

CONSULTING AND SERVICES AGREEMENT BETWEEN

Beloit College and _____

This Consulting and Services Agreement ("Agreement"), with an Effective Date of _____, is made and entered into by and between **Beloit College** having its principal place of business at 700 College Avenue, Beloit, WI 53511 ("**College**") and _____ ("**Vendor**") having principal place of business at _____.

For and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

1. Term and Objectives.

- (a) Vendor's contract under the terms of this Agreement will begin on the Effective Date, and will continue subject to termination as set forth in Item (c) below. Any extension of Vendor's contract beyond the Term shall be subject to a new agreement between the parties.
- (b) Vendor shall provide to the Board during the term of this Agreement those consulting services outlined in Appendix A, attached hereto.
- (c) This Agreement shall be effective as of _____ ("Effective Date") and shall terminate on _____ ("Termination Date"). If, however, this Agreement is funded, in whole or in part, by a grant, the parties agree that this Agreement shall terminate on the date of exhaustion of grant funds.
- (d) Vendor's services may be sooner terminated on the first to occur of the following:
 - i. Vendor's successful completion of all services required under this Agreement;
 - ii. Written notice of termination by either party at least sixty (60) calendar days prior to the anticipated termination date; or
 - iii. Mutual, written agreement of the parties.
- (e) Upon termination of this Agreement as hereinabove provided, neither party shall have any further obligation hereunder except for obligations accruing prior to the date of termination and obligations, promises, or covenants contained herein which are expressly made to extend beyond the term of this Agreement.
- (f) Vendor agrees to comply with reasonable business practices as well as all federal, State and local statutes and regulations.

2. Ownership of Deliverables.

Subject to the Vendor and third party rights in Pre-Existing Intellectual Property, all Deliverables, despite status are property of client. The Vendor agrees that the College will own all patents, inventor's certificates, utility models or other rights, copyrights or trade secrets covering the Deliverables and will have full rights to use the Deliverables without claim for additional compensation and without challenge, opposition or interference by said Vendor and will cause each

of its Personnel to, waive their respective moral rights therein. The Vendor will sign any necessary documents and will otherwise assist the College in securing, maintaining and defending copyrights or other rights to protect the Deliverables in any country.

3. Compensation and Reimbursement.

See attached proposal for scope of work, objectives and deliverables.

(a) The name of any individual proposed to be retained by Vendor who will, either directly or indirectly, provide services under this Agreement, other than those individuals identified in Appendix A, attached hereto, shall first be submitted to the College written approval shall be obtained prior to the performance of any services under this Agreement by any such individual.

(b) Vendor shall be paid for services rendered under this Agreement in accordance with Appendix A, attached hereto. Payment shall be made to Vendor within 30 days of the receipt of invoice.

The College shall also reimburse Vendor for reasonable and necessary out-of-pocket expenses incurred and actually paid by Vendor in connection with the performance of services under this Agreement, upon prior written approval of the Board and limited to those expenses provided for in Appendix A. Expense reimbursement shall be subject to: (i) IRS guidelines, and (ii) guidelines specified in Appendix A, attached hereto.

The compensation provided for in Appendix A shall constitute the full cost to the College in retaining the Vendor. Vendor shall provide all personnel and resources necessary to perform the services under this Agreement for the amount of compensation set forth herein, unless otherwise approved by the College.

(c) It is expressly acknowledged by the parties hereto that Vendor is an "independent contractor," and nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship. Vendor shall be solely responsible for compliance with and payment of all taxes of whatever kind including Federal or State Income, Social Security, Unemployment Compensation, and Workers Compensation.

Vendor expressly agrees that Vendor shall bear all risk of loss, remain liable for any such taxes, contributions, or deductions and shall indemnify the College, its members, agents, officers, employees, successors and assigns for any liability including interest, penalties and attorney's fees, if any, assessed against the College as a result of any violation of this provision. At the option of the College, if such expense is assessed against the College, such expense may be withheld by the College in reasonable pro rata amounts from compensation subsequently paid to Vendor.

Vendor shall have no power to bind the College by contract or otherwise except as provided in this Agreement. Vendor hereby covenants and agrees that Vendor shall not represent to any third party that Vendor is an employee of the College.

4. Termination.

The provisions of sections 3 and 4 as set forth below shall survive the termination of Vendor's consulting, regardless of the reason for such termination.

- (a) Either the College or the Vendor may terminate the consulting relationship by providing ten (10) calendar days' written notice to the other party. Except as stated below, consulting will be terminated on the 10th calendar day after written notice is received by the other party.
 - (b) College may terminate the consulting relationship immediately upon notice to Vendor for just cause, including:
 - i. Vendor's serious misconduct which causes injury to College;
 - ii. Vendor's fails to perform any of its obligations under this Agreement or is clear violation of any of the material terms and warranties of this Agreement or his willful failure to perform his duties, provided that Vendor has been given at least ten (10) calendar days written notice of same and has failed to correct the violation or failure within that time;
 - iii. Any misconduct, including but not limited to, Vendor's proven dishonesty, harassment, drug abuse, or other serious violation of College's policies.
 - (c) Vendor may terminate the consulting relationship immediately upon notice to College for just cause, including College's clear violation of any of the material terms of this Agreement, provided that Vendor has given College at least 10 days' written notice of same, and College has failed to correct the violation within that time.
 - (d) Upon termination of any project or work given hereunder, the Vendor will immediately provide the College with any and all work in progress or completed prior to the terminate date. As the College's sole obligation to the Vendor resulting from such termination, the College will pay an equitable amount as determined by College for the partially completed work in progress and the agreed to price for the completed Services and/or Deliverables provided and accepted prior to the date of termination
5. FERPA Compliance. The Vendor agrees to comply with all applicable national, state and local laws and regulations ("Applicable Laws"), including but not limited to relevant employment laws, in the course of providing services under this contract, including but not limited to the Family Educational Rights and Privacy Act.
6. Pre-Existing Intellectual Property
- (a) Vendor will not use any third party Pre-Existing Intellectual Property in connection with this Contract unless Vendor has the right to use it for the College's benefit. If the Vendor is not the owner of such Pre-Existing Intellectual Property, the Vendor will obtain from the owner any rights as are necessary to enable the Vendor to comply with this Contract.

- (b) The Vendor grants the College a non-exclusive, royalty-free, worldwide, perpetual and irrevocable license Pre-Existing Intellectual Property, to the extent such Pre-Existing Intellectual Property is incorporated into any Deliverable, with the license including the right to make, have made, sell, use, reproduce, modify, adapt, display, distribute, make other versions of and disclose the property and to sublicense others to do these things.
- (c) The Vendor will not incorporate any materials from a third party, including Open Source or freeware, into any Deliverable unless (i) the Vendor clearly identifies the specific elements of the Deliverable to contain third party materials, (ii) the Vendor identifies the corresponding third-party licenses and any restrictions on use thereof, and (ii) approval is given by Customer in writing. The Vendor represents, warrants and covenants compliance and shall continue to comply with all third-party licenses (including all open source licenses) associated with any software components that will be included in the Deliverables or any other materials supplied under this services contract.

7. Confidentiality.

(a) For the purposes of this Agreement, “Confidential Information” shall mean all information related to the College’s business that is not generally known to the public or within the College’s industry. Confidential Information shall include, but shall not be limited to: any financial (whether historical, projections or forecasts), pricing, cost, business, planning, operations, services, potential services, technical information, intellectual property, trade secrets and/or know-how, purchasing, marketing, personnel, supplier, or other information of the College; any papers, data, records, processes, methods, techniques, systems, models, samples, devices, equipment, compilations, invoices, or documents of the College; any confidential information or trade secrets of any third party provided to the College in confidence or subject to other use or disclosure restrictions or limitations; this Agreement and its terms; and any other information, written, oral or electronic, whether existing now or at some time in the future, whether pertaining to current or future developments or prospects, and whether accessed prior to Vendor’s tenure with the College or to be accessed during Vendor’s future consulting or association with the College, which pertains to the College’s affairs or interests or with whom or how the College does business. The College acknowledges and agrees that Confidential Information shall not include information which is or becomes publicly available other than as a result of a disclosure by Vendor.

(b) In the course of Vendor's engagement by the College, it may be necessary for Vendor to acquire access to certain information, including but not limited to, information concerning students and/or school personnel, and other confidential and/or proprietary information (collectively, "Confidential Information"). Vendor agrees that Vendor will not, without the prior written consent of the College, misappropriate or disclose or make available to anyone for use, at any time, either during Vendor's engagement with the College or following termination of this Agreement, for any reason whatsoever, any of the Confidential Information, except as required in the performance of Vendor's duties pursuant to this Agreement. The provisions of this Section shall survive the termination of this Agreement for any reason.

(c) All physical items containing Confidential Information shall remain the exclusive and confidential property of the College and shall be returned, along with any copies or notes that Vendor made thereof or therefrom, to the College when Vendor ceases consulting with the College. Vendor further agrees to return copies of any Confidential Information contained on Vendor's home computer, portable computer or other similar device.

(d) The parties acknowledge that, by virtue of Vendor's activities on behalf of College, Vendor will be entrusted with and will have access to certain Confidential Information (as hereinafter defined) related to the business and operations of College which constitutes a valuable, special and unique asset of College, and which is protected by College in order to preserve its business, trade and good will. The parties desire to set forth their understanding as to such Confidential Information as an integral part of the terms and conditions of this agreement.

(e) Vendor acknowledges that the College, in reliance on this Agreement, will provide Vendor access to trade secrets, proprietary data and other Confidential Information as defined below. Vendor agrees to retain said information as confidential and not to use said information for the Vendor's personal benefit or to disclose same to any third party, except when required to do so to properly perform duties to the College. The Vendor shall use Confidential Information solely for the purposes of carrying out those duties as a Vendor of the College and not for any other purpose. The disclosure of Confidential Information to the Vendor shall not be construed as granting to the Vendor any license under any copyright, patent, trade secret, or any right of ownership or right to use the Confidential Information whatsoever. In the event that Vendor is compelled, pursuant to a subpoena or order of a court or other body having jurisdiction over such matter, to produce any Confidential Information or other information relevant to the College, Vendor agrees to promptly provide the College with written notice of such subpoena or order unless specifically precluded by the subpoena or order from doing so, so that the College may timely move to quash if appropriate.

(f) Security Breach Procedures. If the Vendor discovers or is notified of a breach or potential breach of security relating to College Confidential Information or College Content, the Vendor shall promptly: (1) notify the College of such breach or potential breach without unreasonable delay and in no case later than five (5) calendar days after discovery of the potential breach, (2) in consultation with College, investigate and remediate such breach or potential breach at least to the extent required by law, (3) if the breach or potential breach resulted from a failure or weakness in systems or procedures that were the Vendor's responsibility, provide the College with satisfactory assurances that the breach or potential breach will not recur, and (4) to the extent that the breach or potential breach resulted from acts or omissions of the Vendor, the Vendor shall be responsible for all costs reasonably determined to be incurred by the College or Vendor in connection with the foregoing activities. The Vendor shall cooperate fully to assist the College in: (1) identifying individuals potentially affected by the breach; (2) conducting any risk assessment required by applicable law; and (3) providing any notifications required by applicable law. If the Parties, acting reasonably, determine that establishment of a toll-free telephone contact number is necessary to handle inquiries relating to the breach, and requests the Vendor to provide

staffing to respond to calls to the toll-free number, the Vendor shall provide the requested staffing at its cost.

8. Insurance.

Vendor shall maintain adequate insurance coverage and minimum coverage limits for its business as required by any applicable law or regulation, including commercial general liability and Workers' Compensation insurance as required by any applicable law or regulation, or otherwise as determined in its reasonable discretion. The College shall be listed as an "additional insured."

On an annual basis during this agreement, the Vendor must provide a certificate of insurance listing the College as an "additional insured. The Vendor's lack of insurance coverage shall limit any liability under this Agreement.

9. Vendor's Representations and Warranties.

- (a) Vendor represents and warrants that Vendor has not entered into any prior agreements with others which would conflict with the terms of this Agreement. Further, Vendor covenants that he will not enter into any agreement with others which would conflict with this Agreement during the term hereof without the prior written consent of the College,
- (b) The Services and Deliverables are original and do not infringe upon any third party's patents, trademarks, trade secrets, copyrights or other proprietary rights,
- (c) The Vendor it will perform the Services hereunder in a professional and workmanlike manner,
- (d) The Deliverable provided to the College are new, of acceptable quality free from defects in material and workmanship and will meet the requirements and conform with any specifications agreed between the parties,
- (e) The Vendor has all necessary permits and is authorized to do business in all jurisdictions where Services are to be performed,
- (f) The Vendor will comply with all applicable federal and other jurisdictional laws in performing the Services.

10. Indemnification. The College shall not be responsible for the acts or omissions of Vendor, and Vendor agrees to hold harmless and indemnify the College, its members, agents, officers, employees, successors and assigns from any and all claims, demands, liabilities, damages, and expenses, of whatever nature, including reasonable attorney's fees, caused by any negligent or intentional act or omission of Vendor and/or arising from Vendor's performance of services under this Agreement (including any and all claims filed by or on behalf of Vendor). The College shall hold harmless and indemnify Vendor, its members, agents, officers, employees, successors and assigns from any and all claims, demands, liabilities, damages, and expenses, of whatever nature,

including reasonable attorney's fees, caused by any negligent or intentional act or omission of the College and/or arising from the College's performance of services under this Agreement (including any and all claims filed by or on behalf of the College). Notwithstanding the preceding, the College does not waive any of its rights or defenses provided by law.

(a) This Agreement is a result of negotiations between the parties, none of whom have acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the parties hereby waive the application of any rule or law that otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and the singular, the plural. The words "hereof," "herein," "hereunder and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

11. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or sent via certified or express mail, return receipt requested, postage prepaid, to the parties to this Agreement at the following addresses, or to such other address as either party shall specify by written notice to the other:

(a) if to College:

Beloit College
Attention: Vice President for Finance and Planning
700 College Ave.
Beloit, WI 53511

(b) if to Vendor:

Name: _____

Address: _____

Email: _____

12. Amendment and Waiver. This Agreement may be amended, modified, superseded, canceled, renewed or extended only by an instrument or instruments in writing signed by the parties. No delay by the Vendor or the College in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other further exercise thereof or the exercise of any right, power or privilege hereunder. Any failure by the College or the Vendor to require strict performance by the Vendor or the College, as the case may be, or any waiver by either the College or the Vendor of any terms, covenants or agreements herein shall not be construed as a consent to waiver of any other breach of the same or any other term, covenant or agreement herein.

13. Force Majeure. Neither Party shall be liable for any failure to perform under this Agreement when such failure is due to causes beyond that Party's reasonable control, including, but not limited to, acts of state or governmental authorities, acts of terrorism, natural catastrophe, fire, storm, flood, earthquakes, accident, and prolonged shortage of energy. In the event of such delay the date of delivery or time for completion will be extended by a period of time reasonably necessary by both the Vendor and the College.
14. Governing Law and Consent to Jurisdiction. The formation, construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Wisconsin. The parties hereby consent to jurisdiction of the state and federal courts in the State of Wisconsin for any dispute or action arising under or relating to the terms of this Agreement.
15. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, pertaining to the terms and conditions of consulting and contains all of the representations, covenants and agreements between the parties with respect to the Vendor's consulting by the College. This Agreement contains all of the terms agreed upon by the parties with respect to the subject matter of this Agreement, and all promises and representations have been merged herein.
16. Invalidity. If any term or provision of this Agreement is held or deemed to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, such provision shall be construed to be valid and enforceable to the fullest extent of the law, and shall automatically be modified to reflect the intent of the parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed the Agreement on the dates written below.

Beloit College

Date of Signature

By: _____

Vendor

Date of Signature

By: _____

APPENDIX A

Consulting Agreement

1. Scope of Work

- a. See attached proposal

2. Deliverables

- a. See attached proposal

3. Compensation & Reimbursement

The College agrees to pay the Vendor a rate of _____

The Vendor agrees to invoice the College, at least monthly, payable in 30 days from the invoice date.

The College agrees to reimburse the Vendor for travel related expenses that are incurred with the performance of this agreement. The Vendor will maintain adequate documentation and records to support all costs invoiced to the College including receipts for travel related expenses.

Payments made by the to the Vendor will not deduct any taxes and the College will provide the Vendor with IRS Form 1099 at the end of each calendar year. For purposes of issuing IRS Form 1099, the Vendor will provide a social security number upon execution of this agreement.

4. Additional Services

Any additional work outside the scope of work must be pre-approved by the College. The College agrees to pay the Vendor a rate of \$_____ for approved additional services.