the College at cost with no mark-up fees using the invoice process below.

Consultant shall submit a monthly invoice for the services performed consistent with this Article IV, Compensation. Each invoice shall contain a description of the date of the rendering of service, an itemization of services furnished, including dates of service and total hours worked, the location or address of where the services were performed, and the sum due at that time pursuant to this Agreement. All invoices shall contain the Consultant’s name and address and shall reference the College. After receipt and approval by the College of a proper invoice, as determined by the College, payment to Consultant will be made promptly. Unless otherwise directed by the College, invoices should be directed to: North Central State College, ATTN: C.F.O., 2441 Kenwood Circle, Mansfield, Ohio 44906.

**V. CERTIFICATION OF FUNDS**

It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that the College gives Consultant written notice that such funds have been made available to the College by the College’s funding source.

**VI. TERMINATION OF CONSULTANT’S SERVICES**

The College may, at any time prior to the completion of the Work, suspend or terminate this Agreement with or without cause by giving written notice to Consultant.

Consultant, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the

College, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting there from, and any other matters the College requires.

Consultant shall be paid for services rendered up to the date Consultant received notice of suspension or termination, less any payments previously made, provided Consultant has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by the College for which Consultant has not rendered services shall be refunded.

In the event this Agreement is terminated prior to its completion, Consultant, upon payment as specified, shall deliver to the College all work products and documents which have been prepared by Consultant in the course of providing services under this Agreement. All such materials shall become, and remain the property of, the College, to be used in such manner and for such purpose as the College may choose.

Consultant agrees to waive any right to, and shall make no claim for, additional compensation against the College by reason of such suspension or termination.

Consultant may terminate this Agreement upon sixty (60) days prior written notice to the College.

## **VII. RELATIONSHIP OF PARTIES**

The College and Consultant agree that Consultant shall be responsible for all of their own business expenses, including, but not limited to, computers, email and internet access, software, phone service and office space. Consultant will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

This Agreement does not entitle Consultant to participation in a state sponsored pension plan under R.C. Chapters 145, 3307, or 3309. In the event the STRS, PERS, or SERS Board deems Consultant eligible as a result of this Agreement, Consultant agrees to indemnify and hold College, and any of its past, present or future trustees, agents, officers and employees and their heirs, successors and assigns, officially and individually, harmless for and from any and all representations arising in connection with STRS, PERS, or SERS and, including but not limited to, STRS, PERS, or SERS interpretations and treatment of the terms and conditions of this Agreement.

While Consultant shall be required to render services described hereunder for the College during the term of this Agreement, nothing herein shall be construed to imply, by reason of Consultant's engagement hereunder as an independent contractor, that the College shall have or may exercise any right of control over Consultant with regard to the manner or method of Consultant's performance of services hereunder.

Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

It is fully understood and agreed that Consultant is an independent contractor and neither Consultant nor their personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the College or the State of Ohio.

This Agreement does not and is not intended to confer any rights or remedies upon any party other than College and Consultant.

### **VIII. RECORD KEEPING**

During performance of this Agreement and for a period of three (3) years after its completion, Consultant shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to the College as the College may reasonably require.

### **IX. RELATED AGREEMENTS**

The Work is to be performed by Consultant, who may subcontract without the College's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the type of work or services described in Exhibit 1, Scope of Work, but which are required for its satisfactory completion.

- i. Consultant shall not enter into other subcontracts related to the Work without prior written approval by the College. All work subcontracted shall be at Consultant's expense.
- ii. Consultant shall furnish to the College a list of all subcontractors, their addresses, tax identification numbers, and the dollar amount of each subcontract.

Consultant shall bind their subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the College to terms inconsistent with, or at variance from, this Agreement.

Consultant warrants that he/she has not entered into, nor shall he/she enter into, other agreements, without prior written approval of the College, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.

### **X. CONFLICTS OF INTEREST AND ETHICS COMPLIANCE**

No personnel of Consultant or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the Work is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such Work, shall, prior to the completion of said Work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his/her functions and responsibilities with respect to the carrying out of said Work.

Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his/her interest to the College in writing. Thereafter, he/she shall not participate in any action affecting the Work, unless the College shall determine in its sole discretion that, in the light of the personal interest disclosed, his/her participation in any such action would not be contrary to the public interest.

Consultant represents, warrants, and certifies that he/she and his/her employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws and Executive Order No. 2011-01K. Consultant further represents, warrants, and certifies that neither Consultant nor any of their employees will do any act that is inconsistent with such laws and Executive Order.

#### **XI. NONDISCRIMINATION OF EMPLOYMENT**

Pursuant to R.C. 125.111 and the College's policy, Consultant agrees that Consultant, any subcontractor, and any person acting on behalf of Consultant or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, disability, military status, national origin, genetic information, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the Work.

Consultant further agrees that Consultant, any subcontractor, and any person acting on behalf of Consultant or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of Work on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, genetic information, or ancestry.

#### **XII. RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE**

The College shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data or materials prepared by Consultant pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Consultant by the College shall be subject to copyright by Consultant in the United States or any other country.

Consultant agrees that all original works created under this Agreement shall be made freely available to the general public to the extent permitted or required by law until and unless specified otherwise by the College. Any requests received by Consultant should be referred to the College.

Neither party shall use the name, logo, likeness, trademarks, image or other intellectual property of the other party for any advertising, marketing, endorsement or any other purposes without the specific prior written consent of an authorized representative of the other party as to each such use.

#### **XIII. CONFIDENTIALITY**

Consultant shall not discuss or disclose any information or material obtained pursuant to her obligations under this Agreement without the prior written consent of the College.

All provisions of this Agreement relating to "confidentiality" shall remain binding upon Consultant in the event of cancellation.

#### **XIV. LIABILITY**

Consultant agrees to indemnify and to hold the College and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Consultant's own negligent actions or omissions or those of their trustees, officers, employees, subcontractors, suppliers, third parties utilized by Consultant, or joint venturers while acting under this Agreement. Such claims shall

include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

Consultant shall bear all costs associated with defending the College and the State of Ohio against any claims.

In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

In conjunction herewith, Consultant agrees, at his/her own cost, to procure and continue in force at all times that this Agreement is in effect, in his/her name, general liability insurance against any and all claims for injuries to persons or damage to property occurring or arising out of Consultant's obligations set forth herein. Such insurance shall at all times be in an amount not less than Five Hundred Thousand Dollars (\$500,000) on account of bodily injury to or death of one (1) person, and One Million Dollars (\$1,000,000) on account of bodily injuries or death of more than one person as a result of any one accident or disaster, and Two Hundred Fifty Thousand Dollars (\$250,000) for property damage in any one accident. Such insurance shall be written by a company or companies authorized to engage in the business of general liability insurance in the State of Ohio with an A.M. Best rating of at least "A" or be otherwise approved in writing by the College. Any insurance policy required hereunder shall include an endorsement naming the College and the State of Ohio as additional insureds. Prior to the effective date of this Agreement, Consultant shall provide the College with (i) a copy of such endorsement and (ii) a certificate reflecting the coverage of the policy, each in a form acceptable to the College in its sole discretion. Consultant shall provide written notice to the College no less than thirty (30) days prior to a cancellation, non-renewal, expiration or material alteration of the coverage contained in any policy required hereunder, and shall provide to the College evidence of continuing coverage of any required policy no less than thirty (30) days prior to its expiration.

#### **XV. COMPLIANCE WITH LAWS**

Consultant, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances.

Consultant affirms that he/she has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and all are current. If at any time during the term of this Agreement Consultant, for any reason, becomes disqualified from conducting business in the State of Ohio, Consultant will immediately notify the College in writing and will immediately cease performance of the Work.

#### **XVI. DRUG FREE WORKPLACE**

Consultant agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of his/her employees or permitted subcontractors engaged in the Work purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

#### **XVII. CAMPAIGN CONTRIBUTIONS**

Consultant hereby certifies that neither Consultant nor any of Consultant's partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in R.C. 3517.13.

#### **XVIII. CONTROLLING LAW**

This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Consultant consents to jurisdiction in a court of proper jurisdiction in Richland County, Ohio.

#### **XIX. FINDINGS FOR RECOVERY**

If the potential compensation to Consultant under this Agreement exceeds \$25,000, Consultant warrants that he/she is not subject to an "unresolved" finding for recovery under R.C. 9.24.

If this warranty is found to be false, this Agreement is void ab initio and Consultant shall immediately repay to the College any funds paid under this Agreement.

#### **XX. DEBARRMENT**

Consultant represents and warrants that he/she is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25. If this representation and warranty is found to be false, this Agreement is void ab initio and Consultant shall immediately repay to the College any funds paid under this Agreement.

#### **XXI. OFFSHORE SERVICES**

**EXECUTIVE ORDER REQUIREMENTS** The Consultant affirms to have read and understands Executive Order 2011-12K issued by the Governor of the State of Ohio and shall abide by those requirements in the performance of this Agreement, and shall perform no services required under this Agreement outside of the United States.

The Consultant also affirms, understands, and agrees to immediately notify the College of any change or shift in the location(s) of services performed by the Consultant or his/her subcontractors under this Agreement, and no services shall be changed or shifted to a location(s) that are outside of the United States.

**TERMINATION, SANCTION, DAMAGES.** If Consultant or any of his/her subcontractors perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. The College is not obligated to pay and shall not pay for such services. If Consultant or any of his/her subcontractors perform any such services, Consultant shall immediately return to the College all funds paid for those services. The College may also recover from the Consultant all costs associated with any corrective action the College may undertake, including but not limited to an audit or a risk analysis, as a result of the Consultant performing services outside the United States.

The College may, at any time after the breach, terminate the Agreement, upon written notice to the Consultant. The College may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement and costs associated with the acquisition of substitute services from a third party.

If the College determines that actual and direct damages are uncertain or difficult to ascertain, the College in its sole discretion may recover a payment of liquidated damages in the amount of one hundred percent (100.00%) of the value of this Agreement.

The College, in its sole discretion, may provide written notice to Consultant of a breach and permit the Consultant to cure the breach. Such cure period shall be no longer than twenty-one (21) calendar days. During the cure period, the College may buy substitute services from a third party and recover from the Consultant any costs associated with acquiring those substitute services.

Notwithstanding the College permitting a period of time to cure the breach or the Consultant's cure of the breach, the College does not waive any of its rights and remedies provided the College in this Agreement, including but not limited to recovery of funds paid for services the Consultant performed outside of the United States, costs associated with corrective action, or liquidated damages.

## **XXII. SECURITY AND CONFIDENTIALITY OF RECORDS**

Each party acknowledges that information (if any) received from the College regarding its students may be protected by the Family Educational Rights and Privacy Act ("FERPA"), and agrees to use such information only for the purpose for which it was disclosed and not to make it available to any third party without first obtaining the student's written consent.

Furthermore, both parties shall comply with other Federal, State, or local privacy laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach-Bliley Act of 1999, and all associated regulations, taking necessary steps to ensure that confidential personal information is not disclosed or distributed, including maintenance of a security plan consistent with industry standards to protect the confidentiality and integrity of personal information, and to protect against unauthorized access to such information. Information will only be shared in compliance with all applicable laws and regulations.

## **XXIII. PUBLIC RECORDS**

Consultant agrees to keep and maintain records, as defined by R.C. 149.43, et seq., created in association with, by, through, or as a result of the terms and conditions of this Agreement. Said records shall be kept and maintained by Consultant in compliance with the College's public records retention policy and not Consultant's records retention policy so as to allow the College to meet its obligations under R.C. 149.43, et seq. Consultant further agrees that he/she will not destroy said records without providing the College thirty (30) days written notice. Consultant agrees to indemnify the College for Consultant's destruction, whether intentional or inadvertent, of said records in violation of this provision.

## **XXIV. MISCELLANEOUS**

**EXECUTION:** This Agreement is not binding upon the College unless executed in full, and is effective as of the date of final signature by the College.

**COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument. Any party hereto may deliver a copy of its counterpart signature

page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

**CONFLICT:** In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.

**SUCCESSORS AND ASSIGNS:** The Consultant will not assign any of his/her rights, nor delegate any of his/her duties and responsibilities under this Agreement, without prior written consent of the College. Any assignment or delegation not consented to may be deemed void by the College.

**SEVERABILITY:** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

**HEADINGS:** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

**ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

**WAIVER:** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

**NOTICES:** All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses first set forth above.

[REMAINDER OF THIS PAGE LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**CONSULTANT**

Signature : \_\_\_\_\_

Business Name, If Different than above \_\_\_\_\_

Check Appropriate Box  Individual/Sole Proprietor  Corporation  Partnership  Other

Address: \_\_\_\_\_

City, State, Zip : \_\_\_\_\_

Employer's ID# or Social Security (Required) : \_\_\_\_\_

Bill to Account # : \_\_\_\_\_

Approved Dean/Supervisor Signature: \_\_\_\_\_

Approved Division Vice President Signature: \_\_\_\_\_

**NORTH CENTRAL STATE COLLEGE  
TREASURER CERTIFICATION**

This signature certifies the amount required to meet the obligation in the fiscal year in which the Agreement is made has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

By: \_\_\_\_\_

Name: Lori L. McKee

Title: Chief Financial Officer

Date: \_\_\_\_\_

**EXHIBIT 1**  
**Scope of Work**

In exchange for good and sufficient consideration, Consultant shall perform the following duties and provide the following deliverables:

**Other duties the College assigns may become necessary during the term of this Agreement.**