

CONSULTING AGREEMENT

CONSULTING AGREEMENT (this "Agreement") by and between _____
("CLIENT") and The Sherwood G. Wilson Group, LLC ("CONSULTANT").

WITNESSETH

WHEREAS, CONSULTANT possesses advanced knowledge in higher education administration, management and organizational solutions, campus planning, facilities management, construction administration, public safety, labor relations, resource development and related fields, and is willing to provide to CLIENT, and CLIENT desires to engage CONSULTANT to provide, certain consulting services to CLIENT; and

WHEREAS, it is anticipated that valuable proprietary information and knowledge may be disclosed by CLIENT in connection with the consulting services or resulting from the consulting services to be provided by CONSULTANT; and

WHEREAS, CONSULTANT, in connection with providing services, has agreed to enter into this Agreement.

NOW, THEREFORE, in view of the foregoing and in consideration of the mutual covenants herein contained, CONSULTANT and CLIENT agree as follows:

1. **Services.** CLIENT hereby engages CONSULTANT and CONSULTANT hereby accepts CLIENT's engagement, to provide consulting services (the "Services"). Subject to the terms and conditions of this Agreement, CLIENT and CONSULTANT hereby agree that CONSULTANT shall perform various consulting assignments, projects, services and/or subcontracted Services assigned to CONSULTANT by authorized CLIENT personnel and accepted by CONSULTANT via written Work Order issued after the Effective Date and thereafter during the remainder of the Term ("Services").

2. **Compensation.** CONSULTANT shall use CONSULTANT's best efforts and such reasonable working time and energy as may be required for the satisfactory performance of the Services, in accordance with the requests and instructions of CLIENT. CLIENT agrees to pay CONSULTANT, as full and complete compensation for the Services to be rendered hereunder and in consideration of the undertakings made by CONSULTANT hereunder, in accordance with the fee schedule provided for in the relevant Work Order, up to any agreed cap. As used herein, a "Work Order" shall be considered to include any written request by CLIENT for CONSULTANT to perform any Services. Where no fee schedule is set forth in the Work Order, CLIENT shall compensate CONSULTANT on a per billable hour basis (up to the cap set forth in the Work Order, if any) at the rate of per hour for personal services of Sherwood G. Wilson, and the prevailing rates provided to the CLIENT for other consultants. CLIENT shall also compensate CONSULTANT in accord with the following terms, except where expressly provided otherwise in the applicable Work Order:

- A. Actual and reasonable business expenses (including, but not limited to, internet service fees, computer equipment and supplies, travel, food, lodging, and mileage) may be billed to CLIENT only where the expenses are specifically set forth and authorized in the Work Order. Otherwise, all business expenses and costs of providing services by CONSULTANT under any Work Order shall be solely the responsibility of CONSULTANT. In either event, all expenses over \$500.00 must be approved in advance.

- B. For all Work Orders specifying a billable hourly rate, a detailed project time report will be filled out and submitted to the CLIENT.
- C. Services provided will be paid via monthly check or wire transfer covering all CONSULTANT's invoiced project time, except where the applicable Work Order provides otherwise, payable in arrears within thirty (30) days.

3. **Term.** This Agreement shall be in effect for a period of [] months beginning on the date this Agreement is executed by CLIENT (the "Effective Date"). This Agreement may be renewed, for successive periods of [] months each, by written agreement of the parties made at least thirty (30) days prior to the expiration of each such [] period.

4. **Records.** During the course of CONSULTANT's engagement with CLIENT, CONSULTANT will keep records relating to work performed for CLIENT and CLIENT may review such records at times that are reasonably agreeable to the parties.

5. **Representations.** Each party represents and warrants that it is free to enter into this Agreement and that it is not subject to any restrictions which might prohibit CONSULTANT from rendering consulting services to CLIENT or CLIENT from retaining CONSULTANT, and that the individual signing on behalf of CLIENT has authority to engage these services.

6. **Confidential Information.**

6.1 **CLIENT Information.** CONSULTANT agrees at all times during the term of its performing services hereunder and thereafter, to hold in strictest confidence, and not to use, except for the benefit of CLIENT to fulfill its obligations under this Agreement, or to disclose to any person, firm or corporation without written authorization of the President of CLIENT, any Confidential Information of CLIENT. CONSULTANT understands that "Confidential Information" means any information, technical data, trade secrets, and know-how regarding CLIENT's business or university operations, including, but not limited to, research, product and operational plans, services, lists of customers or prospective customers, prices charged or proposed to be charged, terms of dealings with customers, customer requirements, costs of goods or services, markets or marketing reports, software, developments, inventions, processes, formulas, technology, designs, drawings, finances or other business information disclosed to CONSULTANT by CLIENT either directly or indirectly in writing, orally or by drawings or observation of materials, presentations, or equipment and which are marked as "Confidential" by CLIENT.

CONSULTANT further understand that Confidential Information does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act of CONSULTANT or of others who were under confidentiality obligations as to the item or items involved. CONSULTANT acknowledges that the Confidential Information is of extremely high value to CLIENT and any action or omission on its part which may lead to the disclosure or misuse of any such Confidential Information could be of extreme detriment to CLIENT and would cause irreparable harm to CLIENT, for which CLIENT would not have any adequate remedy at law. In the event of any breach of CONSULTANT's obligations set forth in this Agreement, CLIENT shall, in addition to such other remedies as may be available to it, be entitled to injunctive relief against CONSULTANT.

6.2 **Third Party Information.** CONSULTANT recognizes that CLIENT has received and in the future will receive from third parties their confidential or proprietary

information subject to a duty on CLIENT's part to maintain the confidentiality of such information and to use it only for certain limited purposes. CONSULTANT agrees to hold all such confidential or proprietary information that is marked as Confidential in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out its work for CLIENT consistent with CLIENT's agreement with such third party.

7. **Work For Hire.** Title and ownership rights of CLIENT to work product set forth herein shall vest in CLIENT only upon payment in full for all services under this Agreement and/or the Work Order relating to such work product. Subject to the foregoing, CONSULTANT acknowledges that all original works of authorship which are made by it (solely or jointly with others) within the scope of and during the period of its Services under this Agreement with CLIENT and which are protected by copyright are "works made for hire," as that term is defined in the United States Copyright Act. CONSULTANT shall not incorporate any invention, original work of authorship, development, concept, improvement, or trade secret owned, in whole or in part, by any third party, into any work product without CLIENT's prior written permission. CONSULTANT agrees to assist CLIENT, or its designee, at CLIENT's expense, in every proper way to secure CLIENT's rights in the Inventions and any copyrights, trademarks, patents, or other intellectual property rights relating thereto in any and all countries, including the disclosure to CLIENT of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which CLIENT shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to CLIENT, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, or other intellectual property rights relating thereto.

8. **Independent Contractor.** CONSULTANT's status shall be that of an independent contractor and CONSULTANT shall not be classified as a common law employee for any reason whatsoever, including, but not limited to, tax purposes. Neither this Agreement nor CONSULTANT's services as a consultant shall entitle CONSULTANT to participate in any employee benefit plan or arrangement of CLIENT. CONSULTANT understands and acknowledges that neither U.S. nor foreign income taxes nor payroll taxes of any kind shall be withheld or paid by CLIENT on behalf of CONSULTANT and CONSULTANT shall not be treated as an employee with respect to services provided hereunder for U.S. or foreign tax purposes. No workers' compensation insurance shall be obtained by CLIENT concerning CONSULTANT and CONSULTANT shall comply with applicable workers' compensation law concerning CONSULTANT. CONSULTANT is responsible to pay, according to applicable law, CONSULTANT's income taxes. CONSULTANT shall not be deemed to be an agent of CLIENT and has no authority whatsoever to bind CLIENT to any obligation. CLIENT does not have the right to control and direct CONSULTANT as to the details and means by which CONSULTANT's work under this Agreement is to be accomplished. CONSULTANT expressly acknowledges that, as an independent contractor, it and its individual consultants and employees shall not be eligible for any health or disability insurance, retirement benefits, or other welfare or pension benefits under the terms of any plans or programs that CLIENT may offer to its employees. CONSULTANT represents that it regularly and customarily offers the Services that it is being contracted for to the public, and that it has all necessary business licenses related to its business endeavors.

9. **Termination.** Both CLIENT and CONSULTANT shall have the right to terminate this Agreement for any reason upon thirty (30) days' notice. Furthermore, if either CLIENT or CONSULTANT fail to abide by any of the material terms this Agreement, the other party shall have the right to terminate this Agreement upon ten (10) days' notice to the

defaulting party. If the defaulting party cures the default within the said ten (10) day period, this Agreement shall continue in full force and effect as if no default had occurred.

10. **Survival.** The provisions of Sections 4, 6-8, and 12-15 of this Agreement shall survive the termination or expiration of this Agreement.

11. **Entire Agreement.** This Agreement supersedes all prior agreements between CLIENT and CONSULTANT with respect to the matters addressed herein and can only be modified by a written amendment signed by CONSULTANT and CLIENT.

12. **Indemnification.** CLIENT agrees to defend, indemnify and hold harmless CONSULTANT, its agents, representatives, employees, officers, directors and shareholders from, against and in respect of all liabilities, damages, losses, costs, expenses (including all attorneys' and expert witness fees), causes of action, suits, claims, demands and judgments of any nature whatsoever (each an "Action"), arising out of, by reason of or in connection with, in whole or part: (i) the material violation or breach of, or the failure by CLIENT to fully and completely keep, observe, satisfy, perform and comply with, any agreement, term, covenant, condition, requirement, restriction or provision of this Agreement or of applicable law; (ii) the Services provided under this Agreement, including but not limited to any personal injury or property damage arising therefrom; and (iii) any actual or alleged infringement by CLIENT of any patent, copyright, trademark or other intellectual property right or misappropriation of any trade secret or other proprietary right. CLIENT shall be obligated to defend the Action, at its expense, and by counsel reasonably satisfactory to CONSULTANT. CONSULTANT shall have the right to participate in the defense of the Action at its own expense. In the event that CLIENT elects not to defend the Action, CLIENT fails to take appropriate actions to defend the Action seasonably but in any event within twenty-one (21) days of notice of the Action, or CLIENT is also an entity or person against whom an Action is made and CONSULTANT determines in good faith that joint representation would be inappropriate, CONSULTANT shall be free, without prejudice to any of its rights hereunder, to compromise or defend (and control the defense of) such Action. Any compromise or settlement of an Action shall require the prior written consent of CONSULTANT. IN NO EVENT SHALL CONSULTANT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY. THIS LIMITATION SHALL APPLY EVEN IF CONSULTANT HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT MAY ANY ACTION BE BROUGHT AGAINST CONSULTANT ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE CLIENT SHALL HAVE LEARNED OF THE DEFECT, INJURY OR LOSS. CONSULTANT SHALL NOT IN ANY EVENT BE LIABLE FOR MORE THAN THE AMOUNT OF COMPENSATION PAID TO CONSULTANT UNDER THIS AGREEMENT (WHETHER SUCH LIABILITY ARISES FROM ANY PROVISION OF THIS AGREEMENT, BREACH OF WARRANTY, BREACH OF THIS AGREEMENT OR OTHERWISE, AND WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY).

13. **Governing Law and Arbitration.** Any claim or controversy relating in any way to this Agreement shall be governed and interpreted exclusively in accordance with the laws of the Commonwealth of Virginia and the United States. This Agreement shall be deemed to have been made in, and shall be construed under, the internal laws of the Commonwealth of Virginia. In addition, CONSULTANT and CLIENT agree to resolve any disputes arising out of or related to this Agreement by way of binding arbitration in Blacksburg, Virginia, under the American Arbitration Association ("AAA") Rules. Prior to initiating arbitration, the parties shall meet and attempt to resolve the dispute. If they are unsuccessful, they shall agree upon

an arbitrator to hear the matter. If they cannot agree upon the arbitrator, then each shall choose a AAA arbitrator who shall select a third arbitrator who shall hear the matter.

14. **Severability.** If a court of competent jurisdiction determines that any portion of this Agreement is unenforceable, then that portion shall be considered to be removed from this Agreement and it shall not affect the enforceability of the remainder of this Agreement.

15. **Successors and Assigns.** The rights and obligations of CLIENT under this Agreement shall inure to the benefit of its subsidiaries, successors, affiliated companies and their assigns and shall be binding upon the successors and assigns of CLIENT. This Agreement, being personal to CONSULTANT, cannot be assigned by CONSULTANT, but his personal representative shall be bound by all its terms and conditions.

16. **Representative Clients.** We are proud of the institutions and organizations that we are privileged to represent, and from time to time may identify you as a “representative client” on our website, or in marketing materials citing our prior experience. We will not include in such listing information any non-public information. We respect your privacy, and will not list your institution or organization if you let us know that you would prefer we not, and your permission may be revoked at any time.

IN WITNESS WHEREOF, CLIENT and CONSULTANT have executed this Agreement as of the date first above written.

CONSULTANT

By: _____

Title: _____

Date: _____

CLIENT

By: _____

Title: _____

Date: _____